

complaint

Mr and Mrs A complain about National Westminster Bank Plc's ("NatWest") handling of their mortgage, loan and current accounts with it. They consider it failed to respond fairly, positively and sympathetically to them when they were facing financial difficulty. In particular, they say it went back on an agreement to remove the defaults it had registered on their credit file with it.

They say it also delayed in marking those defaults as satisfied.

background

Mr and Mrs A held mortgage, loan and current accounts with NatWest. In 2010 they experienced financial difficulty. They missed a number of mortgage and loan payments. Their current accounts were overdrawn.

In March 2011, NatWest issued default notices and passed the accounts to recoveries. It registered defaults against Mr and Mrs A's credit files for Mr A's loan account and their current account overdraft borrowing. It stopped charging interest.

Mr and Mrs A took advice from debt charities and set up a payment agreements with the bank for all their accounts. After they had made six months regular payments, NatWest agreed to capitalise the mortgage arrears (that is, add the arrears to the mortgage account). In doing so it asked Mr and Mrs A to refinance the defaulted loan and overdraft borrowing. And it sent letters indicating it would then remove the defaults, potentially improving their credit rating. They signed the loan agreement ('the April 2012 loan') for just over £20,000, at an interest rate of 5% over Bank of England base rate for a term of more than 13 years. They then made payments of just over £175 a month as agreed under the loan.

In 2013 Mr and Mrs A complained to NatWest. Mr A had been unable to get a loan he needed for his work (he is self-employed). They complained NatWest had failed to remove the defaults, as it had earlier agreed, and it had also failed to mark the unsecured borrowing as 'satisfied' for over a year. They felt it hadn't treated them fairly when they were in financial hardship.

NatWest said it had correctly registered the defaults. Mr and Mrs A had missed payments on the loan and overdraft borrowing and, in the period until the default was registered, had not entered into a payment plan. It had marked the original defaults as satisfied when the April 2012 loan was set up. It then reported that the payments were being met on the new loan. Mr and Mrs A didn't agree. They said the bank had misled them about removing the defaults. It had caused them on-going financial hardship. Mr A's income reduced because he couldn't get a loan. They had had to pawn Mrs A's jewellery.

our adjudicator's conclusions

Our adjudicator ultimately concluded that NatWest had been entitled to register the defaults. But she didn't consider it was fair for NatWest to charge interest on the 2012 loan. This was because NatWest had stopped charging interest when the loan was passed to recoveries, in 2011, and had led Mr and Mrs A to believe the new loan would result in defaults being removed. She recommended NatWest make the loan an interest-free one, and refund any interest already paid.

NatWest didn't agree. It said it had fully explained the terms of the loan to Mr and Mrs A during its telephone conversations with Mrs A. Had it not capitalised the mortgage arrears and refinanced the unsecured borrowing in this way it is likely it would have taken action for possession of Mr and Mrs A's property. It also paid a payment protection insurance (PPI) refund to them directly, when it would otherwise have been used to reduce the existing borrowing.

my findings

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

the bank's response to Mr and Mrs A's financial difficulties

I consider NatWest did take steps to treat Mr and Mrs A fairly, sympathetically and positively. It gave them details of the debt charities, which they contacted. It froze interest and agreed a 'breathing space' while they took advice. It accepted reduced payments and, when those payments were maintained, agreed to capitalise the arrears.

registration of the defaults

I find NatWest was entitled to registered defaults against Mr and Mrs A's credit files. The loan had been in significant arrears, and their current accounts were overdrawn. At the time the defaults were registered Mr and Mrs A hadn't made any proposals to repay the borrowing.

I accept that the bank did, as it says, mark the debts as satisfied on the date the April 2012 loan repaid that borrowing.

the April 2012 loan

I consider NatWest's letters to Mr and Mrs A, in March 2012, were not just confusing but misleading. I accept that they entered the April 2012 loan in the reasonable belief that NatWest would remove the defaults.

So I need to decide a fair outcome to this dispute. I don't consider I can fairly require NatWest to remove the defaults. In my view, the defaults fairly and accurately reflect Mr and Mrs A's period of financial difficulty. Their credit files are intended to show their history of repaying credit.

Even if the defaults were not on their credit files, I consider it likely Mr and Mrs A would struggle to obtain finance - given the history of missed payments and mortgage arrears, and their overall liabilities.

But I find that NatWest didn't explain the options to Mr and Mrs A in a clear and transparent way. So they didn't make an informed decision. Mr A's loan balance already included an element of interest on the original loan. The loan balance and their current account balances had been frozen, with no more interest added after the accounts were passed to recoveries. Rather than negotiate a repayment arrangement for the existing debt, NatWest offered a loan which added further interest. But the accounts were already in default and would remain so. It didn't intend to remove the defaults.

And I can't see any reason why Mr and Mrs A wouldn't have entered into a repayment arrangement with the bank on the defaulted debts. They had already met the agreed reduced payments and have maintained the April 2012 loan payments. So it is not clear to me that the April 2012 loan, adding interest to the borrowing again, was the only way to avoid court action as NatWest suggests.

So, like the adjudicator, I consider a fair and reasonable settlement is for NatWest to refund (to the loan account) any interest it has already charged on the April 2012 loan, and make it interest-free for the remaining term. I accept Mr and Mrs A might not have received the PPI refund had they not refinanced, but I can't see it would be fair or reasonable now to expect them to repay this money to the bank.

my final decision

My decision is that I uphold this complaint. I order National Westminster Bank Plc to rearrange the April 2012 loan it made to Mr and Mrs A so that:

- it refunds to the loan account any interest it has applied to date; and
- It doesn't charge any interest for the remaining term of the loan.

If necessary, and to make it interest free, National Westminster Bank Plc is entitled to ask Mr and Mrs A to sign a new loan agreement to replace the April 2012 agreement. If it does so it should ensure that:

- it uses any payments Mr and Mrs A have made under the April 2012 loan to reduce the balance of the new loan; and
- the overall term is no less than the April 2012 loan term (that is, no less than 162 months from the date the April 2012 loan was drawn down); and
- the monthly payments are no higher than the April 2012 loan payments (that is, no more than £175.65); and
- The interest rate is zero.

Amanda Maycock
ombudsman