

The complaint

Mr A through his daughter complains that National Westminster Bank Plc failed to provide adequate information in relation to a loan he had with the bank and discriminated against him.

What happened

Mr A came to the United Kingdom from abroad in the 1970s. He has spoken English to a basic level and has limited literacy. He has built up a sizeable property portfolio. In January 2014 he took out a loan with NatWest to borrow £500,000 over a five-year term with interest at 4% per annum over LIBOR to be repaid by 19 quarterly capital repayments of £5,000 plus interest and a final instalment of £405,000. After the loan was taken out Mr A got no further correspondence or statements about the loan, just an entry on his bank statements indicating that a payment was going out each quarter. Mr A had several health issues and when NatWest wrote to him in 2019 to say that the loan had expired he couldn't remember having taken out the loan. There was then a dispute between Mr A and the bank about the existence of the loan resulting, his daughter says, in the bank closing the account. Thereafter, Mr A arranged to bank elsewhere.

But Mr A then discovered that because he wasn't getting the information from the bank that he didn't declare the interest he was paying on the loan to be set-off against his tax bill. Mr A says that he lost out on £174,271.28 of set-off. It was only after Mr A redeemed the loan on 23 December 2022 after raising the money to do so that NatWest provided a document setting out all the interest he paid on the loan.

Mr A says because of NatWest's communication failures he lost the opportunity to set off interest against tax and the opportunity to compare this loan to another and see if there was a better way of funding this part of his business. Mr A says that NatWest lacked integrity and acted in a discriminatory manner towards Mr A on grounds of race as he was placed at a disadvantage compared to customers who are proficient and literate in English. Mr A wants compensation for the losses he suffered and to refer NatWest to the ECHR.

NatWest said that it doesn't produce certificates of interest for this product but since 2018 it has produced LIBOR advice notices, but these were only issued internally, and none sent to Mr A. It offered compensation of £100 for its error. Our investigator didn't recommend that this complaint should be upheld. Although she felt that NatWest should have sent LIBOR advice notices she said that Mr A would have had the relevant information in the current account statements that he received, and that NatWest wasn't required to send other statements unless they were required by the customer. Mr A disagreed and asked for a review.

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 note that in this complaint Mr A's daughter says that she feels that her father has been subject to discrimination by NatWest. We are not a court, and we are unable to make a finding that the Equality Act 2010 has been breached. That's a matter for the courts not us. But in coming to this decision, I take the relevant law, amongst other things, into account in deciding what is fair and reasonable and that includes this Act.

Mr A is a businessman involved in the letting of property. In January 2014 he took out a secured loan with NatWest to refinance his borrowings on four properties, now secured against five properties. The capital was to be repaid by 19 capital repayments of £5,000 quarterly and interest and a final payment of £405,000. Interest was to be charged at 4% over LIBOR. The repayments came from Mr A's bank account with NatWest, and I see that when payments are made that the words "ITL" appear beside the payment. I can see that every quarter, from April 2014 onwards for five years a sum of about £10,000 is paid from that account to NatWest in line with what I'd expect would be paid under the terms of the loan agreement.

Mr A's main complaint through his daughter is that because he did not get regular information in the form of certificates of interest or LIBOR advice notices from NatWest that he didn't apply to set off the interest that he paid on his buy to let properties against the tax due. Now, NatWest is a lender engaged in the lending of money and in this case secured lending on properties.. As I understand it from what Mr A's daughter says, between 2014 and 2022 Mr A has not sought to offset the interest paid on his tax returns in relation to this mortgage. Mr A blames NatWest for this.

I could understand how a claim like this might proceed against the bank if the bank failed to provide information to assist Mr A in compiling his interest offset claim on his tax return or provided incorrect information. But this is a different case. It seems that Mr A did not submit an offset claim at all for any interest that he paid on this account. But Mr A knew he was paying interest to the bank. Mr A is a businessman after all, in the property market, who has had loans before who entered into this loan and loans from banks carry interest. He may not have known exactly what interest he had to pay and presumably could have checked the amount of interest that he paid in a particular tax-year with the bank. But the issue here is not that NatWest failed to provide information to compile a tax return but that either Mr A didn't know he could set-off that interest against his tax or didn't apply to set-off the interest for some other reason. Neither of which is the fault of NatWest. NatWest is not responsible for compiling Mr A's tax returns or advising Mr A whether the interest that he was paying on his loan can be set off against tax.

But even if Mr A was submitting a tax return and didn't have the information immediately at hand from NatWest - and I could understand that he might need further information than he had - there is no indication on file that he requested further information from NatWest and was refused.

Rather unusually in this case it seems that Mr A forgot that he had this loan with NatWest, and it's suggested that NatWest should have reminded him of it by providing information about it more regularly. But Mr A was paying about £10,000 a quarter to NatWest for five years. Those payments show up in the bank account not, I agree, as a payment to NatWest but with the reference "ITL". Mr A is responsible for the money coming in and out of his bank account and has the assistance of an accountant. It would not have been difficult to confirm with NatWest what the "ITL" was for, if Mr A had forgotten what it was for, or his accountant was unsure. It's reasonable to assume that as Mr A had entered the loan agreement, had some expectation of what the quarterly repayments would have been, saw the money going out of the account quarterly and might have known what "ITL" meant without needing to ask,

but the alternative was there to ask. If I look at one year - 2015 - the four single biggest payments paid out of the account in that year were all to "ITL", all related to this loan and all in excess of £10,000 and were the only payments made in excess of that figure during that year. Mr A says that these payments marked "ITL" only appeared on the statement once a quarter and were lost among the noise of the many daily items going through the account. I can't accept that because there was so much going on in the account that these substantial payments could reasonably be missed or overlooked on the statements and that NatWest should have done something more to bring these payments to Mr A's attention.

I appreciate that Mr A could not see from the bank statements alone what was interest and what was capital but that would be another exercise. Mr A's complaint is not that NatWest failed him in that exercise but that he didn't recognise that he was paying NatWest at all. But I'm satisfied that there was sufficient information in the bank statements that would on a reasonably enquiry have identified the payments to NatWest. It was a matter then for Mr A or his accountant to ascertain what further information they needed from NatWest to complete the tax return. Mr A is a businessman in the property market and will recognise that rates of interest are competitive. As the rate of interest on this loan was always 4% above LIBOR which Mr A had agreed at the start, if he wanted to compare interest rates he would always be able to do so without regular information from NatWest confirming that. Mr A just need to know what LIBOR was and that could be ascertained by a phone call.

Mr A's daughter says Mr A has been discriminated against and this has caused him a financial loss. I understand that Mr A has language difficulties and literacy problems, although he has been able to build a property business. But Mr A's loss essentially comes from not making a claim to offset bank interest in his tax returns. Submitting Mr A's tax returns and ensuring that interest is claimed is not NatWest's function. I also don't accept that Mr A couldn't have reasonably identified the loan repayments on the bank statements. So, I can't fairly say that Mr A's financial loss is the fault of NatWest.

There are a number of other matters. Mr A complains that NatWest never sent certificates of interest or LIBOR advice notices. But there is nothing I've seen in the documentation that says that NatWest would produce these. I've looked at the loan agreement dated 3 January 2014 and can see nothing in that about a commitment to send Mr A either of these. I note that in NatWest's letter of 1 September 2022 it says that it produced LIBOR advice notices from 2018 but these weren't sent to Mr A. My reading of that is that as a service issue, but not from a contractual obligation, NatWest issued these from 2018. They should have been sent to Mr A and weren't and that by way of apology they paid £100. That seems appropriate.

But I've seen nothing to suggest that NatWest promised to issue certificates of interest on a regular basis. In the context of this complaint, I understand Mr A to say that these would have prompted him to know that he had a loan with NatWest and interest was due on it but as I say above there was sufficient evidence for this in any case. I also recognise that this is a business loan and not a residential mortgage and there is no requirement for NatWest to issue the comprehensive annual statements that residential mortgage lenders will produce for their customers. So, I've considered this complaint in detail and considered the relevant law including the Equality Act and the other matters I need to have in mind and apart from the service issue mentioned above, I can't fairly say that NatWest has done anything wrong, and I don't require it to do anything more.

My final decision

National Westminster Bank Plc has already paid £100 in settlement of this complaint which I

consider fair and reasonable. I don't require the bank to pay anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 12 December 2023.

Gerard McManus
Ombudsman