

## **The complaint**

Mrs K and Mr S complain that National Westminster Bank Plc (NatWest) made mistakes with a series of loan repayments and interest payments. They want NatWest to investigate the lending, establish whether any mistakes have been made and take corrective action if necessary.

## **What happened**

Mrs K and Mr S are business customers of NatWest. Since 2008, they have taken out the following business loans from NatWest either personally or through limited company P:

- £550,000 in February 2008 – personal business loan (Loan 1)
- £450,000 in October 2008 - personal business loan (Loan 2)
- £100,000 in October 2008 – limited company P loan (Loan 3)
- £400,000 in February 2016 – personal business loan (Loan 4).

Mrs K and Mr S and P made a series of repayments towards loans 1, 2 and 3. In February 2016, Mrs K and Mr S put the proceeds of sale from a property towards the outstanding balance on Loan 1. Loan 4 was then used to refinance the outstanding balances on loans 1 to 3 so that they could be closed. NatWest says loan 4 was fully repaid and closed in July 2022.

In June 2021, Mrs K and Mr S complained to NatWest after they calculated that the outstanding balances on loans 1 to 3 should have been nearer £191,000 so loan 4 should not have been for £400,000.

NatWest said that the calculations Mrs K and Mr S provided didn't include interest. So, NatWest didn't agree that it had made a mistake.

Mrs K and Mr S were unhappy that NatWest failed to provide a breakdown of the repayments made together with copies of loan agreements. Mrs K and Mr S wanted to check the repayments as there is a significant difference between their calculations and those of NatWest.

Our investigator considered the complaint and didn't recommend that it be upheld. He didn't think the discrepancy between Mrs K and Mr S's calculations and those of NatWest was due to them not taking account of interest charges. Instead, the investigator thought the difference in figures was due to a series of international payment transfers made from the account for loan 1 between August 2010 and February 2014.

The investigator said he couldn't identify any error by NatWest when calculating the balance of loan 4. However, as the discrepancy between Mrs K and Mr S's calculations appeared to arise from not factoring in the international payments, the investigator said NatWest should provide complete statements for each account if Mrs K and Mr S accepted his assessment.

After Mrs K and Mr S asked for the complete statements so they could comment further, the investigator explained that if they accepted his assessment, then part of his recommendation was that NatWest should provide the statement records.

A second investigator took over and reached the view that part of Mrs K and Mr S's complaint had been made outside the time limits which apply in our rules. The second investigator said she agreed with the first investigator that Mrs K and Mr S's complaint shouldn't be upheld. But that as they wanted an ombudsman to make a final decision, she didn't think that we had the power to look into the entire complaint.

The second investigator said that due to the age of loans 1, 2 and 3, it wouldn't be possible to consider a complaint about them. She did say that it was possible for this service to consider a complaint about loan 4.

Mrs K and Mr S thought that the investigator has made a mistake as they made their complaint within six years from 2016. Mrs K and Mr S said that it appears NatWest has provided nothing to show that it hasn't made a mistake and question why NatWest doesn't have any evidence when Mrs K and Mr S have been able to provide evidence.

I issued a provisional decision on 7 August 2023 which said:

*I first want to clarify something about the scope of this complaint. When Mrs K and Mr S complained to us in 2021, they provided their own repayment calculations for loans 1 and 2 but also referred to the outstanding balance on loan 3. By Mrs K and Mr S's calculations in their complaint form, the merged outstanding balances on loans 1, 2 and 3 came to just over £191,000 as at 2016. So, Mrs K and Mr S couldn't understand why loan 4 was for £400,000 instead of £200,000.*

*As loan 3 was taken by limited company P, rather than Mrs K and Mr S as individuals and because P hasn't complained about the loan repayments, the investigators haven't said much about loan 3. However, as it appears that loan 3 formed part of the lending consolidation in February 2016, I have referred to it in my provisional decision.*

*The rules under which we operate are set by the regulator – the Financial Conduct Authority. These are known as the DISP rules and they set out what complaints we can and can't consider.*

*DISP 2.8 sets out the rules about when the ombudsman can investigate complaints. DISP 2.8.2 states:*

*'The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:*

*(1) more than six months after the date on which the respondent sent the complainant its final response, redress determination or summary resolution communications; or*

*(2) more than:*

*(a) six years after the event complained of; or (if later)*

*(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;*

*unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgment or some other record of the complaint having been received;*

*unless:*

*(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R was as a result of exceptional circumstances; or ....*

*.....*

*(5) the respondent has consented to the Ombudsman considering the complaint where the time limits in DISP 2.8.2 R or DISP 2.8.7 R have expired...'*

*DISP 2.8.2 (2) means that this service can only consider a complaint if it has been raised within six years of the event complained about or, if later, within three years of when the complainant should reasonably have been aware of their cause for complaint.*

*Part of the purpose of my provisional decision is to address what we can and can't consider as part of this complaint. NatWest thinks that as loans 1 and 2 were opened in 2008, this service doesn't have jurisdiction to consider a complaint about them as Mrs K and Mr S didn't bring their complaint until 2021 i.e. more than six years later. This means any complaint about loans 1 and 2 is outside the first part of the time limit set down at DISP 2.8.2.*

*The second investigator thinks that as loans 1, 2 and 3 were consolidated in 2016, Mrs K and Mr S should have been aware at this point they had cause to complain. As Mrs K and Mr S didn't complain about the lending until 2021 (and P hasn't brought a complaint at all), more than three years has passed, which means the complaint about loans 1 and 2 (and therefore 3) falls outside the second part of the time limit in DISP 2.8.2.*

*I disagree that a complaint about loans 1 to 3 falls outside the time limits set down in the DISP rules because the basis of the complaint is that the settlement figure used for the consolidation in 2016 was incorrect. So, the event complained about took place in 2016 which was less than six years before Mrs K and Mr S complained. But even if I'm wrong about that, it's not in question that Mrs K and Mr S's complaint about loan 4 was referred to us in time. As Mrs K and Mr S are essentially disputing loan 4 by saying that the sum advanced should have been half the amount that it was, it has been necessary to look back at loans 1 to 3, to try and determine whether NatWest has correctly accounted for the payments to and from each loan account when calculating the closing balances.*

*NatWest has already provided this service with full statements for loans 1, 2 and 3. Given the age of loans 1, 2 and 3, NatWest doesn't hold copy agreements which I think is understandable. From reviewing the statements, I can't see that NatWest has miscalculated the loan balances. It looks to me like the total amount of the outstanding balances on loans 1, 2 and 3 (taking account of the proceeds of a property sale of £217,000) was over £390,000 in February 2016. This would tie in with the amount advanced by loan 4 in 2016.*

*I don't intend any disrespect to Mrs K and Mr S but I don't think their calculations for loans 1 and 2 are correct. For example, they appear to have applied the loan*

*repayments for loan 2, against loan 1 and vice versa. Mrs K and Mr S's calculations also don't seem to account for the quarterly interest debits applied to loans 1 and 2. Although Mrs K and Mr S say that they'd been paying interest prior to the loan actual loan repayments, this isn't reflected on the statements provided by NatWest.*

*I can also see from the statement for loan 1 provided by NatWest that there were a series of debits marked "ITL". These debits increased the outstanding loan balance by £76,000. The ITL statement abbreviation is usually used for international payments. Given the time that has passed, NatWest has limited information about these debits which is understandable. However, NatWest has provided a note from August 2010 which indicates that Mrs K and Mr S held an interest hedging product or facility. It is referred to as a 10 year swap and is likely to have been used to manage interest rate risks. I appreciate Mrs K and Mr S might not recall the product given the time that has passed. However, it seems unlikely to me that NatWest made a mistake and included debits which weren't made by Mrs K or Mr S at the time.*

*As I'm not persuaded that NatWest made a mistake when calculating the balances on loans 1 and 2 and there doesn't seem to be any disagreement over loan 3, I don't find NatWest needs to make any corrections to loan 4. If Mrs K and Mr S disagree, they have the chance to provide further evidence before I make my final decision.*

#### Further submissions

NatWest didn't make any further submissions in response to my provisional decision but Mrs K and Mr S, through their representative Ms K, remained unhappy. In summary Ms K said:

- interest payments were made prior to when the loan repayments commenced and some of these had been paid from the account for which she provided a statement
- she made it clear to the previous investigator that no international payments had been made and that he investigated this on her behalf
- I had not taken account of the statement for the account from which the loan repayments were debited
- I had ignored her request for NatWest to provide calculations and a copy of the loan agreement
- she calculated the interest separately and provided this when the complaint was first made
- loan 3 had no relevance to this complaint as it is for a separate identity from the complainants

I asked our investigator to go back to Ms K with some points of clarification. In summary, I said:

- I referred to loan 3 as Mrs K and Mr S referred to it when they first complained to the Financial Ombudsman and because it was settled on the same day as loans 1 and 2 – which indicated to me that loan 3 was included as part of the refinancing in February 2016.
- I hadn't ignored Ms K's calculations but didn't think they accurately reflected what had happened with the loan accounts. Although over £304,000 of loan repayments

and £217,00 from the proceeds of a property sale were applied to reduce the balance on loan 1, there were also interest charges of more than £63,000, ITL payments of almost £77,000 and some other debits totalling almost £8,000. This left a balance outstanding in 2016 of just over £173,000.

- I wasn't going to ask NatWest to provide further calculations as I was satisfied it had already supplied the relevant loan account statements
- Based on the evidence I had, I was disinclined to conclude that NatWest had made a mistake with the payments marked ITL
- The statement Ms K recently provided showed monthly standing orders and debits marked SBT which corresponded with the statements for loans 1 and 2. This made it difficult for me to decide that NatWest's loan statements were wrong.
- interest payments made against loan 1 before 2010 didn't reduce the opening balance of £550,000 as there was a capital repayment holiday. As the repayments were interest only, they didn't appear on the statement for loan account 1.

Ms K responded to my points of clarification with her calculation that around £793,700 of repayments had been made leaving a total outstanding balance on the loans of just over £206,000.

Ms K said that even if you include the ITL debits, it still wouldn't add up to an outstanding balance of £400,000. However, Ms K said that as the hedging product had been mis-sold, it should not have been included in any outstanding balance.

Ms K can't understand why NatWest is unable to provide a calculation or loan agreement when she has provided evidence, calculations, and explanations.

### **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.

I am sorry to disappoint Mrs K and Mr S but after considering everything that Ms K said in response to my provisional decision and my points of clarification, I still don't think NatWest made a mistake with the loans.

Despite what Ms K says about her calculations being correct, the fundamental thing for me is that NatWest's statements for loans 1, 2 and 3, show the relevant opening balances, followed by a series of credits and debits. In February 2016 the closing balances across the three loans totalled more than £390,000 rather than the figure Ms K has provided of around £206,000.

As I've explained to Ms K, any interest repayments made between 2008 and 2010 were not applied to the capital balance for loan 1. Once Mrs K and Mr S started to repay both the capital and interest on the loans, the quarterly interest debits increased the outstanding balances which were then reduced by the monthly loan repayments – all of which have been accounted for in the loan statements.

Ms K would like to see a calculation for loan 4 but I'm satisfied that the statements NatWest has provided for loans 1, 2 and 3, show how it has calculated the outstanding balances for each loan. The amount required to repay the combined outstanding balance on loans 1, 2 and 3 was just over £394,000. As I've said above – this seems to fit with the £400,000

refinancing loan in 2016.

From looking at the bank statement that Ms K recently provided, the credits and debits on loan accounts 1 and 2 tally with this statement. This makes it difficult for me to decide that NatWest made a mistake or failed to properly credit the loan accounts.

I can appreciate Ms K's frustration that NatWest hasn't provided a copy of the agreement for loan 4 but I accept that NatWest no longer holds a copy. I also don't think I need to see the agreement for loan 4 to decide that NatWest didn't make a mistake with the amount it advanced to repay the outstanding balances on loans 1, 2 and 3.

Ms K says that the hedge fund product was mis-sold but I don't have enough evidence to decide that this was the case. I also think that if Mrs K and Mr S thought the product was mis-sold back in 2008, it would have been reasonable to expect them to have complained far sooner.

For all the reasons outlined above, I don't consider NatWest made a mistake with loan 4 so I don't require it to take further action.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K and Mr S to accept or reject my decision before 22 November 2023.

Gemma Bowen  
**Ombudsman**