

The complaint

Mrs R has complained about a secured business loan she holds with National Westminster Bank Plc. Mrs R's complaint falls under the following three broad headings:

- The sale of the loan in 2008.
- Her payments weren't adjusted with Bank of England base rate ("base rate"), even though her loan interest rate tracks base rate.
- She doesn't think the current loan balance is correct.

What happened

Mrs R's father (who I'll refer to as Mr D) died in March 2008. In his will he left his entire estate to Mrs R for when she turned 25 years old. The executor was to be Mrs R's uncle (Mr D's brother).

Mrs R's uncle obtained probate in May 2008, and that stated the gross value of the estate to be no more than £300,000 and the net value no more than £135,100.

In June 2008 Mrs R spoke to NatWest about Mr D's borrowing. The notes say:

- Since mid-2007 the business premises had been let to a family friend as Mr D had been too unwell to continue running his own business from there.
- Mr D didn't want Mrs R to sell the premises given that it attracts a good rental income and the tenant is someone they know. However the premises could be sold in the future, or an alternative tenant should easily be found.
- Mrs R had worked at an estate agents until she took a sabbatical at the end of 2007 to care for Mr D. Her employer had kept her job open for her if she wanted to go back, and she was likely to look at going back in the next couple of months once she'd finalised Mr D's affairs.
- Mrs R was married, and her husband's income was sufficient to pay all their personal commitments, including their mortgage and household outgoings, without any income needed from Mrs R.
- Mrs R wanted to take out a loan to repay Mr D's borrowing so she could keep the premises rented out. At that time Mr D's debts with NatWest totalled around £101,500.
- The premises had been valued at £300,000 in April 2007.
- Annually the rental income was £23,400, and the proposed repayments were around £9,750.

NatWest agreed to lend Mrs R the funds to repay Mr D's borrowings.

After doing so the notes indicate Mrs R asked if NatWest would increase the loan to £120,000, with the additional amount being so she could invest in some stock which would be sold from the premises, for which she would keep the profit and the tenant would take a small cut for storing and selling it. That new loan amount meant the annual loan payment increase to around £11,340.

On 18 June 2008 NatWest agreed to lend Mrs R the higher amount.

The loan was drawn down on 21 August 2008, by which time Mrs R had turned 25 years old.

The loan was for £120,000 (plus £2,100 fees) on a repayment basis over a 20-year term. The interest rate was base rate plus 2.25%, which based on the opening interest rate of 7.25% gave a monthly payment of around £960 (variable). Interest would be added to the loan account quarterly.

Mrs R paid around £960 a month until January 2009, then from February 2009 her payments decreased to around £720 a month at which they stayed until April 2020.

In August 2009 Mrs R asked about switching the variable rate loan onto a fixed interest rate. The notes indicate Mrs R was conscious that interest rates were low, and as the loan relies on rental income she was looking to fix the interest rate for three years. At that time the notes indicate the rental income for the premises was £350 a week, which equated to £18,200 a year.

Whilst the paperwork was drawn up for the fixed rate, Mrs R didn't go ahead with it. So the loan remained on its variable interest rate.

In February 2010 Mrs R successfully applied for a £5,000 business overdraft, at the time saying she needed it due to the cold weather causing damage to the premises (with the tarmac lifting) which had caused some flooding. In 2012 it was decided to decrease the overdraft to £2,500, with it being fully withdrawn in January 2014.

Mrs R emailed NatWest in April 2019. She said she was thinking about redoing the roof on the premises so a machine could be installed. She asked if she could take £10,000 to £15,000 out to carry out the work on a short-term basis of around six months. The notes indicate there was a meeting in May 2019, and the lending didn't go ahead.

Between May and October 2020 (inclusive) Mrs R took Covid-19 payment deferrals as the tenant had closed the premises due to the pandemic and wasn't paying rent. Her payments recommenced from November 2020 at around £550 a month.

Mrs R called NatWest in April 2021 to ask to increase her monthly payments from around £550 to £1,000 a month from June 2021, and in October 2021 she asked that from November 2021 her payment reduce back to the contractual minimum amount, which decreased them to around £520 a month.

In December 2021 Mrs R asked what her repayments would be if she paid £25,000 off the loan and asked how long the loan had left to run. NatWest said that overpayment would take the payments down to around £260 a month, and confirmed the loan expiry date was 1 August 2027.

And then in February 2022 she asked about potential financing to buy another commercial property that was next door to her premises as it had just come on the market for £150,000. She said she had around £40,000 in savings, and she believed she could achieve a rental income of around £2,500 a month. She said she already received a rental income of £1,300 a month for her premises. Mrs R had a meeting with NatWest, and some options were put forward for her consideration, which she didn't go ahead with.

Following a complaint being raised, NatWest responded on 8 December 2022. It said Mrs R had complained she'd been overpaying the loan, and that her overpayments hadn't been taken into consideration with the current balance and accruing interest. And as Mrs R thought the outstanding balance was wrong, she'd not taken out further borrowing to buy the

commercial property next door and it had now come back on the market for around £70,000 more which meant she'd lost out on a potential profit.

NatWest said in response that whilst base rate had dropped, Mrs R's payment had remained static between February 2009 and April 2020 and in total she'd overpaid around £6,670. It said that overpayment had been taken into account when calculating the interest, and a specialist recalculation team had checked the account was correct. It said the outstanding balance of around £36,200 was correct and it wasn't at fault for Mrs R deciding not to buy the other commercial premises. NatWest did however accept the service hadn't been as good as it could have been in various calls and no call backs being received, but it said that Mrs R didn't want to accept its offer of £200 compensation for that issue.

Mrs R sent an email to NatWest the same day saying she'd received a response from the complaint handler, and they'd only looked into the overpayments made in 2021, not those over the full term of the loan. She set out some details about the overpayments she'd made over the life of the loan, and said she'd called NatWest in February 2009 to request her payment drop as she believed they should. She said she requested to pay more than the minimum required payment that was around £660, instead paying around £720.

In January 2023 Mrs R called NatWest. The note says she was confused about her repayments as she said she'd been told she had paid over £118,000 so far and over £34,000 of that was interest. She was struggling to understand why she still owes so much.

After some further conversations with NatWest a second complaint response was issued in March 2023. This one covered the same issues as above relating to the overpayments and balance, and also dealt with an additional point in that Mrs R said she shouldn't have been allowed to take out the loan.

It said:

- The recalculation figures it had provided to show the position the account would now be in if Mrs R hadn't overpaid over the life of the loan were correct. It said the loan has been overpaid by around £6,670 due to her payments not varying when her interest rate changed.
- The outstanding balance is correct as Mrs R borrowed £122,100 and had paid around £118,000. Of that around £33,000 was interest, so if that was deducted from the amount paid that left around £85,000 that had come off the loan balance. If that (approximately) £85,000 was deducted from the original loan amount of £122,100 that left the current loan balance to pay.
- If Mrs R wanted to reclaim the overpayment of around £6,670 then it could be transferred to her, and her loan monthly payments would increase to around £720 as the balance will increase back up. Or if she left the overpayment on the loan account then she would need to pay around £590 a month. Both of those payments would vary if the base rate changed. It said if it didn't hear back from Mrs R then it would leave the overpayment on the loan account.
- Whilst the loan end date was incorrectly showing on one of its systems as October 2068 that was an error and hadn't impacted the loan or the payments. It said it would change that to the correct end date.
- Whilst the business bank account charges were correct, it had already offered to refund some of those as a gesture of goodwill which Mrs R had turned down. It said that offer still stood and if Mrs R wanted to accept it she should contact the complaint handler.
- Although the loan had been taken out in 2008 NatWest had located notes from the time, which showed an extensive review of Mrs R's ability to pay was carried out. It said it had taken into account her household's income and commitments, as well as taking into account the fact the rental income for the commercial premises more than covered the

loan repayments. It said the rental income had continued since the loan was taken out, and payments had always been made on time to the loan.

- It had held a valuation of £300,000 for the premises although it could no longer find the actual report, but even if the valuation was as low as Mrs R said then it was still more than enough to have allowed the loan to proceed.
- Whilst Mrs R now said she was young with no business knowledge, the notes at the time she took out the loan show she said she had knowledge of the trade in question and she requested a higher amount than was needed to cover Mr D's debt so she could purchase some new stock.

In the meantime Mrs R had referred the complaint to our service in February 2023.

It was looked at by one of our Investigators. He said:

- We couldn't look at a complaint about the sale of the loan as that complaint hadn't been made within the time limits set out in our rules.
- The balance didn't appear to be wrong as Mrs R had paid around £118,000 not the £151,000 she thought. As interest was due on the loan it wouldn't be enough to just pay back £122,100, and the original loan agreement showed she'd make 240 payments of around £962 each if the interest rate had remained the same, which would have meant paying over £230,800 in total.
- NatWest had offered to refund the overpayments Mrs R had made due to her payment not reducing when her interest rate did. That would mean her payments would go up and he didn't think it would be in Mrs R's best interests to take that refund.
- Whilst the term was showing incorrectly on one of its systems, that hadn't had an impact on the loan and so no further action was needed.

Mrs R didn't agree saying, in summary:

- She doesn't understand how the loan works now, so how was she supposed to understand it at the time of losing her father and being vulnerable. She said her emotional state of mind wasn't right for many years, and she was unable to process any information.
- The NatWest complaint handler told her she was getting charged two lots of interest, and that was the first time she'd been made aware of that. If she'd been given clear information about that she would have questioned it much sooner.
- She's missed out on historical all time low interest rates as a result of not receiving clear statements showing how much interest she'd paid. If she was to refinance the loan now she's looking at a much higher interest rate.
- It's unfair she wasn't notified of her minimum required payment each base rate change, and surely NatWest had a duty to provide that information.

Our Investigator explained that interest hadn't been charged twice, one lot of interest was charged each quarter in line with the loan agreement. He could request more information be provided about the rate changes but NatWest had already made an offer to put that right.

After some back and forth Mrs R provided her final submissions, saying:

- In the period after taking out the loan she was under a lot of emotional pain and financial difficulty. She had bailiffs at the door, and other creditors coming forward for outstanding debts.
- NatWest didn't give any other creditor the chance to come forward as it opened the loan just three days after the grant of probate.
- She applied for the overdraft in February 2010 as she was under pressure to pay her and Mr D's debts, and the ceiling collapsed during a storm and needed to be repaired.
- She didn't know she could complain about a mis-sold business loan until she recently saw information on the news about it.
- She wants to know how it is possible to authorise a business loan when she was still legally under age in terms of Mr D's will.
- She had no idea Mr D's estate was insolvent until January 2023 when she applied to see his Will and Probate certificate.
- Her only income was around £110 a week carer's allowance for looking after Mr D.

As an agreement couldn't be reached it has been passed to me to decide.

Earlier this month I issued a decision about our jurisdiction. In that I said we can't consider a complaint about the sale of the loan in 2008 but we could consider the rest of the complaint, and I said I would issue a further decision about the parts we can consider. I now issue that second decision as the final stage of our process.

What I've decided – and why

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

Whilst I can't consider a complaint about the original loan I feel it is prudent to pick up on a few things Mrs R has said about that time. She's said she shouldn't have been able to take out the loan before she turned 25 in line with Mr D's will, the estate was insolvent and NatWest didn't give any other creditor a chance to come forward.

NatWest had lent money to Mr D that needed to be repaid as part of his estate, either by the business premises being sold or by the debt being refinanced (as happened here). The loan wasn't drawn down until after Mrs R had turned 25 years old, and in any event even if it hadn't that wouldn't have been something I would hold NatWest liable for. I also wouldn't hold NatWest liable for granting a loan even if Mr D's estate had been insolvent, or for the speed in taking out the loan after probate was granted. I'll explain why.

NatWest wasn't the executor of Mr D's estate, that was Mrs R's uncle. It was her uncle's role to ensure that all creditors were notified of Mr D's death and that any debts were settled by the estate (or that Mrs R was aware of what the debts were and that she would refinance them as the beneficiary of the estate). It would also have been Mrs R's uncle's role to ensure that the estate was correctly administered in line with Mr D's wishes, including the age restriction stated in the will, and to ensure Mrs R was aware of the solvency of the estate, and the assets and liabilities held so she could decide whether to retain or sell the assets.

So even if I were able to consider a complaint about the original sale, I wouldn't be able to consider any of those points against NatWest. NatWest had no pre-existing banking relationship with Mrs R and it had no obligation to offer her business or bereavement advice; Mrs R needed to instruct her own independent professional advisers if she wanted that. She asked for a business loan to repay Mr D's business debts he held with NatWest so she could retain his business premises and that is the starting point here.

The information provided to NatWest at the time, and over the years, indicates the rental income Mrs R received from this business premises far exceeded the monthly loan repayments so this loan was self-funding. If Mrs R hadn't taken out the loan (either with NatWest or a different lender) then she would have needed to sell the business premises to repay Mr D's secured loan, and she wouldn't have then had the benefit of that excess rental income since 2008. There was no option for Mrs R to retain the business premises but not take out a loan to cover Mr D's business liabilities (unless she sold some other of his assets or had sufficient savings or assets of her own she could realise to repay the debt of over £100,000).

Whilst the loan end date was recorded incorrectly on one of NatWest's systems I'm satisfied that has been corrected and it hasn't had any impact on the loan payments or the loan balance. For that reason I won't make any further comment on this point.

Mrs R's loan tracks base rate. That means when base rate changes, the interest rate on Mrs R's loan changes by the same amount of percentage points. However, because Mrs R's loan repayments were set up to be collected by standing order (rather than direct debit) her monthly payments didn't automatically change in line with the interest rate changes.

Mrs R said it's unfair she wasn't notified of her minimum required payment each base rate change, and surely NatWest had a duty to provide that information.

NatWest has already accepted that it should have made Mrs R aware that she needed to amend her standing order each time base rate changed and has said that by not doing so Mrs R has overpaid by around £6,670 over the life of the loan (up until the calculation was carried out in December 2022).

As Mrs R has overpaid she's saved interest over the life of the loan as the interest has been charged on a balance that is lower than it would have been if Mrs R had adjusted her monthly payments each time her interest rate changed. So Mrs R has benefited financially on this loan due to not being aware she needed to adjust her payments.

NatWest offered to refund the overpayment to Mrs R, however that was on the understanding her loan balance would increase by that amount, and therefore her payments would go up. That seemed a fair way to resolve that part of the complaint and I wouldn't have ordered NatWest to do anything more. I understand Mrs R didn't request the refund be issued to her.

As base rate has recently increased substantially and I don't know what payments Mrs R has made in that time it may be there's no longer an overpayment available on the account for Mrs R to request back, so I leave it for her to discuss that with NatWest if she now wants to see if any overpayment funds are left.

Mrs R has also said that her balance is wrong, saying :

"I've been very recently made aware I have paid £117,986.31 in to the loan and £33,016.31 interest so far. (£151,002.62 TOTAL)

I don't understand why I owe £36,094.70 still."

But Mrs R hadn't paid a total of £151,002.62, she'd paid £117,986.31. That sum of £117,986.31 included the interest of £33,016.31, the interest hadn't been paid on top of it.

Mrs R borrowed £122,100 and up until the end of 2022 she'd made payments totalling around £118,000. As interest is due on top of the £122,100 it would never have been

enough to just repay £122,100. Mrs R can see the quarterly interest charges on her transaction history, with this starting at around £1,970 a quarter and dropping to its lowest at around £200 a quarter. In 2022 the four quarterly interest payments were around £260, £300, £350 and £430 respectively.

I've considered the transaction history very carefully and I can't see NatWest has made any errors in how it has calculated the outstanding balance due and so I'm satisfied the figures provided by NatWest are correct.

Mrs R has said the complaint handler told her she was getting charged two lots of interest, and she couldn't complain about that sooner as she didn't know about it. I can only assume there's been a breakdown in communication at some point as there has never been two lots of interest charged on Mrs R's account. Interest is debited quarterly in line with her loan agreement.

Finally, Mrs R has said she's missed out on historical all time low interest rates as a result of not receiving clear statements showing how much interest she'd paid and if she was to refinance the loan now she's looking at a much higher interest rate.

It's not clear what Mrs R is saying here as she hasn't missed out on historical low interest rates as her loan tracked base rate so she was only being charged the low interest rates she's referred to. Whilst she made higher payments than she needed to (as I've covered above) she was charged interest at the correct, lower, rate. It may be Mrs R is saying she would have looked to refinance her loan onto a fixed interest rate at some point, but that would have required her to have somehow foreseen when and by how much the base rate would increase after it being at those historically low rates for over a decade.

Mrs R also said if she'd been made aware she could have been able to pay this loan off quicker as she would have been able to make use of the historical low interest rates and save money. But by NatWest not telling her she should reduce her payments Mrs R did pay more which would have led to her being able to pay the loan off quicker and saving money. If Mrs R had maintained higher payments, rather than requesting they be reduced to the minimum in November 2021, then her loan would have been paid off early. If Mrs R felt able to pay more over the term of the loan then she could have increased her payments irrespective of what the interest rate was.

This was a business loan, so NatWest had no obligation to proactively offer Mrs R advice about her rate and the rates that were available to her. She was issued with a loan contract when she took out the loan, so she ought reasonably to have been aware of the interest rate she was being charged, that is base rate plus 2.25%. If Mrs R wasn't happy with that rate then the onus was on her, as a business owner, to manage her commercial interests and look into the possibility of refinancing.

My final decision

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 17 January 2024.

Julia Meadows
Ombudsman