

complaint

Mr B complains, through his representative, that National Westminster Bank Plc won't write off his debt even though he has a mental health condition and is in financial difficulties.

background

Mr B opened his credit card account with NatWest in April 2013. His representative contacted it in November 2016 about his mental health condition and financial difficulties. NatWest stopped all interest and charges and agreed a repayment plan of £1 a month. It eventually arranged for the debt to be managed by its Specialised Support Team. But it wouldn't write off the debt which is over £3,000

Mr B's representative contacted NatWest again in September 2017 to say that Mr B's financial circumstances hadn't changed and his mental health condition was deteriorating due to his anxiety about his finances. In October 2017 Mr B's doctor completed a form about his mental health condition as requested by NatWest.

NatWest initially agreed that Mr B should repay £1 every month but then placed his account on hold for three months. It told Mr B's representative that it wasn't its policy to write off debts as *"it is felt that this encourages the mis-use of credit facilities"*.

Our investigator didn't think NatWest had done anything wrong. She thought NatWest had acted in a positive and sympathetic way when it knew about Mr B's difficulties. She said it'd considered his situation, and had taken steps to stop the debt from increasing. It'd agreed to repayments of £1 a month (which it was willing to put on hold) to offer him further assistance. And his account has been placed with its Specialised Support team. So she couldn't see that NatWest could reasonably do anything more.

I issued a provisional decision on 9 January 2019. I've enclosed a copy of this, as it forms part of this final decision. In this I explained that I thought it would be fair and reasonable for NatWest to stop pursuing Mr B for the remaining balance on his account and to remove this from his credit file.

Mr B's representative responded saying they felt the decision was fair – although they hadn't heard from Mr B directly. NatWest responded, explaining that it appreciated the sensitivity of Mr B's personal circumstances and had considered MALG. But it questioned the removal of the account from Mr B's credit file. It felt that continuing to report this was in line with the guidance, accurate and served as a sign to other lenders of the difficulties Mr B had in servicing the account. So I now need 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.

Neither side has added anything to the reasoning in my provisional decision as to why NatWest should stop pursuing Mr B for the outstanding balance here. So, on that basis, I see no reason to depart from what I've said about that in my provisional decision. I remain of the view that this is a fair outcome here and for the reasons already given.

But I've considered the point that NatWest raised about removing the record of the account from Mr B's credit file. I said to NatWest and to Mr B's representative that I thought this was a fair point. My provisional decision was intended to remove any reference of this debt so Mr B could move on from this situation. But I think accurately reporting the account on his credit file is in line with the Money Advice Liaison Group guidance and is something that's been suggested with Mr B's interests at heart.

Mr B's representative said that he felt this was fair, but despite a significant period of time, neither he, nor this service has heard from Mr B. So with a view to being quick and informal, I think it's only right that I reach my final decision now.

In the circumstances here, as both parties have confirmed that they understand why I don't think it's fair for NatWest to pursue the debt. All that remains is whether it should report this on the credit file. I think it's fair to do so in the way that NatWest has suggested. That is, to continue to report the accurate conduct of the account, including any amendments that need to be made to reflect the fact it's no longer pursuing the debt.

my final decision

My final decision is that National Westminster Bank Plc should stop pursuing Mr B any further for this debt. It should also amend his credit file to reflect this and write to him to confirm these actions have been taken.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 April 2019.

James Staples
ombudsman

Copy of Provisional Decision

complaint

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Our investigator didn't think NatWest had done anything wrong. She thought NatWest had acted in a positive and sympathetic way when it knew about Mr B's difficulties. She said it'd considered his situation, and had taken steps to stop the debt from increasing. It'd agreed to repayments of £1 a month (which it was willing to put on hold) to offer him further assistance. And his account has been placed with its Specialised Support team. So she couldn't see that NatWest could reasonably do anything more.

Mr B's and his representative disagreed with this and still felt that NatWest should write off what he owed. So the complaint has been passed to me to decide.

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.

Mr B has been experiencing serious financial difficulties for a number of years. His financial difficulties are closely linked to his mental health condition. When a customer is experiencing financial difficulties, as Mr B is here, the relevant guidelines say that lenders should treat them positively and sympathetically.

I don't think there's any dispute as to whether NatWest has treated Mr B with positively and sympathetically here. It's always been willing to discuss Mr B's situation with him and with his representatives. It's agreed helpful payment plans and various concessions to try and help him too. So I think NatWest has treated Mr B fairly here.

The outstanding issue here is whether NatWest should help Mr B further and 'write off' the debt in light of his difficulties and mental health condition. So it's this that I'll focus on in my decision.

relevant considerations

In coming to my decision I have looked at relevant guidance for situations like this one. The relevant sections of the Consumer Credit Sourcebook (CONC) are:

CONC 7.2.1

A *firm* must establish and implement clear, effective and appropriate policies and procedures for:

1. dealing with *customers* whose accounts fall into arrears;
2. the fair and appropriate treatment of *customers*, who the *firm* understands or reasonably suspects to be particularly vulnerable.

CONC 7.2.2

Customers who have mental health difficulties or mental capacity limitations may fall into the category of particularly vulnerable *customers*.

CONC 7.2.3

In developing procedures and policies for dealing with customers who may not have the mental capacity to make financial decisions, firms may wish to have regard to the principles outlined in the Money Advice Liaison Group (MALG) Guidelines "Good Practice Awareness Guidelines for Consumers with Mental Health Problems and Debt".

The Money Advice Liaison Group (MALG) is a not-for-profit organisation that encourages organisations to 'work together to improve the lives of people with problem debt'. Its "Good Practice Awareness Guidelines for Helping Consumers with Mental Health Conditions & Debt" was launched in March 2015. Alongside being acknowledged by the Financial Conduct Authority (FCA) in CONC, these guidelines have also been approved by the Information Commissioner's Office (ICO) and this Service. The guidelines have also been included in a number of creditor trade body Codes of Practice.

The guidelines say:

"The Creditors should consider 'writing off' unsecured debts when mental health conditions are long-term, hold out little likelihood of improvement, and are such that it is highly unlikely that the person in debt would be able repay their outstanding debts.

The request for a 'write off' is a last resort when the consumer's mental health condition is serious enough to merit a 'write off' and/or the consumer has little or no disposable income, no significant available assets and an insolvency remedy is not an appropriate option. The creditor should consider fully 'writing off' the debt so that the balance is set to zero or nil, and that no further payments are due. This should be reported to the consumer and relevant third parties including credit reference agencies and the consumer's authorised adviser."

should NatWest 'write off' Mr B's debt here?

Mr B's GP has completed a Debt and Mental Health Evidence Form (DMHEF) which explains why he is a vulnerable customer. This is a form from MALG to help debt advisors and creditors in getting clear, relevant and comprehensive information in a standard format from health and social care professionals. The form is designed to help creditors to make appropriate decisions about the debts of their customers.

In Mr B's completed DMHEF, his GP confirms that Mr B has had a mental health disorder since 2009 which affects his ability to manage his money. The treatment and support he receives also affects this too.

So I've looked at the contents of this form alongside what Mr B's representatives have told NatWest and this service about his situation. Mr B last worked in December 2013. His representative tells us he was diagnosed with Post Traumatic Stress Disorder (PTSD) as well as an anxiety disorder and depression. He's was on a waiting list for over a year awaiting specialist mental health support and has been told that he may be waiting for up to another year before treatment can begin.

He receives Personal Independence Payments (PIP) as his only income. This was awarded due to his need for assistance with daily living related to his mental health problems. He lives in rented accommodation. He has no assets other than a car which is worth between approximately £300 and £500 but which is necessary as his anxiety stops him from using public transport. He's sold most things of any value to service his debts since he stopped working.

His representative tells us Mr B finds simple day to day tasks overwhelming. He suffers from confusion and memory lapses. He has difficulty reading, gets muddled by figures and confused by anything but basic instructions. He also struggles to be in public and isolates himself at home.

Mr B hasn't worked for five years and it seems to me that he doesn't have any realistic prospect of returning to work for some considerable time. NatWest has agreed plans to help Mr B but it's clear that these aren't sustainable ways of repaying the debt over time. He's been paying £1 a month for some time and going forward there doesn't seem to be any prospect of this changing.

The information from the GP here confirms that his treatment is ongoing and that he's had life-long issues with anxiety. Mr B's representative also confirmed he has little disposable income and doesn't have any significant available assets.

I also note that all of Mr B's other creditors have decided not to pursue him for what he owes them. So it seems that, in these circumstances, Mr B's only remaining option would be to potentially pursue bankruptcy. But that doesn't seem an appropriate or proportionate step for just this one outstanding debt with NatWest in the overall circumstances here.

Referring back to the MALG guidelines, the GP confirms that Mr B's mental health condition is long-term. He holds out little likelihood of improvement, and it's highly unlikely that he will be able to repay his outstanding debts. I've also noted that he has little income, no significant available assets and an insolvency remedy is not an appropriate or proportionate option. And, his GP has confirmed that Mr B is 'overwhelmed daily by money worries'. So I acknowledge that NatWest agreeing to accept £1 a month and put payments on hold is helpful. But I also have to consider that the debt remaining outstanding is going to cause Mr B further distress given the nature of his condition.

So in the specific circumstances of this complaint, I think it would be fair and reasonable for NatWest to 'write off' Mr B's debt as a 'last resort'.

I realise that NatWest feels that by doing this, it would 'encourage the mis-use of credit facilities'. I understand why NatWest says this, after all when a customer has had use of credit provided by a lender, it's a general principle that they should pay it back.

But I don't think 'writing off' the debt would encourage the mis-use of credit facilities here, given the very individual circumstances. Mr B has provided consistent, detailed information about his situation and why he is vulnerable. He's provided that information in line with the guidelines I've mentioned, which say that, in these circumstances a write off should be considered. So I've considered this and having done so, while it's not a step our service would often tell a business to take, I think that writing off the debt – in line with the MALG guidelines - is the fair and reasonable thing to do in all the circumstances here.

my provisional decision

Subject to any additional comments or evidence I receive from either party, I intend to uphold this complaint and order National Westminster Bank Plc to stop pursuing Mr B any further for this debt and to remove any record of it from his credit file. It should also write to Mr B to confirm that this action has been taken.

James Staples
ombudsman