

complaint

Mr R complains that National Westminster Bank Plc (“Natwest”) hasn’t paid him enough money as a result of it accepting that it had mis-sold him a packaged bank account. He says that Natwest has incorrectly used some of the money to “off set” debt – as he cleared his debt years ago and no longer owes them any money.

background

In 2018 Mr R complained to Natwest about the sale of a packaged bank account. Natwest upheld his complaint and calculated what it owed him, paying some directly to him, and the rest to its in-house Recoveries Team. The amount it paid to him was the 8% interest calculation which forms part of our standard approach when putting things right. The other amount was calculated as being the refund of the PBA fees he’d actually paid minus a small deduction for some banking benefits.

When Mr R queried this, and explained he had paid off all his debt with Natwest some years ago, it disagreed. Mr R then came to this service, where the adjudicator looked into the evidence and concluded that Natwest hadn’t done anything wrong, as the available information showed that Mr R did have old debt with Natwest.

Mr R still disagrees, and has asked an ombudsman to look at his case.

my findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint. To be clear, the only point at issue in this decision is whether it is fair for Natwest to exercise the “right of set-off”. I have not considered any mis-sale issues, or the calculation or the redress amount itself. Having looked at all the relevant information, I am not upholding Mr R’s complaint, and I’ll explain why.

I can rarely be 100% certain about what has happened, particular when looking into a complaint which is to do with relatively historic issues. But it’s my job to use the evidence to decide what I think is more likely than not to be the case, on the balance of probabilities.

did Mr R still owe Natwest money after his current account closed/went into collections?

Mr R has told this service several times that he remembers paying off all his debt with Natwest some years back. He’s mentioned both a PPI refund, and a re-mortgage with a third party, as being the ways he had the money to do that. He also mentioned a court case, which he says he lost, but which led to him not having to pay anymore.

I’ve looked carefully through all the records that Natwest has been able to provide, and it does look like Mr R is right about a PPI refund being used to reduce the debt he had built up on his current account. It looks like that happened in March 2013. But once that refund was applied, the records show that Mr R still owed Natwest more than £4,000.

The records also talk about court action in 2008, so I can see why Mr R has mentioned that. But it supports what he said about losing the case and having to pay costs – so I can’t see why that would have led to a court order saying he didn’t owe any money. There’s nothing on the file to suggest that.

I also can't find any other amount paid by Mr R to Natwest, like a lump sum from a re-mortgage. Mr R has given us a bank statement from 2007, which he says shows he was making mortgage repayments to another lender. That is true, but it also shows that he was overdrawn with Natwest by over £2,000 at that point. So it doesn't suggest to me that he had used a re-mortgage to pay what he owed, otherwise I would expect to see his account in credit.

It's clear from both the records provided by Natwest and what Mr R has told us that he was having a very difficult time around then. He was ill, and seems to have had extensive significant financial problems, so it really isn't surprising that he may not remember all these details now. But there is no evidence to show me that Mr R paid back what he owed Natwest around 2007 or 2008.

is it fair for Natwest to use this compensation to off-set debt?

I've made a finding that the evidence shows that Mr R did still owe Natwest money when his account with them closed. But that doesn't automatically mean I would find that it is fair of Natwest to exercise the right of set-off. So I've gone on to think carefully about that.

Firstly, everyone agrees that the debt was written off by Natwest in 2013. And I can see why that in itself might make Mr R think he no longer owes anything. But that isn't what this term means. When a business 'writes off' a debt, that means it decides that it won't chase what it's owed any more: that is, it accepts that it won't get paid. It doesn't actually mean that the outstanding balance is erased.

I also queried with Natwest to make sure that it hadn't sold the debt on to a third party, as if it had I might decide it wouldn't then be fair to also use compensation to off-set. But it has sent me evidence to show what the various entries in the system mean, and I am satisfied that it didn't sell this debt on.

Mr R also hasn't mentioned any urgent priority debt he has (such as mortgage; rent; or council tax arrears, meaning he could be facing homelessness or criminal prosecution). Rather, his complaint is that he believes he doesn't owe Natwest any money. Having looked at everything, as I've explained, the evidence doesn't suggest that.

It's clear from both the evidence provided by Natwest and what Mr R has told us that he was obviously having a very difficult time about ten or so years ago. He was ill, and seems to have had significant financial difficulties, which I'm sorry to hear. So it absolutely isn't surprising if he isn't now entirely clear on what the situation was with all his accounts or borrowing relationships. But the available evidence leads me to find that it isn't unfair or unreasonable for Natwest to use some of this refund to off-set outstanding debt, and so I don't uphold this complaint.

my final decision

For the reasons I've explained, I don't uphold this complaint and Natwest doesn't need to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 24 June 2019.

Siobhan McBride
ombudsman