

complaint

Mr K complains that the Nationwide Building Society applied interest and charges to an outstanding credit card debt incorrectly and that it took unjustified legal action to collect that debt.

background

This is a brief summary of an issue going back ten years.

Mr K lost his job in 2004 and fell into financial difficulties. This situation contributed to health problems which appear to be ongoing. He sought help from a debt advice charity which set up a debt management plan so he could pay off his debts over time. In November 2004 he entered into an arrangement to pay off his Nationwide credit card debt which was in excess of £10,000. In December 2004 the society issued a default notice for Mr K's credit card debt. Under this notice Mr K says he expected that interest and charges would be stopped. However, the society did not register the default notice and continued to apply interest and charges. Mr K made his monthly payments as agreed and increased them from time to time as his financial situation permitted.

In 2009 Nationwide asked Mr K to pay off the debt or at least increase the monthly payments. Mr K refused since the payments had increased over the years as part of his debt management plan. In April 2010 Nationwide issued another default notice. The basis for this notice was that Mr K had "*...not paid the minimum payments due...*". The society took legal action to recover the outstanding debt, but it realised that action was flawed and it failed. The society stepped back from its legal actions and agreed to continue with the original agreement. However, unlike the notice in 2004, it did register this default notice.

In April 2013 Mr K reached the point where he believed he had paid off the debt and asked Nationwide for confirmation. At that point the society told him he owed £1,588, though latterly that figure has been reduced to £1,205. Nationwide has not been able to clarify how the amount had been calculated save to say that it was due to interest, charges and court fees. Mr K disputed that he owed this since the original default notice in 2004 should have stopped interest and charges. He says neither he nor the debt advice charity was aware of the failure to register the notice.

The adjudicator recommended that the complaint be upheld. She said that Mr K had taken a responsible attitude to clearing his debts. She was not persuaded that the society had supported Mr K sympathetically or positively as it should have done. Also it had not been made clear to Mr K or the debt advice charity that interest and charges would continue after the default notice was issued in 2004. She recommended that the society forgo the claimed interest and charges and the court charges which had been added to his debt. It should remove the default reported in 2010. The society had already issued a notice for the debt in 2004 and it was its failure that it had not registered it. Finally, Nationwide should pay Mr K £200 compensation.

Nationwide did not agree and suggested that it pay compensation of £200 because of the distress caused by the failed legal proceedings in 2010 and refund the court fees of £225. In support of its position the society provided a recording of a call from March 2011. In this Mr K agreed the sum outstanding which included interest and charges and it says this establishes that he would have known the debt included interest and charges. Mr K accepted the adjudicator's conclusions.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where necessary and/or appropriate, I reach my decision on a balance of probabilities – that is, what I consider is most likely to have happened in the light of the available evidence and the surrounding circumstances.

Following the loss of his job Mr K found himself in a difficult situation, but he took steps to sort out his finances and repay his debts. He approached a debt advice charity which set out a plan that would allow him to repay his debts over the coming years. In the course of this Nationwide issued a default notice which both he and the debt advice charity presumed stopped interest and charges. I have not seen any evidence that shows the society made the position clear to Mr K when it agreed to accept monthly instalments to clear the debt. In the absence of clarity from Nationwide I find it was reasonable for Mr K, advised by a debt advice charity, to assume that the additional burden of interest or charges was not being added to his debt.

Nationwide says the March 2011 phone recording demonstrates that Mr K should have known interest was being added to the debt. Mr K points out that this was one of a number of calls and it should be seen in context. I have not heard recordings of the other calls. He also says that he relied on Nationwide to give him the correct figure. Listening to the recording Mr K agrees the sum outstanding with the call handler, who goes on to say that interest and charges would normally be stopped once a case is put through the litigation process. In the call Mr K confirms he has not had statements for around six years. I am not sure how Mr K could have calculated the outstanding sum including charges and interest without the aid of statements for six years. I can only conclude that his calculations would have been based on information given to him by someone from Nationwide, probably during a previous call. I cannot tell if they explained that the figure included interest and charges and I do not accept that Mr K knew interest and charges had been added.

Mr K kept up his monthly payments, and the statements provided by the debt advice charity show these increased consistently over the years, apart from one month. In late 2009 the payments increased every month by very small amounts, but the payment in February 2010 dropped by just over £3 and Mr K believes this was the trigger for Nationwide to issue a default notice. He says that prior to this Nationwide had been pressing him to increase his monthly payments or pay off the loan completely. Nationwide invoked various legal steps to collect the debt, but having failed to do so correctly it reverted to collecting the regular monthly sums. Nationwide has not been able to explain why it took legal action when Mr K was diligently paying off his debt and it accepts he is entitled to compensation.

Nationwide has not been able to explain how it has calculated the outstanding balance of £1,206. It says that it is to cover interest and charges. I cannot, with any certainty, conclude that this figure is accurate. As set out above, Nationwide has not established that it told Mr K that interest and charges were being added to his debt and on the balance of probabilities I accept he entered into an arrangement to pay off his debt on the basis that no further interest or charges would be added.

On the issue of the default notice, Nationwide failed to register the original notice and has not been able to explain why. If it had registered it in 2004, I would have expected the notice to have been removed from Mr K's credit file by now. Having failed to register the first notice Nationwide sought to do so again in 2010. I do not consider this to be fair or reasonable.

my final decision

My final decision is that I uphold this complaint. I direct Nationwide Building Society to:

- Write off the £1,205 it considers is owed on the credit card debt.
- Remove the default notice reported against the credit card in 2010.
- Pay Mr K compensation of £200.

Ivor Graham
ombudsman