

The complaint

Miss A complains about National Westminster Bank Plc's (NatWest) decision to sell her credit card debt, and she thinks they've been unreasonable not to provide her with a copy of her original credit agreement.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my decision.

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 know it will disappoint Miss A, but I agree with the investigator's opinion. I'll explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Section 78 of the Consumer Credit Act 1974 (section 78) says:

"The creditor under a regulated agreement for running account credit, within the prescribed period after receiving a request in writing to that effect from the debtor and payment of a fee of £1 shall give the debtor a copy of the executed agreement (if any) and of any other document referred to in it."

Miss A asked for a copy of her credit card agreement (credit cards are a type of running credit). I'm not sure if she included the requisite £1 fee with her request but I don't think that matters here as it seems unlikely the business would have been able to provide a copy of her agreement anyway. NatWest have explained that the agreement was taken out in 1988 and that their records simply don't go back that far.

I'm required to decide whether NatWest have been reasonable here and I think they have. They don't have to keep documents for more than six years and I think after 35 years it would be understandable that they wouldn't have them.

That means they may be unable to comply with Miss A's section 78 request. The legislation says that in those circumstances the agreement may not be enforceable until the information is provided. That's a decision only a court can make, and it doesn't stop NatWest from taking some other actions in relation to the debt, such as passing information about the account to

the credit reference agencies and asking for payment. But in respect of their failure to provide the agreement, as I've explained already, I don't think they've been unreasonable.

When a bank lends money, the terms of the agreement typically include provisions about transferring the debt. While I've not been able to consider the finance agreement in this case, as NatWest no longer have it, it would be unusual for such a provision not to be included for a credit card agreement. I'm not, therefore, persuaded it's likely NatWest have been unreasonable to sell Miss A's debt on. For her reassurance, however, I would add that the sale of the debt is subject to the oversight of the Financial Conduct Authority (FCA) who set rules and standards to ensure customers, like Miss A, receive fair treatment.

Ultimately, while I understand Miss A's frustration at not being provided with a copy of her agreement, I don't think NatWest have been unreasonable.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 7 March 2024.

Phillip McMahon
Ombudsman