

## **complaint**

Mr H has complained that after National Westminster Bank Plc (Natwest) upheld an earlier complaint he had made about mis-selling him a packaged bank account, it decreased the amount of compensation it paid him to reduce a debt it said he owed from several years earlier. Mr H doesn't think this was fair. He believes that Natwest should have paid him all the compensation, plus interest.

## **background**

One of our adjudicators has already looked into this complaint. The adjudicator thought it was reasonable for Natwest to withhold part of the compensation from Mr H and didn't recommend that it should uphold his complaint. Mr H disagreed and asked for an ombudsman to review his case. So it has come to me to make a final decision.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've looked into everything that Mr H and Natwest have told us or sent us about it and I've decided not to uphold it. I'll explain why.

When we uphold a complaint against a bank for mis-selling a packaged bank account, we normally tell it to refund all the fees a consumer paid for the account and to add interest from the time the consumer paid the fees until the bank gives them back. We add the interest to compensate consumers for not being able to use the money the bank took in fees for the mis-sold account. In some circumstances, we also allow banks to deduct any savings the consumer made by having the bank account. These savings may come from benefits such as better interest rates on overdrafts.

Mr H didn't bring the mis-sale complaint to us, but both parties seem to agree that Natwest initially worked out the compensation due to Mr H according to our normal guidance, including a small deduction for savings Mr H made on an overdraft. However Natwest then only paid Mr H the amount it calculated for interest. It said it could keep the rest as it believes that Mr H owes it a large debt on the account.

Mr H has raised two main points in his complaint to us. Firstly, he doesn't think he has any debts with Natwest, he thinks he paid them off several years ago. And secondly, even if he does owe Natwest money, he doesn't think Natwest can "*determine his priority debt*" in this way. He's told us that "*(his) complaint is that the bank deducted an amount based on an unadvised and unsubstantiated debt*".

I'll explain my findings for each of Mr H's main points in turn.

### **does Mr H owe Natwest any money?**

Mr H and Natwest have agreed that the packaged bank account closed a long time ago. Natwest has told us that Mr H paid fees for the account during 2002, 2003 and 2004 but that the account went into arrears. It says the account closed in July 2010 with a significant amount of money outstanding. It has sent us statements from this time and they show that Mr H did owe them a large amount of money.

Although Mr H has told us that he paid back all the money he owed to Natwest before 2010, he hasn't been able to send us any further evidence to show us how or when he did this. Nor have I seen anything to show he repaid the debt after 2010; so it seems to me that the statements are probably accurate and that Mr H's debt still exists.

I have also seen some of Natwest's records for Mr H's account which show that although Natwest may have used a third-party collection agent to try to recover money from Mr H, when the account closed Mr H still owed the money to Natwest. The records also show that Natwest or its agent discussed the debt with Mr H during 2010, so I'm satisfied that he knew about it at that time.

I accept that Mr H may not remember these details. It's nearly a decade since his account closed and I acknowledge that Natwest may not have said much to him about it for quite some time. But I'm satisfied that he does still owe money to Natwest due to the arrears on his bank account.

*does Natwest have the right to withhold part of Mr H's compensation for mis-selling him the account?*

Although I'm satisfied that Mr H owes Natwest some money, this doesn't automatically mean that it was fair for Natwest to hold on to some of the compensation for mis-selling him the account.

We only think it's fair for banks to withhold compensation in the way Natwest did in certain circumstances. For example, we must be satisfied that there was a close connection between the financial product which gave rise to the debt and the product for which the bank owes compensation; and we must also be satisfied that consumer doesn't have any urgent priority debts which the bank knows about. (Urgent debts include things like significantly overdue mortgage or rent or council tax arrears which could lead to a consumer becoming homeless or facing prosecution in the courts). We also look into any other reasons why it may be unfair for a bank not to pay all the compensation.

In this case, the debt and the compensation come from the same account, so there is obviously a close connection between them. And I'm not aware of Mr H having any urgent priority debts. Nor have I seen any other reason to think that Natwest behaved unfairly when it used part of the compensation to reduce Mr H's debt. I think it acted within its rights when it paid him the compensatory interest, but did not refund the account fees.

Mr H has also mentioned that he has received money back from Natwest for mis-sold insurance policies where it didn't withhold any part of the compensation, and has referred to decisions we have published on our website where we didn't think it was fair for a bank to withhold part of the compensation. So he thinks it must be unfair for Natwest to do so in this case.

It's not appropriate for me to comment on other cases in this decision. We consider each complaint individually to decide what's the fair and reasonable thing to do in the individual circumstances of the case. I have done that here, and I hope my explanation helps Mr H to understand how I have reached my decision.

**my final decision**

For the reasons I have set out above, I am not upholding Mr H's complaint against National Westminster Bank Plc. I'm not going to tell it to give him any money back.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 11 July 2019.

Steve Townsley  
**ombudsman**