

## **complaint**

Mr L and Mr M are brothers. They complain that National Westminster Bank Plc and its debt collection agent have given them inconsistent and incomplete information about the amounts it says they owe to it.

## **background**

Mr L and Mr M ran a business which failed in the early 1990s. They had borrowed money from NatWest under a business current account overdraft and a business loan. Both accounts were in their joint names. Mr L also held a personal loan account with NatWest.

In the period to 2012 it is not in dispute that payments were made to both joint business accounts. In 2010 and again in 2011 Mr L and Mr M complained to the bank. They felt that they had paid enough. They said the figures provided by its debt collection agent didn't add up. They complained again to NatWest in 2012. They said that the debt collection agent was asking them to pay different amounts. They asked NatWest to send them the original overdraft and loan agreements.

In its 2012 final response letter NatWest said it had passed the borrowing to its recoveries department in the 1990s. At that time it had frozen interest on the debt. It had received payments of more than £16,000 which left a balance outstanding of just under £15,500. NatWest said it couldn't locate the original loan and overdraft agreements. It said it accepted the debt was not enforceable in court as a result. But it could pass the debt to a debt collection agent as it had done here. When the payment arrangement had ended it said its agent had contacted them for proposals. It offered them £100 for the delay in providing a response.

Mr L and Mr M remained unhappy. They believed they'd repaid the debts to the bank and that it hadn't provided any evidence they still owed it any money.

Our adjudicator attempted to mediate a settlement. He was satisfied it was likely Mr L and Mr M still owed NatWest money and sent them information from the bank about this. Mr L owed slightly more because of his personal loan. The adjudicator considered Mr L's total liability was £9,189.07 (to include his personal loan) and Mr M's liability was £7,499.49 (the joint borrowing less the money in his sole business current account).

The bank said its debt collection agent was willing to accept £5,100 from Mr L and £4,200 from Mr M. But this meant that if they both paid these amounts they would pay more than the total due. Following further contact between the bank and the adjudicator, Mr L and Mr M said that they could afford to pay the bank £3,000. But they could not pay this within 28 days. NatWest did not agree with this figure, and instead said it would be willing to accept £4,900 if paid within 28 days. This was not acceptable to Mr L and Mr M. The adjudicator proposed that the bank accept from Mr L and Mr M a total of £5,100, to be repaid within 6 months. It did not agree and its earlier offer lapsed.

## **my provisional conclusions**

After considering all the evidence, I issued a provisional decision on this complaint to Mr L and Mr M and to NatWest in August 2013. I summarise my findings:

I concluded NatWest had provided sufficient evidence to show that at 1 May 2013 the amounts outstanding to it were:

*joint accounts*

- Joint business current account overdraft	£2,204.58
- Joint business term loan	£6,108.26
- Total	£8,312.84

*sole account*

- Mr L sole personal loan account	£876.23
-----------------------------------	---------

The bank was entitled to ask either or both Mr L and Mr M to repay the joint debts, as I concluded it was likely they were arranged on a 'joint and several' basis. So it followed that NatWest and its debt collection agent was entitled to ask the brothers to repay the following amounts, in total:

- Mr L £9,189.07 (the two joint business accounts plus his personal loan)
- Mr M £8,312.84 (just the two joint business loans)

I didn't take into account any amount in Mr M's sole business account when arriving at the above figures. I considered NatWest had been entitled to impose a time limit where it had offered to accept a much lower amount than the amount due to it.

But I considered NatWest and its debt collection agent both provided incomplete, unclear and inconsistent information about the amounts owed by Mr L and Mr M. I concluded it should pay Mr L £250 and Mr M £250 for the distress and inconvenience this had caused them. I proposed this should be paid to them directly rather than in reduction of their debts.

I invited both parties to respond to my provisional conclusions. NatWest had nothing further to add. Mr M responded, on behalf of himself and his brother. He said, in summary:

- They found it difficult to accept they could still owe NatWest money, having taken out a loan of £15,000 (in 1989), an overdraft of £5,000 and Mr L a personal loan of £1,500 for his first car. But they have no further evidence to offer to show the debts should be lower.
- They would like NatWest to accept a reasonable offer and give them time to repay the borrowing as a lump sum. And if they do carry on making monthly payments they don't want the bank's debt collection agent to hassle them about it.
- They would prefer the compensation for distress and inconvenience to be used to reduce the debt, rather than being paid directly to them.

**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 the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities - in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

I appreciate Mr L and Mr M do not consider they should owe NatWest as much as it says. But they have not provided any additional evidence about this. And I remain of the opinion

that NatWest has done enough to show the balances set out above are due to it. To be clear, the bank cannot ask them to pay more than £9,189.07 in total – made up of the business loan, overdraft and personal loan.

It is not for me to say that NatWest should accept a reduced amount in settlement of the debt, or negotiate the time period for this to be paid. Mr L and Mr M can certainly contact the bank, and its debt collection agent, about this and discuss whether any reduced settlement can be agreed. Alternatively they can propose to continue their payments.

Even if Mr L and Mr M are meeting an agreed payment plan, the bank and its debt collection agent will still be entitled to contact them from time to time. For example, it can check the payments are still acceptable based on their income and expenditure, and circumstances, and remind them of the amount due to it. If Mr L and Mr M feel the contact is too frequent or amounts to the bank 'hassling' them, they can ultimately make a new complaint to the bank and this service if necessary. But I remind the bank of its responsibility to treat customers in financial difficulty sympathetically and positively.

Finally, Mr L and Mr M say they would prefer the compensation for distress and inconvenience to be used in reduction of their debt with the bank. As there are three separate accounts I suggest they confirm, in their response to this decision, their instructions to the bank for which account they would like to be reduced with the compensation payment. Our adjudicator will then pass this on to the bank.

### **my final decision**

My decision is that I uphold this complaint in part. I order National Westminster Bank Plc to pay to Mr L £250 and to Mr M £250 for distress and inconvenience.

I suggest Mr L and Mr M confirm, in their response to this decision, to which account they would like the bank to pay the compensation.

Amanda Maycock  
**ombudsman**