

complaint

Mrs R complains that National Westminster Bank Plc ("NatWest") has not provided a copy of her original credit card agreement and refuses to write off her debt, when it agrees the agreement is unenforceable.

background

Mrs R took out a credit card with NatWest in 1992. In 2012 she asked the bank to provide her with a copy of the original agreement. She is entitled to this under section 78 of the Consumer Credit Act 1974. NatWest replied that it could not find the original agreement and accepted that this failure to comply meant that it could not enforce the agreement through the courts. In the same letter NatWest said that Mrs R's obligations under the agreement continued even though the debt was unenforceable. NatWest also said that if Mrs R did not continue to meet these obligations it could pursue the debt by other means (short of enforcement through the courts) and register any default with credit reference agencies. Mrs R considers this response unreasonable. She would like NatWest to write off the outstanding balance.

Our adjudicator did not recommend that the complaint should be upheld. She considered that it was fair and reasonable for NatWest to expect Mrs R to repay the debt which she incurred on the credit card. Mrs R says that, as the agreement is unenforceable, a court would write off the debt and so NatWest should do so.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I come to the same conclusions as our adjudicator for much the same reasons.

Only a court can decide whether the credit agreement is enforceable. I cannot decide this issue or whether a court would also require the bank to write off the debt.

I decide complaints with reference to what I consider to be fair and reasonable in all the circumstances. The issue for me to decide is whether NatWest should write off the debt because it accepts the agreement is currently unenforceable in court.

I do not consider I can fairly require the bank to write off the debt. Mrs R does not dispute that she borrowed the money and had the benefit of it. I consider NatWest is entitled to ask her to repay the debt, and to register information with the credit reference agencies about it.

I recognise that Mrs R is likely to be disappointed by my decision. She is entitled to reject it and, if she does, it will not be binding on her or the bank. She will then be able to pursue any legal remedies open to her.

my final decision

My decision is that I do not uphold this complaint.

Claire Jackson
ombudsman