

complaint

Mrs G is unhappy with how National Westminster Bank Plc handled matters when she was trying to repay a debt with it, delays she encountered in receiving confirmation that the debt had been repaid and how it handled a refund it promised her.

background

I set out the background to this complaint and my provisional conclusions by way of a provisional decision – a copy of which is attached and forms part of this final decision. For the reasons I set out, I concluded that part of Mrs G's complaint was out of our jurisdiction as it was brought more than six months after NatWest issued its final response letter. I said that I don't think I can reasonably hold NatWest liable for the losses Mrs G was claiming regarding delays she encountered in receiving confirmation her debt was repaid, and that the £50 offered by NatWest for its handling of the refund was reasonable in the circumstances.

I invited both Mrs G and NatWest to let me have any further comments they wished to make in response to my provisional conclusions.

Response to my provisional findings

NatWest accepted my provisional findings, but Mrs G didn't. She said (in summary):

- She didn't agree that the final response letter of 6 June 2016 should be considered as she'd still not received the required confirmation that the debt had been cleared at that point. A letter from NatWest dated 4 April 2017 shows her complaint was not brought out of time.
- A PPI refund had been sent to her trustee in bankruptcy which indicates the bank knew the trustee was involved. Mrs G says it should have sent them confirmation of the debt repayment. If the PPI refund had been taken in part repayment of the debt rather than being sent to the trustee, she'd have had to find less to repay it which will have helped her cashflow.
- Her trustee contacted NatWest again on 22 July 2016 for written confirmation of the repayment of the debt, which was sent on 29 July 2016. Mrs G says this is 79 days after the first request, and it wasn't done quickly enough.
- Her trustee has provided evidence to us that the NatWest debt was the only one outstanding preventing the lifetime mortgage from going through.
- The £50 compensation for the problems with the NOSIA refund is unsatisfactory.

my findings

After receiving responses from both parties, I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm minded to proceed with my final decision along the same lines as set out in my provisional decision. I'll explain why.

Mrs G's main objections focus on the jurisdiction aspect of the complaint. I said I'm unable to look into matters dealt with by NatWest in its final response of 6 June 2016 because she'd referred her complaint to us too late.

Mrs G said NatWest issued a further final response on 16 February 2017 and this was referred to again in its letter of 4 April 2017. As she referred her complaint to us in June 2017, she feels she was in time.

The final response letter of February 2017 refers to her complaint about the NOSIA and delays in sending the discharge letter to Mrs G's trustee in bankruptcy. It doesn't deal with the activities covered by the final response in June 2016. I've considered Mrs G's complaint about the NOSIA and delay in the discharge letter in my provisional findings. But I can't consider the complaint points that were dealt with in the final response dated 6 June 2016 as they weren't raised with us until May 2017. It's not that I don't want to look into those points, simply I have no power to do so for the reasons set out in my provisional decision.

There's no dispute that NatWest knew Mrs G had been made bankrupt and she had a trustee working with her. It's for this reason that it sent the PPI refund to the trustee. But I don't think it's reasonable to assume that because it knew of the trustee's involvement, it follows that it should automatically have known that it should forward confirmation of repayment of the debt to them too. I say this because, while NatWest accepts it might have been better if it had written to both parties, written confirmation had been sent to Mrs G on 3 June 2016.

Mrs G has said that her trustee has confirmed to us that the NatWest debt was the only one that prevented the lifetime mortgage from going ahead, and I acknowledge that the trustee did provide that evidence to us. But I've seen nothing to suggest that either the trustee or Mrs G brought it to the attention of NatWest at the time. In other words, I've seen nothing which suggests NatWest was – or ought to have been - aware of the urgency of the trustee receiving the confirmation directly from it, or what the consequences were if such confirmation was delayed.

I've acknowledged Mrs G's dissatisfaction with NatWest's actions regarding the NOSIA refund and the delay in getting it to her. But once its mistake was brought to its attention, NatWest dealt with it in reasonable time and paid £50 compensation for this. I think this is a reasonable payment and in line with awards we'd make in similar circumstances.

my final decision

For the reasons I've set out here, and in more detail in my provisional decision, I don't require National Westminster Bank Plc to take any further action in response to this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 13 March 2020.

Richard Hale
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mrs G is unhappy with how National Westminster Bank Plc handled matters when she was trying to repay a debt with it, delays she encountered in receiving confirmation that the debt had been repaid, and how it handled a refund it promised her.

background

Mrs G's concerns about how the bank has treated her go back further than the events I've looked at. As she and the bank are aware, I'm unable to consider events relating to the repayment of her debt which were covered in NatWest's final response letter of 6 June 2016. This is because Mrs G didn't refer her complaint to us until after the time limit to do so had expired. So this complaint focusses on events after the final response was issued; that is the delays in confirming the debt was repaid and how the bank handled the refund it promised.

Mrs G had a loan with NatWest and subsequently entered into bankruptcy. In 2016, she was planning to take a lifetime mortgage with another lender. In order to release the money secured through the lifetime mortgage, the lender required confirmation from Mrs G's trustee in bankruptcy (trustee) that all the debts included in the arrangement – including the NatWest loan – were fully settled.

Mrs G sent a bankers draft to fully repay the loan on 25 May 2016. NatWest wrote to her on 3 June 2016 confirming receipt and that she had no further debt with it and there were no other costs to pay. The lifetime mortgage offer was due to expire on 7 July 2016; this was later extended until 14 July 2016. But NatWest didn't write to the trustee to confirm the loan had been fully repaid until 29 July 2016, by which time the mortgage offer had expired. Mrs G was subsequently able to rearrange the mortgage but this was at a higher rate of interest. She also incurred more fees from her solicitor and trustee as a result of the further work.

On 9 December 2016, NatWest wrote to Mrs G to say it had made mistakes in handling arrears on the loan while it was in existence. NatWest said it had been required to send a Notice of Sums in Arrears (NOSIA) letter and annual statements, but it had either failed to do so or there were mistakes in the documents. As a result, it said it wasn't entitled to charge interest or fees on the loan for correctly. So it said Mrs G was due a refund of £1,352.78.

Mrs G called the bank a month or so after receiving the letter, as she hadn't received the refund. She was told the bank had kept it as she still owed it money. She complained to NatWest about that and the delays in 2016 which she said had caused her to lose the cheaper mortgage offer and to incur additional costs.

NatWest looked into Mrs G's complaint. It agreed it shouldn't have kept the NOSIA refund as she'd repaid everything she owed. It sent her a cheque for that sum, and an overpayment of £36.63. It also paid a further £50 for the inconvenience caused.

NatWest also said it received a letter from Mrs G's trustee dated 13 July 2016 requesting confirmation that the bank had no further interest in her bankruptcy. It responded on 29 July 2016 confirming it didn't. It acknowledged Mrs G's comments that this caused her mortgage offer to be withdrawn and that she was seeking reimbursement of costs incurred as a result. It asked for evidence to support her claim which Mrs G provided.

In response to the further evidence from Mrs G, NatWest said she had additional outstanding debts with another lender at the time she was seeking confirmation from it. While NatWest acknowledged some delays on confirming repayment of the loan, it said Mrs G's other debts meant the information

it provided wouldn't have been enough to allow the lifetime mortgage to be granted. So it declined her request for reimbursement but said if she could provide evidence of additional costs incurred solely as a direct result of its delay, it would consider refunding them.

Mrs G referred her complaint to us and one of our adjudicators looked into it. The adjudicator said (in summary):

- She'd spoken with the trustee and they confirmed NatWest was the only lender that hadn't confirmed their debt had been repaid. All other creditors had given their confirmation in time for the first lifetime mortgage agreement to have been completed. So she felt that mortgage – at the lower interest rate – would have gone through if NatWest had confirmed to the trustee that debts were cleared when it was first asked. And Mrs G wouldn't have incurred extra costs from her solicitor and trustee though having to arrange a new mortgage.
- It seemed NatWest hadn't marked the debts as settled when it wrote to Mrs G about the NOSIA refund, so it gave her incorrect information. The adjudicator acknowledged however, that the money was paid to Mrs G on 15 February 2015.

To resolve the complaint, our adjudicator recommended that NatWest should:

- Pay Mrs G £21,284.11 representing the difference in costs of the two mortgages including extra intermediary fees, the increase in interest rate, solicitor and conveyancing fees and trustee fees.
- £300 for incorrect information and distress and inconvenience caused to her.

Mrs G accepted our adjudicator's assessment, but NatWest didn't. It said:

- Both the trustee and Mrs G asked for confirmation that the debt was settled. It agreed it may have been better to write to both parties but had only written to Mrs G. It said it had done so promptly after the loan was repaid and was unaware of any time pressures for doing so.
- The trustee's letter of 13 July 2016 says they '*note from your correspondence that the balance on the account has now been reduced to zero*'. NatWest says this suggests the trustee did in fact have the confirmation they needed before the mortgage offer expired the following day.
- Both the trustee and Mrs G were aware that the bank had only written to her in time to have been able to make sure the trustee had the information it needed to allow the mortgage to go ahead.

As there was no agreement, the complaint has been referred to me for a decision.

my provisional 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've reached a different conclusion from that of our adjudicator and will explain why and how I think the complaint should be resolved.

There are three parts of this complaint that I can consider, and I'll deal with each in turn:

- Whether we can consider the early events leading up to the problems with the mortgage and increased costs.
- Whether NatWest's failure to send a discharge letter to Mrs G's trustee meant she couldn't draw the mortgage on the original terms and should pay her increased costs.
- The problems with the NOSIA refund.

can we consider the earlier events?

Some of the events leading up to Mrs G's claim for costs, relate to events leading up to the repayment of the loan about which she complained in the first half of 2016. NatWest looked into her complaint at the time and issued its final response on 6 June 2016. In that letter, it explained that she had six months in which to refer the complaint to our service, and that if she didn't do so, we wouldn't have its permission to look into it. We would only be able to do so if there were exceptional circumstances which led to the delay. This is in line with the rules which govern our service and are set out in the Financial Conduct Authority's (FCA's) handbook, specifically the Dispute Resolution section (DISP).

Mrs G didn't refer her complaint to us until May 2017 – more than six months after the bank's final response. And our adjudicator rightly explained to Mrs G, that we can only look at complaints brought to us outside that six-month period if NatWest gave us consent to do so. But NatWest had refused.

However, our adjudicator didn't consider the whole of DISP 2.8.2 – the relevant rule in this matter. While I think she correctly addressed the time in which the complaint was referred to us and NatWest's lack of consent, she didn't address the part of the rule that allows us to consider a case if, *'in the view of the ombudsman, the failure to comply with the time limits...was as a result of exceptional circumstances'*. DISP 2.8.4 says *'an example of exceptional circumstances might be where the complainant has been or is incapacitated'*.

So I've gone on to consider whether the delay in referring the complaint to us was due to exceptional circumstances.

Mrs G wrote to us after receiving our adjudicator's letter on this point. She said she felt it was unfair to use the final response of 6 June 2016 in this way because, at that time, NatWest had not sent a letter to the trustee confirming the loan had been fully repaid. She went on to explain that it had been a stressful time for her leading up to October 2016 when the *'recognition that everything was clear'* was *'finalised'*.

While I recognise the matters Mrs G was dealing with at the time, I don't consider they amount to *exceptional* circumstances. They were simply other things that she was having to handle at the same time. And I don't think it's unfair to use the final response of 6 June 2016 to begin the six months timescale for the issues it covered, which relate to the actual payment of the loan rather than confirming to the trustee that it had been.

I know it will be a disappointment to Mrs G, but I don't think we have the power to deal with the complaint points raised prior to the bank's final response letter of 6 June 2016. I can – and have – gone on to consider events after repayment of the loan not covered in that final response.

NatWest's failure to send a discharge letter to Mrs G's trustee

NatWest sent a letter to Mrs G on 3 June 2016 confirming it had received full repayment from her. It confirmed that she had no further debt with the bank and there were no further costs to pay. NatWest acknowledges that both Mrs G and her trustee had requested such a letter. There is no dispute that NatWest didn't write to the trustee and the bank has accepted that *'it may have been better'* if it had written to both.

Be that as it may, by early June 2016 Mrs G was in possession of a letter issued by the bank confirming her debt was repaid and no further amounts were due. There doesn't appear to have been any reason why this letter would not have met the proof of payment requirements of the court.

did Mrs G enough to prevent any loss?

The trustee wrote to NatWest on 9 May 2016 to say they were aware of Mrs G's intention to settle the debts in full. They said she was doing so to '*avoid the need for enforcement of an order to possession and sale*' of her property and confirmed they have no objection to this. They asked the bank to confirm, on receipt of funds, that it had no further claim under the bankruptcy.

Mrs G wrote to NatWest with a bank draft to settle the debt on 25 May 2016 and asked for confirmation of receipt and that there were "*no further costs*". There was no mention of a deadline for receipt of such confirmation or any indication of one.

NatWest wrote to Mrs G on 3 June 2016 confirming the debt was settled in full. Mrs G says she '*assumed*' the bank had also written to the trustee. At that time, there was still five weeks until the first mortgage offer expired, and this was later extended by a further week.

I've seen nothing which suggests NatWest was – or ought to have been – aware of the urgency of the trustee receiving confirmation direct from it that the debts were cleared, or what the consequences were if such confirmation was delayed. As I've said, Mrs G repaid the debt on 25 May 2016 so at that stage there would have been time for Mrs G to make the bank aware of the deadline for acceptance of the lifetime mortgage.

NatWest has accepted it may have been better if it had written to Mrs G *and* the trustee with confirmation that the debt was cleared. But I don't think I can reasonably hold it liable for the losses Mrs G is claiming because she had the opportunity to take reasonable steps to avoid them. For example, she could have ensured the bank was aware of the deadline for the mortgage and could have shared the letter she received with the trustee.

the problems with the NOSIA refund

NatWest agrees it shouldn't have held on to the refund as it did. It's clear that by the time it wrote to Mrs G on 9 December 2016 about its handling of the arrears, the loan was fully repaid. And it should have made sure the information it gave in its letter – that a refund was due – was accurate so as not to mislead Mrs G.

Mrs G contacted the bank on 9 January 2017 to say she'd not received the refund and quite reasonably complained about the response she received (that the bank had retained the funds as there was still an outstanding debt). She wrote to NatWest on 18 January 2017 providing evidence to show the debt was settled. I don't think she should've had to do that. And NatWest wrote to Mrs G on 31 January 2017 confirming that a refund had been authorised and a cheque would be sent.

It's clear NatWest made a mistake in retaining the funds and put Mrs G to some inconvenience having to prove the refund was rightfully hers. But I think the payment of £50 compensation as well as an apology for its error was a reasonable way to correct things, so I'll not be asking it to do anymore in this regard.

my provisional decision

My provisional decision, subject to the further submissions of the parties, is that I don't intend to require NatWest to take any further steps to resolve Mrs G's complaint.