

complaint

Mr J complains that National Westminster Bank Plc is unfairly asking him to repay a loan, because it hasn't been in contact with him about for more than six years.

background

I issued a provisional decision on this complaint in December. A copy is attached.

NatWest has given us some information about how Mr J might have got information on his loan.

Mr J asked us for some extra time to submit his comments, which we agreed. Other than the two comments he made initially, which I've covered below, he's not provided any other evidence.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr J said two things. The first was whether I'd listened to a call (or read a transcript of it) he had with the bank, when he believes it said it was in agreement with his stance. I didn't – but I said in my provisional decision that even if that conversation wasn't clear, the bank confirmed its position reasonably quickly. I'm not doubting Mr J's recollection of the call, but if the bank made a mistake at that point I think it corrected this within, at the most, a couple of weeks. So I don't think any error here had a long term effect.

Mr J also said I hadn't addressed all of the points he'd made, but not what was missed. I don't need to refer to every single point a customer's made in a decision. I can assure him I considered everything he provided in order to reach my provisional decision.

We gave NatWest extra time to send information also. It sent us some statements for a savings account Mr J had from 2009-2015. It says the statement shows he accessed this account using online banking, and when doing that he would have been presented with a summary of all his accounts, including the loan. NatWest says this means Mr J must have known about the debt. I don't think this is enough to persuade me that the bank was contacting Mr J about his loan as it says it did. I say that because I think relying on a customer to review an account on a computer – especially when it wasn't the account Mr J was intending to access – is at best unreliable. NatWest hasn't shown us that Mr J opted out of receiving paper statements for the loan and in fact told us it had sent statements – although it can't give us any evidence it did this.

As I said in my provisional decision, I can't say whether Mr J's debt remains enforceable, as that's a decision only a court can make. But I can say whether I think it's being fair in continuing collections activities. Overall, I don't think the bank has done enough to show that it responded to Mr J's questions properly when he challenged its collections activity in early 2015. Nor has it answered most of the questions I asked, or cleared up the confusing account of how Mr J's loan was set up and how much he owes.

Without clear evidence that the bank has complied with the guidance in the Consumer Credit Sourcebook I don't think it's fair for the bank to continue its collections activities. I think the

other points – the compensation and removal of incorrect entries on his credit record – remain valid.

On that basis, I'm still going to uphold this decision.

my final decision

My decision is that I uphold this complaint. I order National Westminster Bank Plc to pay Mr J £100, remove any incorrect adverse entries from his credit record and stop collections activity until it can show it's complied with the Consumer Credit Sourcebook guidance on time barred debt.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 3 May 2016.

Sue Peters
ombudsman

copy of provisional decision

complaint

Mr J complains that National Westminster Bank Plc is unfairly asking him to repay a loan. He says he hasn't heard anything about the debt for more than six years, which means NatWest can't ask him to pay it. Mr J wants the bank to pay him substantial compensation for the trouble he's been put to – including, he believes, registering adverse information on his credit record.

background

In 2006 Mr J took out a loan to help pay for his studies to become a solicitor. He hasn't made any payments towards the debt since October 2007.

NatWest contacted Mr J in December 2014 wanting to discuss the account. Mr J complained about that in January 2015, saying that recovery action for the debt was time barred because no-one had contacted him – so he hadn't acknowledged the debt – for over six years.

NatWest said Mr J's argument didn't apply because it had sent him yearly statements which notified him of the debt. It said the limit on his account expired in December 2014 and its collections team would handle any repayment plan.

Mr J complained again and also said he'd been told on the phone that the bank agreed with his stance and would confirm that. The bank couldn't find that conversation and instead confirmed its original position – that Mr J should agree a repayment plan.

Our adjudicator didn't think the complaint should be upheld. She thought that, as NatWest had been sending Mr J statements, it had maintained contact and so was entitled to try to recover the debt. She also said that NatWest had explained why it didn't contact Mr J about missing payments – it had said that reflected the type of loan he had.

Mr J doesn't agree: he has raised a number of points and has asked for an ombudsman to review the complaint.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr J, a solicitor, doesn't say he didn't borrow the money from NatWest in the first place. But he does think that as he hasn't heard anything about it – or acknowledged the debt – for a number of years NatWest can't now try to recover the money.

Mr J says that this service must take account of the law when reaching a decision. I agree with that. But as well as that, the over-riding principle that this service works to is whether a customer has been treated fairly and reasonably.

I'm not going to go into all the detail around this complaint. But in summary:

1. In 2006 Mr J took out a loan to pay for his law studies. It should have run until 2013. No payments were due for the first 14 months, and then about £300 per month was due for just under six years. Mr J stopped making payments in 2007.
2. The credit agreement Mr J provided bears little resemblance to the loan the bank says it set up. Mr J's agreement was, broadly speaking, for the loan to be repaid in instalments. The bank says it set up a loan that had no scheduled repayments and simply had to be cleared by

its end date. This was apparently a facility aimed specifically at people studying to become lawyers – which Mr J was.

3. There seem to be discrepancies in the amounts borrowed and the end date. The agreement is for £17,000 plus interest. The bank appears only to be asking Mr J to repay the amount of money (about £7,000 after interest) transferred to his current account in 2006. The bank hasn't explained why it's not asking for more given Mr J made very few repayments.
4. When the loan expired in the bank's books – late 2014 – it started chasing for the debt. Mr J's credit agreement was for just over seven years – so it would have expired in 2013. The bank hasn't satisfactorily explained this.
5. Having made the above comments, it seems to me that the structure set up by the bank has been in Mr J's favour. He's not been charged any fees for not paying regularly nor has his credit record been affected even though he hasn't repaid any money for a long time.
6. Mr J says he's not acknowledged the debt in more than 6 years. He's pointed to Consumer Credit Sourcebook's (CONC) position on debts that haven't been chased for six years or more. CONC says, in summary, that a lender can't try to recover a debt if it hasn't been in contact with a borrower for over six years. The bank says it sent statements every year, which means the debt isn't time barred. It hasn't so far provided any proof these were sent and Mr J says he doesn't recall receiving them. He also says it makes no difference if the statements were sent as he hasn't acknowledged the debt. But as CONC only asks that the lender has been *in contact* I think whether or not the bank can prove statements have been sent is a key point.
7. Mr J complained in January and raised the fact that he believed the debt was time barred. The bank responded fairly quickly to reject the complaint. Mr J complained again and the bank again rejected it.
8. Mr J complains that the bank continued to chase him for payment even though he'd asked it to explain a number of things in its first letter. Some of Mr J's points are the same as ones the bank hasn't explained to us, either.
9. The bank transferred Mr J's debt to its collections department and started recovery proceedings. It said it would stop these whilst his complaint was with us (mid April).
10. Mr J says the bank told him, in a phone call in late March that it agreed with his reasoning – but never confirmed this. The bank's notes from the time don't match his recollections. Those from the date Mr J refers to say that the bank has reactivated the complaint and agreed the issues, their effect and what Mr J wants as an outcome. Even if the conversation was less than clear – a letter dated the same day says the bank won't uphold the complaint and gives referral rights for our service. The bank's position was also confirmed in a phone call a couple of weeks later – so Mr J can't have been under the impression the debt would go away for very long.
11. Mr J says he received notice that his loan was about to be formally defaulted a few days after the call. He didn't think he needed to respond to that as he believed this had been superseded by the phone call. I think that's an unusual thing for a solicitor to do, as I'd expect a more cautious approach, but I do understand his reasoning. About a week later a default notice was issued. The default notice says the loan amount outstanding is just over £7,000. However it says that the arrears are about £27,000, and this is the amount that needs paying within 28 days. That doesn't seem right to me, so I'd ask the bank to explain the arrears and loan balances.

12. Mr J says his credit record has been affected – because he couldn't borrow money. I haven't seen Mr J's credit record, and without that I can't say that the bank's actions were wrong or the only reason he was refused credit.
13. The bank has also decided to close his accounts – and one for an ex girlfriend he had a joint account with. The provision of services is a commercial decision the bank's entitled to make, and I see that it's given him a reasonable period – about two months – in which to make other arrangements.

My current thinking on this complaint is that I can't say whether Mr J's loan is statute barred or unenforceable because that's a decision properly made by a court.

I *can* consider whether the bank's acted fairly and reasonably. I'm not currently persuaded that it has. I say that because:

1. The explanation of how the credit was set up isn't satisfactory.
2. Mr J had clearly challenged whether the bank could ask him to pay and said he thought the loan was time barred. CONC says a bank shouldn't continue to try to recover a debt once a customer has raised this as an issue. I accept that the bank responded by the end of January, but Mr J asked some reasonable questions in response to its letter – and I don't think the bank should have continued recovery activity before it had answered those questions.
3. There appear to be errors in the default notice.
4. The bank may have placed information on Mr J's credit record that it shouldn't have. If the bank had dealt with Mr J in line with the credit agreement he sent us, it would have been in contact with him in late 2007. And it seems likely that it would have registered missing payments, a default and possibly a county court judgement. Mr J's credit record would have been affected by those for six years, so the bank's lack of action means he's not had that problem. Having said that, it's likely that the entries would have expired by now, and I'm not currently persuaded it should be registering new information – if it has.

Overall, I don't think the bank has handled this complaint well. So I'm minded to ask it to pay Mr J some compensation. I'm not, however, going to ask it pay several thousands of pounds as Mr J has suggested. I'm currently minded to ask it to pay £100 for continuing to contact Mr J about the debt when he'd asked reasonable questions about the bank's letter. I'll consider whether this amount should change once I receive any comments or additional evidence from both Mr J and the bank. I'm also intending to ask the bank to remove any incorrect entries it's made on Mr J's credit record.

my provisional decision

My decision is that I'm minded to uphold this complaint and order National Westminster Bank Plc to pay Mr J £100 and remove incorrect adverse entries from his credit record.

Sue Peters
ombudsman