

complaint

Mr R complains that National Westminster Bank Plc didn't fully refund him for interest and fees he'd been incorrectly charged due to non-compliance. They kept some of the money to offset a debt that Mr R owed to them. Mr R says that they shouldn't have kept any money because the account had been closed when he'd been in an IVA and this had now run its six years.

Mr R would like a full refund of the interest and fees plus compensation for the distress and inconvenience caused to him by the actions of National Westminster Bank Plc.

background

In 2009, Mr R had a loan with Natwest. He fell into financial difficulties and entered into an IVA with various creditors. Natwest was one of these creditors. They agreed to the IVA which included his loan account. The IVA was approved in April 2009.

In August 2018, Natwest wrote to Mr R saying that they had not complied with their obligations under the Consumer Credit Act. They were obliged to send regular loan statements and a Notice of Sums in Arrears if a customer fell behind in payments. They didn't think that they had done this so found that they weren't entitled to charge interest or fees on the loan for the period that they were non-compliant. They said they owed Mr R a refund of £3895.33. But, as Mr R still had an outstanding debt of £3272.30, they said they would offset this against what they owed him. They gave him a refund of £623.03.

Mr R raised a complaint in September 2018 saying that Natwest shouldn't offset any debt as it had been part of the IVA which had run its course of six years.

Natwest didn't agree. They said that they were entitled to offset any debt owed to them against any refund they gave to a customer. They referred to their Right of Set Off policy. This states that "the refund due to the customer will be used to set off against any outstanding arrears and/or excess the customer currently has with the bank, as well as against any debt which has previously been written off."

Natwest also found that they shouldn't have given anything to Mr R. This is because, in the outstanding debt figure, they had forgotten to include a debt from Mr R's current account with them that had been written off. This debt was for £1,419.16 which meant that the outstanding debt should've been around £4,600. They said, taking this into account, they shouldn't have given Mr R any money at all.

Mr R wasn't happy with this decision so he came to us.

Our investigator looked into the complaint. She found that because of Natwest's Right of Set Off policy, they were entitled to take back the money Mr R owed to them from the refund that they owed to him. She said this applied even though Mr R and Natwest had agreed to an IVA.

Mr R didn't agree with this decision so it has now come to me.

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'm afraid Mr R won't be happy with my decision. I think that Natwest are entitled to offset the amount owed to them from that which they owe to Mr R. I will explain why.

I have looked at the IVA that Natwest agreed to. At the time that it was made, I can see that Mr R's outstanding debt to them for the loan he had taken was over £22,000. Over time, Mr R managed to reduce this amount to just over £3,200. I'm sure that this couldn't have been easy for Mr R and I can see why he thinks that any debts should now just be forgotten as his IVA has finished.

But, Natwest does have a policy on when they can apply set offs. This policy was part of the terms and conditions of Mr R's loan and current account. So, he is bound by it.

I looked at the wording of the policy to see if Natwest had acted in accordance with it. The policy says that when a debt has been written off, Natwest will only claim it back if they haven't agreed to a full and final settlement of the account. I don't think that Natwest wrote off the debt owed for the loan but they did write off the amount owing on the current account.

Because the debt owed for the loan wasn't written off, I think that Mr R still owes it. Unfortunately, unlike bankruptcy, an IVA doesn't mean that the debt will no longer be owed after six years. So, Natwest would still be able to ask for the debt to be repaid after six years.

I considered whether the IVA meant that Natwest had accepted all payments in full and final settlement of a written off debt. But I don't think that Natwest did accept that what was paid off on the current account was in full and final settlement. I think that they just decided to write off the debt. So, I think that, even though they didn't, Natwest could still claim back this debt too.

I can see how this wouldn't seem fair to Mr R as he thought he had resolved all of his financial issues when his IVA had run its course. But I don't think it's unfair for Natwest to use the offset policy. I think that it's fairer for Natwest to have their debt repaid than Mr R to get back money that actually belongs to Natwest.

I also note that Natwest hasn't asked for the debt on the current account to be repaid. I think that they have acted fairly and reasonably in the circumstances.

my final decision

For the reasons given above, I won't be asking National Westminster Bank Plc to do anything else.

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

Rita Parmar
ombudsman