

complaint

Mr and Mrs L, through their representative, complain that National Westminster Bank Plc has failed to treat them fairly because it banked a cheque they sent in to settle a debt but hasn't accepted it as full and final settlement of the debt.

background

NatWest has two charges on Mr and Mrs L's home in relation to outstanding debt following court orders in 2008. In mid-2017, Mr and Mrs L's representative complained to NatWest saying the bank had treated them unfairly and failed to discuss settlement options for the debt with them. NatWest responded to this complaint in September 2017 saying it hadn't had any contact with Mr and Mrs L about potential settlement and its lawyers hadn't had any response from Mr and Mrs L either. It said it would only accept settlement if the full outstanding balance was paid and that they should contact NatWest's lawyers about this.

Mr and Mrs L's representative then wrote to NatWest again in November 2017 with a cheque from Mrs L for £5,000 offered in full and final settlement of the debt. The cheque was cashed but Mr and Mrs L's representative complained that the charges hadn't been removed from the property. NatWest's lawyers responded in December 2017 rejecting the offer and saying that, unless they heard otherwise by 28 December 2017, they'd treat the cheque as a part payment of the debt by Mrs L. They didn't hear back before that date so the payment was kept.

NatWest replied rejecting the complaint in January 2018. It said it had always been clear that only a full payment of the outstanding balance would be enough. Mr and Mrs L's representative disagreed. He said that NatWest had cashed the cheque which meant it accepted it as full and final payment of the debt. So they came to this service. Our investigator didn't think the complaint should succeed. So Mr and Mrs L's representative asked for review by an ombudsman.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Based on what I've seen, I don't think the complaint should succeed and I'll explain why. NatWest made it clear in its final response letter in September that it would only accept a full payment of the outstanding debt to remove the charges. It also said that any communication about that should be addressed to its lawyers. But the letter with the cheque for £5,000 sent in November wasn't addressed to NatWest's lawyers and didn't take account of what it had said.

Mr and Mrs L's representative says that once NatWest cashed the cheque, it accepted Mr and Mrs L's offer. But although NatWest cashed the cheque, their lawyers' letter of December 2017 made it clear the offer wasn't accepted. In that letter, the lawyers repeated what NatWest had said in September 2017. And it gave Mr and Mrs L the chance to say if they didn't want the cheque to be used as part-payment of the debt by 28 December 2017. But there was no response to that letter so the money's been kept to reduce the balance. So I find that NatWest's lawyers did give Mr and Mrs L the chance to ask for the funds back if they didn't want them to be used as part-payment but they didn't follow up on that.

It's my job to decide what's fair and reasonable in all the circumstances of a complaint. I've taken account of the fact that NatWest told Mr and Mrs L in September 2017 that it wouldn't

accept anything less than full payment of the outstanding balance, and that NatWest's lawyers repeated that in December 2017. The £5,000 sent in is a small part of the overall debt and. NatWest's lawyers offered Mr and Mrs L the chance to say they wanted the £5,000 back so I don't think NatWest's treated Mr and Mrs L unfairly. I understand that this isn't the outcome Mr and Mrs L were hoping for and their representative feels, very strongly, that the courts would take a different approach. My job, as an informal dispute resolution service is to decide what's fair and reasonable in all the circumstances of a complaint. If Mr and Mrs L reject my decision, nothing prevents them from taking the matter to court where different considerations may apply.

my final decision

For the reasons given above, it's my final decision that this complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs L to accept or reject my decision before 9 December 2018.

Susie Alegre
ombudsman