

## **complaint**

Ms M and Mr M complain that National Westminster Bank Plc continue to chase them for a debt despite it accepting a payment in full and final settlement.

## **background**

I issued a provisional decision on 5 February 2019, part of which is copied below.

*"Ms M and Mr M took out a joint loan with NatWest when they were married. They're now divorced. This complaint is brought by Ms M on their joint behalf, so I'll refer to her throughout this decision.*

*Some time after the loan was taken out, Ms M experienced financial difficulties and got in contact with NatWest to let it know. NatWest agreed to accept reduced payments on the loan to help out.*

*In 2014, as part of their separation, Ms M agreed to accept responsibility for their loan and Mr M agreed he would no longer have any interest in their matrimonial home.*

*Conversations between Ms M and NatWest about the loan continued over the next couple of years. From July 2017 Ms M made a number of offers to make bulk reductions to the debt. But these weren't accepted.*

*Then in 2018 Ms M contacted NatWest to let it know that, as part of their divorce settlement, the courts said she needed to take responsibility for the debt. While NatWest acknowledged this, it let Ms M know that, as far as the bank was concerned, she and Mr M were both still jointly and severally liable for the debt.*

*In July 2018 Ms M made a number of further offers to make a bulk reduction to the debt. After some negotiation, a figure was agreed on and Ms M made the payment. She says she understood this to be in full and final settlement of the entire loan.*

*It only became apparent after the payment was made that NatWest had intended the agreement to only be in settlement of Ms M's liability for the loan rather than the entire debt. It said Ms M should have known this as it had mentioned it several times over the time they'd been in contact. It said it still intended to pursue Mr M for the remaining balance, explaining that he was jointly and severally liable for the debt.*

*Ms M wasn't happy with this, saying that NatWest knew she had accepted responsibility for the debt as part of the divorce settlement. NatWest said it wasn't party to this agreement so it wasn't bound by it.*

*Ms M didn't agree with this and so she complained to us. Our investigator said, in summary, she didn't think the evidence showed NatWest had agreed the payment would be in full and final settlement of the entire debt, just Ms M's part of it. She said NatWest had made it clear during correspondence it would still chase Mr M for the debt as he was jointly and severally liable. So Ms M asked an ombudsman to make 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. And in doing so I'm likely to reach a different decision than the investigator.*

*From the evidence provided by the parties, it's clear it only became apparent there was confusion over the terms of the agreement after Ms M had made the payment to reduce the loan. Up to this point, both Ms M and NatWest thought they understood what had been agreed. But both understood different things.*

*So the decision I need to make here, is whether the terms of the agreement were clear and whether the parties should be held to them.*

*After she made the payment Ms M queried why the loan hadn't been closed and why NatWest intended to pursue Mr M for the outstanding balance NatWest said*

*"...it was never set out that the offer you made was on a joint basis. The offer was accepted and paid on a sole basis against your name"*

*So I accept that NatWest intended to accept the offer on that basis, but I'm not satisfied that's what it actually said. I'll explain why.*

*Ms M made an offer to NatWest which was rejected. It then made a counter offer, saying*

*"in respect of yourself, I would be willing to accept the same % counter offer of £16,735".*

*I'm satisfied NatWest made it clear this offer was about Ms M's part of the debt.*

*Ms M rejected this offer. She then made a further counter offer, saying*

*"Would you be willing to accept £16,000 as full and final settlement – offer valid for 60 days please?"*

*NatWest responded*

*"I have reviewed your further offer and in view of your overall circumstances I would be willing to accept this offer valid for 60 days from today"*

*This last exchange was where the agreement was made. I'm satisfied Ms M clearly stated the offer was in full and final settlement and didn't qualify this by saying it was just for her part of the debt. I'm therefore satisfied it was more likely than not her intention that the offer was in full and final settlement of the entire debt.*

*NatWest accepted the offer without question or clarification of what the offer was. And in the absence of that, I'm satisfied that a reasonable interpretation of Ms M's offer was in full and final settlement of the entire debt.*

*I acknowledge what NatWest says about it advising Ms M a number of times during its contact with her that it still considered Mr M to be jointly and severally liable for the loan. But I don't think that was in fact what was said. Ms M made an offer in full and final settlement of the loan - and NatWest accepted that offer. The implication here is that Ms M should have*

*worked out on what basis NatWest was accepting her offer, and then understood what the bank meant (rather than what it said). I don't consider it fair and reasonable of NatWest to expect that.*

*So, in summary I don't think it would be fair or reasonable for NatWest to expect further repayment of this debt by Ms M or anyone else. I therefore intend to uphold this complaint and instruct NatWest to write off the remainder of the loan, refund any payments Ms M has made since the bulk reduction and to amend Ms M's credit file to correctly reflect this.*

*It's clear from Ms M's evidence she has found the confusion over the loan very distressing. She's explained she's a sole carer for her child and has experienced financial difficulties over a number of years. She thought she'd reached an agreement with NatWest that would see the loan she held with her ex-husband repaid in full. I understand why discovering this wasn't the case would have been distressing in her circumstances. So I also intend to instruct NatWest to pay £300 for the trouble and upset she experienced as a consequence of its error. Although both Ms M and Mr M are parties to the complaint, that's because this was a joint loan. In my view it was Ms M alone that was upset and inconvenienced by what happened, and so I think it would be fair and reasonable for the compensation to be paid to her alone."*

### **the responses to my decision**

In response to my provisional decision, NatWest didn't accept what I'd recommended and said, in summary,

- Ms M was aware it wasn't party to the divorce settlement and that both parties were jointly and severally liable for the debt
- Ms M had confirmed she was only making a sole offer for the partial repayment of the debt

Ms M accepted my recommendations and added, in summary

- NatWest had negatively impacted her credit file
- It had downgraded her account because it was in recoveries

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In my provisional decision I've acknowledged that during the conversations between Ms M and NatWest, it explained it considered both parties to be jointly and severally liable for the debt. And I accept it also pointed out to Ms M that it wasn't party to the divorce agreement.

NatWest has pointed to an internal record of a conversation it had with Ms M in April 2018 when she made an offer to make a lump sum reduction to the debt. The note says

*"Call in from Mrs cust adv she split from husband however the courts advise that she has to take responsibility for debts. Adv cust I understand this, however, as far as the bank is concerned the customer is j&S [jointly and severally] liable. Cust acknowledged this. Cust confirmed is only making a sole offer"*

So I accept NatWest was clear about its position at this time, in April 2018. But after that, a number of offers and counter offers were made both by NatWest and Ms M and I'm satisfied that each of these superseded those that went before.

Ultimately, as I explained in my provisional decision, NatWest and Ms M only came to an agreement about the bulk reduction in July 2018, some three months after the conversation NatWest refers to. And when this conversation happened there was nothing to suggest that the agreement being reached was only for Ms M's part of the debt. Ms M made an offer in full and final settlement and NatWest accepted it. Ms M didn't state it was only for her part of the debt and NatWest didn't clarify her offer or let her know under what terms it was accepting it. I therefore remain satisfied that a fair and reasonable interpretation of Ms M's offer was that it was for the debt in its entirety and not just for her part of it and that NatWest accepted it on that basis.

In summary, NatWest hasn't said anything which alters my position so I'm still upholding this complaint.

As far as Ms M's comments about her credit file are concerned, in my instruction to NatWest I've told it to amend the file to correctly reflect what should have happened – that the bulk reduction repaid the loan in its entirety. Having done this and taken the rest of the action I'm instructing, NatWest should also reconsider Ms M's account status and let her know whether an upgraded account is available to her.

### **my final decision**

My final decision is that I uphold Ms M and Mr M's complaint and instruct National Westminster Bank Plc to

- Refund any payments Ms M has made to the loan after the bulk reduction of £16,000
  - Pay interest at 8% simple per annum on these amounts from the date they were made to the date they're refunded\*
- Having made the refund, to write off the remaining loan balance
- Amend Ms M's credit file so it correctly reflects the loan being repaid in its entirety from the date the bulk reduction of £16,000 was made
- Pay Ms M £300 to recognise the trouble and upset it caused her
- Reconsider Ms M's account status in the light of the above and advise her if an upgrade is available

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M and Mr M to accept or reject my decision before 20 March 2019.

Paul Phillips  
**ombudsman**

\* If National Westminster Bank Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms M and Mr M how much it's taken off. It should also give Ms M and Mr M a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate