

complaint

Mrs K complains National Westminster Bank Plc is pursuing her for a debt on a joint account she didn't open. She says she was added to the account fraudulently by her ex-husband - Mr K. She also considers the account statute barred as she has never acknowledged the debt as being hers.

background

Mrs K and her ex-husband had an account with Abbey National. In February 2009 Mrs K and her ex-husband applied for a new current account and overdraft with NatWest. All bill payments including the mortgage were transferred to the new account. The account was used regularly, with bill payments and cash withdrawals being made, alongside credits to the account.

In July 2010 the last credit was made to the account, although it continued to be used during July and August 2010 for some bill payments. Following that no further debits or credits were made to the account – leaving it in debit by over £5,000. In September, October, November and December payments were made to the account via a third-party debt adviser. During that time a default notice fee was applied.

Mrs K was contacted about this debt and a loan taken out jointly with Mr K. Mrs K disputed the debts. NatWest agreed to stop pursuing Mrs K for the loan debt, as it couldn't locate a copy of the signed loan agreement and it couldn't be sure she benefitted from it. But two years later, in 2018, Mrs K was contacted again via a collection agency, about repaying the debt owed under the current account. Mrs K again disputed the debt and complained.

NatWest put all collection activity on hold while it investigated. And it was satisfied that Mrs K had been present during the joint account being opened and so it could now ask her to repay the debt as she was joint and severally liable for it under the account terms and conditions. So it didn't uphold her complaint.

Our investigator also concluded NatWest hadn't done anything wrong. She pointed out that two cards had been issued for the account, one for each of Mr and Mrs K; and that they had been used simultaneously. She couldn't find any plausible reason why Mr K would use two cards to operate the account, and she didn't find that adding Mrs K to the account would have assisted with the account opening or gaining the overdraft, as she wasn't working at the time. Overall, the investigator was satisfied Mrs K had applied for the account with Mr K.

Mrs K isn't happy with the outcome and appealed. In summary she said:

- There has been no finding on whether or not the debt is statute barred. The account was defaulted in 2009 and she considers she can't legally be pursued for a debt that's been defaulted, has a CCJ or is statute barred.
- If there was no benefit in her being added to the account, for the overdraft, then there was no benefit in adding her at all and questions why this would have happened.
- She considers it wholly unfair to be pursued for a debt of her ex-husband's making nine years after the account was opened.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I don't uphold this complaint. I explain why below.

As the investigator has explained whether or not a debt is enforceable, or is statute barred, is a matter for a court. However, I am required to take the law into account when reaching a fair and reasonable decision. It's my understanding that if a debtor has been contacted and notified of the debt within the statute period, then the matter isn't barred. It's also my understanding that in England, Wales and Northern Ireland a statute barred debt still exists and is recoverable [see CONC 7.15.12 – Mrs K has referred to these regulatory rules when making her complaint].

I would also add, if only for the sake of completeness, that Mrs K's understanding of the position is incorrect with regard to defaulted debts or debts that have a CCJ. In both situations the debt remains payable – indeed, if a debt has incurred a CCJ it means the court had made a judgement the debt is owed and needs to be repaid.

My consideration here is whether or not NatWest is acting fairly and reasonably in asking Mrs K to repay the debt. Mr K was declared bankrupt and so NatWest is no longer able to pursue him for any of the amount outstanding. But if I find that Mrs K did open and use the account, then as the account was joint and several, NatWest can pursue Mrs K for any amounts owed. So the question I need to consider is whether Mrs K knowingly opened and used the account.

NatWest has provided a copy of the application form, copies of the identification information used to open the accounts, and account statements and cash withdrawal information. Mrs K has said the signature on the account application (and subsequent repayment proposals) isn't hers. As the investigator explained, we aren't handwriting experts. Nevertheless, I have considered this argument carefully, but I don't find it persuasive. That's because Mrs K's signature, over the many different documents provided is different to her passport, including those in her letters of complaint; I'm not persuaded her passport signature being a little different to the application signature is persuasive evidence she didn't open the account.

I have also taken into account the passport copies were certified as true copies of the original – a process most, if not all, banks have to ensure they are meeting regulatory requirements to know their customer. Like the investigator, I would find it highly unusual for a member of staff to accept a photocopy of a passport to meet identification purposes. I'm also mindful that more than one member of staff endorsed the application process. I find, on balance, it highly unlikely that two members of staff would have knowingly facilitated the opening of a joint account, without both parties being present.

NatWest has provided records to show that two cards were issued for the current account. And two cards were used during the entire period the account was being actively used, sometimes at the same time. Whilst it is possible Mr K used both cards, I find the most likely explanation is that Mrs K had a card and used it to meet every day needs – such as shopping.

In response to the investigators point about there being no benefit in adding Mrs K to the account to facilitate its opening and obtain an overdraft, Mrs K has emphasised this means there was no benefit to her being added to the account at all. But I disagree with this - the

benefit was so she could use the account for her every day spending needs. Indeed, I note the previous account Mrs K held with Mr K was also a joint account and the statements provided during this account opening shows it operated in much the same way as this account. I can't think of a plausible reason, and Mrs K hasn't provided any, as to why she would have gone from holding a joint account to not.

Overall, having considered the matter very carefully, I'm persuaded it's more likely than not, that Mrs K did open the account with Mr K and had the benefit of it. I follow I find it isn't acting unfairly or unreasonably when seeking repayment of the debt from her. I do understand this is going to come as a considerable disappointment to Mrs K, particular given the difficult circumstances she went through. But as I don't find NatWest has done anything wrong, I find no basis on which to make an award against it.

my final decision

For the reasons given, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 9 October 2019.

Claire Hopkins
ombudsman