

complaint

Mr D wants National Westminster Bank plc to confirm that he does not owe money, on the basis of the Limitation Act 1980 and the fact that he says he has not used the current account for more than six years.

our initial conclusions

Our adjudicator did not recommend that this complaint should be upheld. He considered that even if the Limitation Act did apply, it would only prevent NatWest from suing Mr D in a court; but that it could still contact him about the debt. The adjudicator noted that Mr D had confirmed to this service that the account was his, and our adjudicator felt it was therefore fair that Mr D be held responsible for it. Mr D replied to say he did not accept the adjudicator's assessment and interpretation of the Act, and he referred to information he had obtained from National Debtline.

my final decision

To decide what is fair and reasonable in this complaint, I have considered everything that Mr D and NatWest have said and provided.

Mr D complains that he has been asked to pay off an account which he says he has not used for over six years, and that the bank has a lack of records. But NatWest says that its records show that Mr D contacted its collections centre on 4 April 2006, as a result of a formal demand letter on 9 March 2006, and that Mr D agreed a repayment plan. The bank says that payments of £25 were received on a monthly basis between April 2006 and March 2008, and it has statements to show this, albeit it cannot now show the originating account. Based on the available evidence it seems to me more likely than not that Mr D made the payments to the account. The account was then closed on 21 October 2009 and sold to Cap Quest Investments Limited on 14 February 2011. The latter company wrote to Mr D about the debt in late 2011. NatWest has also told us that Mr D set up a direct debit with Cap Quest for £20 monthly in January 2012, though no payments have been received. Although Mr D is disputing that he can be pursued for the debt, and has referred to the Limitation Act, it seems to me that Mr D has, within the limitation period, acknowledged that the debt was due. It follows that I do not uphold this complaint.

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr D either to accept or reject my decision, before 28 May 2013.

Claire O'Connor

ombudsman at the Financial Ombudsman Service

The ombudsman may complete this section where appropriate – adding comments or further explanations of particular relevance to the case.

ombudsman notes

Mr D says in his email to one of our adjudicators of 21 August 2012 that he then “implemented the Limitation Act as it had been over six years since I used the account.” This suggests to me that Mr D has acknowledged that the account is his, and this complaint is not about whether or not the debt exists, but whether he can be pursued for it. I also understand that NatWest has now sold the debt so that any collections activity would be undertaken by Cap Quest Investments Limited. So as between Mr D and NatWest, I see no reason to uphold this complaint. If Cap Quest commences legal action to recover the debt, then it might still be possible for Mr D to defend any claim by reference to the Act, subject, however, to his having acknowledged the debt within the limitation period. As our adjudicator has explained, we are not a court, and any dispute over the enforceability of the debt would be best suited to a court.

what is a final decision?

- A final decision by an ombudsman is our last word on a complaint. We send the final decision at the same time to both sides – the consumer and the financial business.
- Our complaints process involves various stages. It gives both parties to the complaint the opportunity to tell us their side of the story, provide further information, and disagree with our earlier findings – before the ombudsman reviews the case and makes a final decision.
- A final decision is the end of our complaints process. This means the ombudsman will not be able to deal with any further correspondence about the merits of the complaint.

what happens next?

- A final decision only becomes legally binding on the financial business if the consumer accepts it. To do this, the consumer must sign and date the acceptance card we send with the final decision – and return it to us before the date set out in the decision.
- If the consumer accepts a final decision and returns the signed acceptance card to us before the date set out in the decision we will tell the financial business – it will then have to comply promptly with any instructions set out by the ombudsman in the decision.
- If the consumer does not accept a final decision before the date set out in the decision, neither side will be legally bound by it.