

complaint

Mr J complains about the maladministration of an account he holds with National Westminster Bank Plc ("NatWest"). He says it didn't respond to letters requesting information about the debt and therefore it is in breach of the tacit agreement that there is no debt.

background

Mr J wrote to NatWest several times in early 2015 and asked it to prove the debt it alleged he had with the bank. Specifically he asked NatWest to validate the debt by way of its accounting system, verify its claim with a signed invoice or equivalent, and provide the original signed contract and credit agreement. He also asked further questions about the securitisation of the debt and whether NatWest had sold it on. The letter said that if Mr J received no response, then there would be an implied tacit agreement that either the debt did not exist or that it had already been paid. As NatWest did not respond in the allotted time, Mr J says it follows that the debt with NatWest doesn't exist, his credit file needs amending accordingly, and NatWest can no longer pursue him for the money.

NatWest says the debt to which Mr J is referring relates to an overdraft on his current account which was agreed in 2004. It says that, as this was more than six years ago, it cannot provide any signed paperwork, and it is not obliged to do so. However, it acknowledged that it did not respond to some of Mr J's correspondence and paid him £100 for this and said it would send him the account statements within 28 days.

Our adjudicator did not recommend the complaint should be upheld. He explained to Mr J that this service cannot comment on whether a debt is legally enforceable, but did not find NatWest had acted unfairly by requesting the debt to be repaid. He considered the £100 NatWest paid for its failure to respond to some of Mr J's letters to be fair and reasonable.

Mr J responded to say, in summary, that: NatWest had taken over a year to respond to some of his letters; some questions remained unanswered including the issues of securitisation and sale of the debt; his credit file was not mentioned; his estoppel notice had not been acknowledged; he had yet to receive the promised statements; and debt recovery should have been suspended whilst the debt was in dispute.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As the adjudicator has explained, this service is an alternative to a court of law and, therefore, this decision is based on what I consider to be fair and reasonable. I cannot comment on whether Mr J's debt is legally enforceable and, similarly, although I acknowledge Mr J's estoppel notice, it will not affect my decision about what is a fair outcome. I also accept Mr J says, by not responding to his letter, NatWest entered into a tacit contract, but, again, that is not something about which this service can comment.

With regard to Mr J's outstanding questions, NatWest has now confirmed there was no securitisation of Mr J's debt and that, although it is with a third party for its management, NatWest has not sold it on. I am satisfied NatWest is entitled to manage Mr J's debt in this way.

I am also satisfied that the debt exists with NatWest. I acknowledge NatWest was unable to provide the original signed paperwork, but I don't consider that to be unreasonable given the passage of time. NatWest has, however, provided Mr J's statements from 2004 and these have now also been forwarded to him. I cannot see that NatWest has made an error in calculating the outstanding debt, and, as far as I can see, Mr J has not disputed the transactions that took his account overdrawn. Indeed, NatWest has noted a conversation from Mr J in late 2014 where he says he was looking to clear the overdraft but was between jobs at the time. So, based on the available evidence, I find Mr J does have an outstanding debt with NatWest and, on that basis, I also cannot conclude his credit file should be amended.

That said, I agree with Mr J that NatWest did not give full and timely responses to his letters. I can understand why Mr J would have been frustrated by the lack of communication, but much like the adjudicator, I find the £100 paid to Mr J to be fair and reasonable compensation for this. I also accept that Mr J says he was still being pursued for the debt whilst it was in dispute, although I cannot see he suffered a financial detriment as a result.

Finally, I note Mr J has also complained to NatWest that the correct procedure was not followed when the default was placed on his credit file in 2015. I understand NatWest is currently investigating, but, if he is not satisfied with its response, Mr J is entitled to refer this further complaint to this service.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 19 October 2016.

Amanda Williams
ombudsman