

## **complaint**

Mr D complains about the way in which National Westminster Bank plc has handled his loan and current accounts during a period of financial difficulty.

## **background**

Mr D has explained that he found himself unable to meet loan repayments following a dispute with his business partners; they had restricted his income. In May 2012 he agreed through Triton Credit Services, the bank's in-house debt collection agency, to pay £100 a month towards the debt.

In November 2012 Triton sought to review the monthly payment. After what appears to have been a rather heated discussion the bank agreed to accept £125 a month for the following six months. At the end of that six month period the bank reviewed the position again; it said it needed £400 a month, a figure which was beyond Mr D's means. Mr D says that the bank's behaviour in the calls of November 2012 and May 2013 was unprofessional and oppressive. He doesn't think the bank properly addressed his resultant complaint.

Following the telephone call in May 2013 Mr D received a letter headed "*Green & Co Solicitors*". It referred to a debt of some £20,000 owed to National Westminster Bank, said that Green & Co was acting for Triton and indicated that court proceedings might be started to recover the debt owed. The letter included (in smaller print than the body of the letter):

*"This Firm is the in-house partnership of solicitors employed by The Royal Bank of Scotland plc and solicitors in the firm are registered by the Solicitors Regulation Authority of England and Wales."*

National Westminster Bank is part of the same group of companies as The Royal Bank of Scotland. Mr D says that when he spoke to the bank, however, he was told that Green & Co was an external firm of lawyers. He asked the bank to investigate this as well.

The bank agreed that it had not handled matters as well it should have done and it paid Mr D a total of £300 in recognition of that. But it continued to insist on increased payments to reduce the overall debt and to say that, in the absence of an acceptable repayment plan it would commence court action.

Mr D referred his complaint to us and one of our adjudicators considered it. She concluded however that the bank had done sufficient to put things right. In summary, she thought that it was for the bank to decide – as a matter of its commercial discretion – what repayments it was prepared to accept and if and when it should seek recovery through the courts. Mr D didn't agree with the adjudicator's conclusions and asked that they be reviewed by an ombudsman.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

First of all, there is no real argument about the debt here. Mr D has never disputed that he has an outstanding loan and overdraft and acknowledges that he is unable to repay them. There may be some discussion over the precise amount owing, but Mr D has not challenged the bank's figures.

### ***general principles***

Where a borrower is struggling to repay a debt we do expect lenders to act positively and sympathetically towards them – in line with regulations, industry guidelines and as a matter of good practice. What that means in practice will vary depending on the circumstances. But it doesn't mean that lenders should delay indefinitely taking recovery action; nor does it mean that they are bound to accept only what a borrower can afford. Sometimes it isn't possible to agree a repayment plan or other concessions which both parties can accept.

We won't generally interfere with a bank's legitimate exercise of its commercial discretion. To a large extent, it's for lenders, not us, to decide both the terms on which they're prepared to lend and to whom and to decide (if necessary) how and when to pursue outstanding debts – having regard of course to their legal and regulatory obligations, to relevant codes of practice and to good industry practice.

And finally, this service was set up to resolve certain disputes quickly and informally. Mr D has made it clear that he feels the adjudicator should have conducted a much more detailed investigation into the bank's actions and, in particular, into its handling of his complaint. He considers as well that she should have commented in rather more detail on the individual aspects of it. I think however that she was entitled to address the matter as a whole and to focus on the issues which she considered to be most important – in line with our statutory role as an informal service.

### ***Mr D's complaint***

I am broadly in agreement with the adjudicator's conclusions about Mr D's complaint, and for the same reasons.

It's clear that much of the communication between Mr D and the bank, both written and verbal, has been rather strained at times. To some extent I agree with him that the bank didn't handle matters as well as it should have done. For example, in a call of 23 May 2013 the bank told Mr D that it required him to make payments which were clearly very much more than he could afford. Unfortunately no recording is available, as the bank says it has become corrupted. But it's apparent even from the transcript of that call that the bank could have conveyed its message in a more sympathetic manner. And some members of the bank's staff appeared not to understand how the bank, Triton and Green & Co were linked.

Be that as it may, the fundamental issue here is that the bank was not prepared to continue to accept the monthly payments which Mr D was able to make. But I agree with the adjudicator that the bank was, after a lengthy period of accepting reduced payments, entitled to take the view that it needed to do rather more to recover the outstanding debt. It was under a duty to treat Mr D positively and sympathetically, but that doesn't mean it had to make decisions only on the basis of what Mr D could afford. So, whilst it could have handled matters better than it did, I don't think it was wrong to seek higher payments or to indicate that the alternative might be court action.

I shall comment briefly on the Green & Co letter, since Mr D has raised it as a specific issue. It's a matter of some concern that some bank staff dealing with debt problems appear not to have been able to explain how Green & Co and Triton fitted into the picture. But Mr D knew from the outset – because he specifically mentioned it – that Green & Co was effectively part of the bank and operating from the same address. Given the level of his debt and his earlier contacts with the bank and Triton, I don't think he was genuinely misled by the letter.

Overall I agree with the adjudicator that the bank has done enough to address any concerns about the handling of Mr D's complaints. And I don't believe it has treated him unfairly in the decisions it's made about the recovery of the outstanding debt.

**my final decision**

My final decision is that, whilst the bank didn't handle Mr D's as well as it could have done, it has done enough to put matters right. I don't require it to do any more.

Michael Ingram  
**ombudsman**