

The complaint

Mr M is a sole trader. He complains that National Westminster Bank Plc, (NatWest) continued to add interest to a loan he believed had already been repaid. He said the bank delayed responding to a Data Subject Access Request (SAR) which meant it took many months for him to discover the bank's actions

What happened

The background to this complaint is well known to the parties. So, I won't repeat it in detail.

Briefly:

- In March 2014, NatWest issued a formal demand for the outstanding balance of a loan (the Loan) which Mr M had with the bank. The amount outstanding at the time was just over £35,000 and it was secured by way of a second charge on Mr M's family home.
- Mr M has told us that he began making payments of around £100 per week towards reducing the Loan.
- In November 2021, Mr M submitted a SAR to NatWest, in which he asked for, among other things, information relating to his account with the bank. Although the bank responded with the information, including statements for the Loan, it didn't do so until September 2022.
- NatWest acknowledged their delay and according to the bank, with Mr M's agreement, they reduced the balance of the Loan by £500 by way of an apology.
- But based on the information provided in the SAR, Mr M said he realised the Loan had not been repaid. So, he complained to NatWest saying:
 - Before their response to the SAR, for many years the bank did not provide statements to him and nor did NatWest request loan repayments from him. That caused him to believe the Loan had been fully repaid.
 - Without explanation, the bank took an unreasonably long time to provide the information, and this was considerably outside the timeframe allowed for SAR responses. Initial statements that were provided did not show interest accruing on the Loan.
 - The delay caused him financial loss. In particular, because the many months it took the bank to provide the information that alerted him to the outstanding debt, interest rates had increased significantly. Whereas, if the information had been supplied within the required time frame for a SAR, the cost of restructuring the Loan would have been significantly lower. Also, it may have

been possible to restructure on a fixed rate to lock in the lower rate that existed at the time.

- Furthermore, finding out that the Loan still existed was extremely distressing and worrying. His mental health suffered because of the stress and worry that his home might be repossessed in view of the outstanding debt.
- The £500 already paid, is unacceptable in view of the level of financial loss and personal distress that he suffered.

Apart from their acknowledgement that they exceeded the timeframe for complying with the SAR, for which they'd paid compensation, the bank didn't think it had done anything wrong.

As Mr M's complaint remained unresolved therefore, he referred it to this service to look into.

In their formal submissions to us, NatWest commented more fully on Mr M's complaint. They said - in summary:

- After the Loan entered Recoveries in 2014, effectively it became non-operational on the bank's system, although it remained open so that the outstanding balance could be repaid. That however, meant its systems no longer showed interest as accruing and this was reflected in the statements that were generated and provided in response to Mr M's SAR.
- But the bank was entitled to continue to charge interest on the Loan by virtue of section 2.4 of Mr M's loan agreement. In accordance with the terms and conditions of the Loan, the bank applied interest after the event of default. And it is allowed to do so at the rate that may be determined from time to time. The bank did nothing wrong therefore, when it continued to charge interest on the outstanding debt.
- Mr M signed the loan agreement, and he was advised to seek legal advice before signing it. He ought therefore to have been aware that interest would still be added to the Loan after it defaulted in 2014.
- Regarding the absence of statements, the Loan is not a Consumer Credit Act regulated product, meaning there is no requirement for the bank to issue annual statements to Mr M.

Our investigator looked into the complaint and noted that NatWest accepted they were at fault for the delay in sending the information to Mr M and compensated him.

And although he also noted that Mr M wanted to know the reason for the bank's delay, he said this isn't a matter for our service since we base our awards on the impact of the financial business' error rather than the reason for it.

He acknowledged the statements NatWest provided to Mr M would have caused some confusion because they didn't show interest accruing on the Loan. However, he was satisfied the bank did provide accurate statements to Mr M. He was persuaded by the bank's explanation that because the Loan is in default, the interest it accrued is shown on another internal system, from which the statements it sent to Mr M in response to his SAR were not generated. He said, however, that having regard to the terms and conditions of the Loan,

which is unregulated, interest continues to accrue after default. So, he couldn't say the bank's decision to charge interest was unfair.

Although the investigator was satisfied also that Mr M did experience stress and worry because of the debt, he said it was difficult to say with certainty what the impact was.

Mr M didn't agree with the investigator's conclusions and has asked for an ombudsman's review of his case. He maintained his position that £500 compensation isn't sufficient for what he described as the unacceptable level of service NatWest provided on multiple occasions. He also said that by not providing any reason for their delay, NatWest were by default trying to extend the process of his proposed litigation so that it would become time barred.

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.

NatWest continued charging of interest

Mr M has questioned the bank's right to continue charging interest on the Loan after he'd defaulted. So, I've weighed up the terms and conditions of the Loan against Mr M's argument that it was unfair for the bank to do so.

Section 2.4 says:

"Following an Event of Default, the Bank may charge interest on the whole amount due at 2% p.a. above the Interest Rate (or at such other rate as may be determined by the Bank from time to time), until the default is remedied to the Bank's satisfaction"

It is difficult for me to conclude the bank made an error when it continued to charged interest. It is not being disputed the Loan was in default and in view of the term just mentioned NatWest were entitled to continue charging interest whilst it remained outstanding and in default.

Moreover, evidence from the bank shows that although in the event of default, it was entitled to charge an extra 2% above the rate applied to the Loan, it did not.

But I agree with the investigator that it was likely to be confusing for Mr M that the statements he received in response to his SAR omitted to show that position. I do not find the bank's explanation as to why that was the case an unreasonable one. But more to the point, the omission does not in my view mean that NatWest were not entitled or otherwise should be precluded from charging such interest.

I turn next to NatWest's delay in providing the information and its impact.

The delay in providing the information.

As noted above, NatWest have acknowledged their delay and paid Mr M £500 in compensation.

I know Mr M would like to know more about why there was such delay. And whereas the bank has said it was because of operational challenges, I appreciate Mr M would prefer to have further details.

But our role is to consider whether a financial business has done something wrong and to award fair and reasonable compensation for the impact of the error. To that end we wouldn't look further into the reasons an error occurred.

Both sides accept what went wrong in this case, which was that the bank delayed providing the information Mr M asked for in November 2021. In the circumstances therefore, what I have to decide is whether beyond the £500 that NatWest have already credited to the Loan, the bank should do anything further. Especially, bearing in mind that Mr M doesn't think the compensation goes far enough when set against the wider impact of the delay.

The impact of the delay in providing information to Mr M.

Mr G has told us that after receiving the information from the bank in September 2022 he was distressed and worried to discover the extent of the outstanding balance on the Loan. He said he was concerned his home might be at risk given that the Loan was secured against it.

I have no doubt Mr M would have found the revelation of the outstanding balance on the Loan disappointing and distressing. But I've seen no evidence the bank had threatened to enforce its charge against Mr M's home to make him fearful it was at risk of repossession.

Whilst not wishing to minimise Mr M's feelings at the time, I regard the bank's compensation for its delay as fair and reasonable in the overall circumstances of this case.

Mr M has mentioned broader impact which I've also considered carefully.

litigation impact

Mr M explained the information was needed for litigation purposes. He said the bank's delay seemed to be aimed at extending that process so it would become time barred.

Our investigator did ask Mr M for details of the impact – including whether for example his solicitors were awaiting the information which meant they were unable to take legal action on his behalf.

But no such details were provided. In the circumstances therefore, it is difficult reasonably to conclude the bank's delay impacted Mr M's litigation.

financial impact

I also note Mr M said he suffered financially as a result of the delay in two key respects, and I've thought about them.

Firstly, Mr M said he'd assumed he had repaid the Loan. In particular, because he'd not been chased for repayments since 2019. However, he later found his assumption was wrong, and, with accrued interest, the Loan balance was roughly £31,000.

But as I've already mentioned I'm satisfied the bank was entitled to continue to charge interest on the Loan.

Moreover, I don't think it was reasonable for Mr M to have made the assumption he did. I say that, bearing in mind the Loan was secured by way of a second charge on his home. In the event the Loan had been repaid, Mr M would reasonably have expected to receive confirmation from the bank that it was releasing its charge. Mr M received no such confirmation.

Secondly, Mr M has told us by the time he received the information he'd asked for from the bank – which was approximately 10 months after the initial request, interest rates had increased. In other words, they were lower in November 2021 compared to September 2022 when he eventually heard from NatWest. So, he lost the opportunity to benefit from the lower rate by refinancing his borrowing.

But for me to require NatWest to pay compensation in the circumstances described by Mr M, I'd need to be satisfied Mr M would have refinanced the Loan and secured a more favourable rate compared what NatWest was charging him.

But I haven't seen anything that supports this. I note that interest rates were at an historic low in the periods Mr M does not dispute he knew the Loan existed and hadn't been repaid. But he took no steps at that time to restructure the Loan. So, I do not find that NatWest should pay compensation for the loss of opportunity to do so in 2021 as Mr M has suggested.

My final decision

Having regard to what I have said above, although I'm sorry to disappoint Mr M, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 28 July 2023.

Asher Gordon
Ombudsman