

complaint

Ms R complains that National Westminster Bank Plc mis-sold a loan to her and subsequently mismanaged her account. She wants compensation.

background

Our adjudicator did not recommend that this complaint be upheld. As the loan was taken out by Ms R partially to repay existing debts, clearly she received the benefit of repaying those and consolidating her debts into one loan. He also found that as Ms R had failed to make contractual monthly repayments over a considerable period of time prior to NatWest defaulting the loan account; it was entitled to do so. He could not find any record of an adverse credit rating but considered that when NatWest defaulted the loan this should have been recorded.

NatWest does not dispute that it made a number of errors in respect of Ms R's accounts and failed to provide a satisfactory level of information about them to assist in progressing this complaint. But our adjudicator found that as NatWest has written off a significant amount of the debt and had paid the amount it wrote off as a PPI refund in error, to Ms R, there was nothing further that it was required to do in compensation for these aspects. Ms R did not agree. She says that the mis-selling complaint remains justified as NatWest did not verify that she could afford it, when her financial information at the time showed otherwise. Also it mis-sold PPI at the same time. She also complains about a number of errors in the handling of her loan account by NatWest which she says have caused her loss for which she should be compensated.

my findings

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

In cases where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities- in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Ms R took out a business loan of £10,000 with NatWest on 16 June 2006. The loan was used to repay other existing debts and was to help her to develop her business. NatWest has been unable to provide any documentation relating to the opening of the loan. This is not surprising in view of the time that has elapsed since it was taken out, as businesses generally only keep records for 6 years. Ms R says that that level of loan was unaffordable at the time, and that she was pressurised into taking a loan double the amount she applied for. Ms R says that the events which followed were a consequence of NatWest selling her a loan which she could not afford.

From the start, Ms R struggled to meet her repayments, and exceeded the £5,000 overdraft limit on her business current account in June 2007. NatWest raised concerns between April 2008 and August 2008 about her arrears. It sent default notices on 30 June 2008. However, it is not clear that a default was recorded on Ms R's credit file at this time.

A number of repayment plans were agreed between NatWest and Ms R, but there were numerous problems with direct debits from her RBS current account to her business accounts with NatWest. Particularly on a number of occasions, the whole monthly repayment

amount was transferred to her business current account and no money paid into her loan account. The result was that her current account was in credit from 26 July 2010 onwards but her loan was in arrears.

NatWest then transferred her loan debt to a collections agent in January 2011 when a further direct debit payment failed. Ms R complained and NatWest accepted this instance was due to its error and refunded £90 of charges and offered £50 compensation for the error.

Throughout 2011 various payment plans were agreed. We then move forward to May 2013, when NatWest transferred a £1,144.69 credit balance on her current account to her loan account in reduction of the debt, and transferred management of her debt to a debt collection company, which I'll call ('B'). Ms R complained around the same time about interest and charges incurred whilst her accounts were being managed by NatWest's credit management services.

In June 2013 the amount owed was £9,072.61. Ms R offered B £4,536 (almost 50%) to settle it. But the £1,144.69 NatWest had set off from her current account had not been deducted from the total debt figure given to her. The offer was accepted and £4,600 was paid by Ms R in full and final settlement of the debt (and she says she paid £500 too much).

Despite settlement the balance of the debt remained on the loan account. Then a payment of £100 was subsequently taken by NatWest by direct debit in June 2013 by mistake. When Ms R complained about this NatWest said she could claim this back by going into a branch.

NatWest then responded to Ms R's complaint about interest and charges in June 2013, and accepted that charges shouldn't have been applied after January 2012. It refunded £198.92 in charges, £314.35 in interest, and it also paid her £100 compensation.

The next month, on 8 July 2013, NatWest also upheld Ms R's PPI mis-selling complaint in relation to the loan. It wrote off the PPI premium of £1,046.32 against the outstanding loan amount and paid a premium refund of £270.64 and interest to Ms R in July 2013.

NatWest then wrongly set up a new loan account in July 2013, which showed a narrative of "PPI rebate" and an amount owing of £3,295. NatWest informed Ms R by letter that a £1,046.32 partial repayment had been recorded against this.

NatWest also sent a letter to Ms R in August 2013, to inform her that a debt with a nil balance had been passed to B, in relation to the old loan. Ms R complained about this and that a default had been recorded. In its final response in October 2013 NatWest rejected C's complaint regarding the default, as no record of a default being recorded could be found. But it paid her £100 compensation in respect of a loan having been set up in error.

NatWest's notes in November 2013 state that the loan hadn't been closed, because they were awaiting the outcome of a PPI investigation.

Ms R remained unhappy and raised another complaint, which was replied to by NatWest's chief executive's office on 27 November 2013. In this response NatWest acknowledged the errors made, and sent Ms R a cheque for £3,672.61 in relation to a PPI refund, and also offered a further £300 compensation.

Ms R then made a complaint to NatWest on 28 January 2014 that the original loan was mis-sold to her and that NatWest should not have recorded a default. NatWest did not uphold her

complaint, as no information was by then available regarding the sale of the loan, and no record of a default could be found.

A further complaint was made to NatWest by Ms R on 25 February 2014, in relation to it passing her account over to collections agents. NatWest responded that the accounts were correctly transferred. It then closed all of Ms R's accounts.

Ms R's complaint to this service is that the loan should never have been sold to her, because it was not affordable, and that everything else that happened was a consequence of this mis-selling of the original loan. Ms R says that a default recorded on her credit file caused her and her partner to struggle to obtain a mortgage in 2013. She says it resulted in them obtaining an unfavourable rate, and that they have incurred £8,190.95 of unnecessary expenses.

Ms R also complains about a series of administrative errors made by NatWest, and that she was harassed to repay in 2008. She also complains about NatWest's failure to correctly set up a direct debit to repay her loan. Finally Ms R complains that she was misled into paying too much in settlement of the loan, as the actual balance was significantly lower than that given to her by B.

I have considerable sympathy for Ms R in relation to NatWest's behaviour in relation to her loan account with it over a number of years. But like the adjudicator I cannot find that the loan was mis-sold to her. There is no evidence available from NatWest at the time when she applied for the loan, and I am unable to find it acted improperly by granting the loan. It says that it would have carried out the usual income and expenditure enquiries and other credit checks, and I have no reason to doubt this. Ms R says that her payslips and business profits are evidence that the loan was unaffordable, but I do not know what NatWest considered when it approved the loan application. Clearly also Ms R has had the benefit of over £5,000 which was used to repay existing debt.

Turning to the adverse credit rating. Our adjudicator asked the credit reference agencies to produce reports, but they both said that there was no information available relating to Ms R's business accounts and that they've never been asked for such a report previously and no records exist. Therefore there is no evidence of an adverse credit rating having been entered by NatWest that could have impacted on Ms R's application with her partner for a mortgage. I accept that it is likely that adverse information was recorded perhaps as early as 2008 when there was first a default, but it seems that either the accounts were later removed by NatWest from Ms R's credit history, or are no longer showing because it is more than six years since a default was recorded. In any event I am unable to find that NatWest should compensate Ms R for any financial loss suffered as a result of being unable to obtain a favourable mortgage, as it is clear it was entitled to enter a default. So NatWest cannot be held responsible even if this had impacted upon a mortgage application.

What is clear is that NatWest managed Ms R's loan account very poorly over a number of years, and added to her difficulties. But in considering this aspect, I also have to take into account the compensation that it has already paid to her. It has already paid a total of £550 compensation to Ms R in respect of the trouble and distress caused to her.

Additionally, as well as paying a PPI refund of £270.91 in July 2013, NatWest paid Ms R a further £3,672.61 subsequently, as it believed this was the refund owed to her. This £3,672.61 was made up of the PPI refund including interest, and the £3,294.90 NatWest had written off when it agreed a settlement of her loan debt with her. So NatWest not only wrote

off £3,294.90 of debt Ms R owed it as part of the settlement, but it also paid her a further £3,294.90 that was not owed to her.

Having taken all of the above into account it is not fair and reasonable to recommend that NatWest should pay Ms R any further compensation for the trouble and upset it has caused to her. I appreciate that my decision may come as a disappointment to Ms R.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms R to accept or reject my decision before 1 May 2015.

Janine Allen
ombudsman