

The complaint

Mr B complains National Westminster Bank Plc (NatWest) have defaulted his credit card account without agreeing this with him.

What happened

Mr B says during the 2020 / 2021 Pandemic like most of the country he had payment plans to help him with his current financial situation. He says these were agreed, payments were set up and none of these were missed. Despite that, he's found when applying for a mortgage more recently NatWest have recorded his credit card account as defaulted. He says he didn't agree to the account being defaulted otherwise he'd have kept it open and made the contractual minimum monthly payments. He adds the impact of the default being recorded wasn't explained to him otherwise he'd never have agreed to it.

Mr B complained to NatWest on 26 June 2023 about this issue – and because it was holding up his mortgage application, he contacted them several more times asking for an urgent reply.

NatWest replied on 10 August 2023. They said their records showed on 30 June 2021 a financial hardship plan was agreed with Mr B for £120 a month – and in that conversation the implications of a default were explained to him. NatWest added they wrote to Mr B with two letters – a default letter on 14 July 2021 asking Mr B to repay the whole balance within 21 days, and a termination letter on 5 August 2021 asking for full payment in 28 days. As no payment was made, Mr B's account was then defaulted on 2 September 2021.

In respect of the time it took to reply to Mr B's complaint, they said although they'd replied within the timescales, they'd record this as a bank error as they did think it was too long. They paid Mr B £50 compensation for this.

Unhappy with this, Mr B asked us to look into things.

One of our Investigators did so and found NatWest had applied the Pandemic guidance for helping people through financial difficulties, but actually Mr B was over his credit limit before the Pandemic started. So, she thought NatWest should have put in place a different type of financial support and defaulted the account earlier.

She said NatWest should:

- Treat the account as if an interest free payment plan was applied to the account in March 2020
- Rework the account from March 2020, which will include refunding all interest and charges applied from March 2020. If this results in a credit balance, this should be refunded to Mr B, with 8% simple interest from the date the account would have been in a credit balance, which is most likely when he recently cleared the balance; and
- Backdate the default to June 2020, when the account would have been in three months' worth of arrears

NatWest said in the interests of resolving this case they'd agree to this. But, Mr B didn't. He said he had never agreed for the default to be applied, so still wanted it removed. Because of that, the complaint's been passed to me to decide.

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.

Mr B's November and December 2019, and January and February 2020 statements show he was over the credit limit of £13,950.

NatWest's notes record in January, February and March 2020 – before impact of the Pandemic would have started – Mr B received arrears notices. And on 9 April 2020 it says in NatWest's notes Mr B is struggling due to the Pandemic.

In brief the regulator the Financial Conduct Authority (FCA) issued guidance for lenders about how to handle someone in difficulties due to the Pandemic. It's this guidance NatWest applied when agreeing repayment plans with Mr B in April and July 2020. But this guidance also said lenders should consider their usual support measures if someone was in difficulties before the Pandemic.

But, I think it's fair to say the evidence of his statements show Mr B was in financial difficulties before the Pandemic. I don't doubt NatWest were doing their best in unprecedented circumstances to help Mr B, but I'd expect them to have applied their usual financial support measures in the circumstances.

The most common are suspending interest, refunding interest and charges, and agreeing a repayment plan for a period of time. The purpose of a repayment plan is that it should be temporary and designed to provide a bit of space for someone to get themselves back in to a position where they can then resume the contractual monthly repayments.

I think this is appropriate for Mr B – and, like our Investigator, I'm going to require NatWest to treat Mr B's account as though an interest free plan was applied from March 2020. I'll explain more about this in the 'Putting things right' section below.

Turning now to the default, I do need to explain this isn't something Mr B has to agree to. This is something NatWest can decide to do once they're satisfied Mr B has broken the terms of his lending agreement. The Information Commissioner's Office (ICO) sets out that it's good practice for lenders to default someone's account when they're in at least three months' worth of arrears, and no more than six months' worth of arrears.

NatWest have told us the consequences of the default were explained to Mr B when he agreed the financial hardship plan on 30 June 2021 – and have pointed to their internal notes as evidence of this. They've also said they can't provide the phone recordings. I don't find this particularly unusual given the time that's passed, although I appreciate Mr B will be frustrated by this.

I say that because Mr B has repeatedly asked for evidence he was clearly told about the default. That isn't available – so neither NatWest nor our service are going to be able to provide the kind of evidence that will seemingly satisfy Mr B's concerns here.

But I also do need to reiterate this isn't something Mr B had to agree to – it's something NatWest are required to consider in line with the ICO's guidance.

Coming back to NatWest's notes, this does say the consequences of the plan were explained to Mr B – so, I think it's more likely than not they were. I appreciate in the moment Mr B may not have realised the consequences of a default, but that doesn't mean I can or should require NatWest to remove the default for this reason.

In addition, NatWest have said they sent out two letters asking for repayment of the debt. NatWest are only able to provide samples of these letters – but their notes do show the letters were sent to Mr B.

The first letter is a default letter sent to Mr B on 14 July 2021. This explains NatWest will record the account as having defaulted, that'll be on Mr B's credit file for six years, and it may make it harder for him to get credit.

The second letter is the termination letter sent on 5 August 2021. This also explains NatWest will record the account as defaulted and it'll remain on Mr B's credit file.

I realise Mr B feels incredibly strongly about this point – so I've also considered what I'd decide if NatWest hadn't told him they were going to report a default. But I don't think that would change anything. I say that because it was NatWest's obligation to consider reporting a default given Mr B's struggles to repay the debt – and I think it'd have been reasonable of them to do so.

So, taking everything into account, I'm satisfied NatWest have acted fairly in applying a default.

And, as I've already found NatWest should have taken action earlier, I'm going to require them to report the default earlier. Again, as the ICO guidance says this can be done after three months, June 2020 seems like a reasonable time to backdate the default to.

Putting things right

I require NatWest to:

- Apply an interest free payment plan to the account from March 2020 onwards
- Rework the account from March 2020, which will include refunding all interest and charges applied from March 2020. If this results in a credit balance, this should be refunded to Mr B, with 8% simple interest* from the date the account would have been in a credit balance, to the date of settlement
- Backdate the default to June 2020, when the account would have been in three months' worth of arrears

*HM Revenue and Customs requires NatWest to deduct tax from the interest payment referred to above. NatWest must give Mr B a certificate showing how much tax they've deducted if he asks them for one.

My final decision

I partially uphold this complaint and require National Westminster Bank Plc to carry out the actions in the 'Putting things right' section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 21 March 2024.

Jon Pearce
Ombudsman