

The complaint

Mr N says that National Westminster Bank Plc (“NatWest”) lent to him irresponsibly and took advantage by applying extremely high interest and overdraft charges.

What happened

One of our adjudicators looked into Mr N’s concerns and didn’t think NatWest had done anything wrong or treated Mr N unfairly. They thought there wasn’t anything in the information Mr N provided or his account history to NatWest which suggested he wouldn’t be able to repay the overdraft within a reasonable time and that there weren’t any obvious signs of financial difficulty.

Mr N, disagreed he says the overdraft was unaffordable and is unhappy at the charges he incurred. So the complaint was passed to an ombudsman for a final decision.

Why I can’t look into Mr N’s complaint about account numbers ending in 6696 and 9593

I can’t look at all the complaints referred to me. The rules applying to this service say that, where a business doesn’t agree, I can’t look at a complaint made more than six years after the event being complained about – or (if later) more than three years after the complainant was aware, or ought reasonably to have been aware, of cause for complaint. This is Dispute Resolution rule 2.8.2R(2) – which can be found online in the Financial Conduct Authority’s handbook.

And in this case NatWest hasn’t agreed. Mr N’s complaint was made in September 2019. This is more than six years after NatWest applied the last charges to Mr N’s accounts when they were closed in July 2010 - which is the event Mr N is complaining about here. To be within the six year rule Mr N needed to complain at the latest by July 2016. So I need to think about whether the complaint was made within three years of when Mr N should reasonably have been aware he had cause to complain.

Any bank charges would’ve been notified to Mr N at around the time they were applied. So Mr N ought to have known enough to decide whether he thought they were unfair and causing financial difficulty and that NatWest did something wrong by applying them. As the last charges for the period Mr N has complained about were applied in July 2010, I think Mr N should reasonably have been aware he had reason to complain at this time.

Three years from this is July 2013. As this is earlier than the six year rule referred to above it means Mr N needed to make his complaint about bank charges by July 2016 (6 years after the event complained about). As he didn’t complain until September 2019 his complaint is out of time under the rules I have to apply.

And this also applies to Mr N’s complaint about irresponsible lending on these accounts. The complaint was made more than six years after the overdrafts were taken out and I think Mr N ought to have been aware he had cause for complaint about the lending as he made NatWest aware of his financial difficulties in 2010 and discussed a repayment plan with it.

Three years from this point is 2013 but again, as this is earlier than the six year rule referred to above Mr N needed to make his complaint about lending on these accounts by July 2016.

I can still look into complaints made outside the time limits if I'm satisfied the failure to comply with them was due to exceptional circumstances. Mr N has told us that he didn't complain earlier because he didn't know he could lay a complaint about irresponsible lending.

In coming to my decision I have to be fair to both Mr N and NatWest and what I have to decide is whether I think the circumstances outlined by Mr N would've *prevented* him from referring his complaint in time had he chosen to do so. I'm afraid that not knowing he could complain is not considered an exceptional circumstance.

The charges Mr N is complaining about were applied over six years ago. I understand why making a complaint may not have been a priority for Mr N. But I think he still could have made his complaint within the time limits, especially as it only takes an email or telephone call to do so.

And as such I don't think that exceptional circumstances apply and because Mr N didn't raise his complaint in time my decision is I'm unable to look into Mr N's complaint about irresponsible lending and the charges applied to his accounts ending 6696 and 9593 prior to them being closed in 2010.

Why I can't look back before September 2013 for account ending 2594

Mr N raised his complaint in September 2019. Six years before he raised his complaint is September 2013. And as Mr N had an overdraft facility and the charges applied to this would've been notified to him at the time they were being applied, I think he ought to have known enough to decide whether they were unfair or causing financial difficulty. So, I don't think that three years from when Mr N ought to be reasonably aware he had reason to complain provides him with a longer period than the six year rule. So, I will only be looking at the affordability of his overdraft from September 2013.

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.

We've set out our general approach to complaints about unaffordable and irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Mr N's complaint. Having considered everything provided, I've decided not to uphold Mr N's complaint. I'll explain why in a little more detail.

NatWest needed to make sure that it didn't lend irresponsibly. In practice, what this means is NatWest needed to carry out proportionate checks to be able to understand whether Mr N would be able to repay what he was being lent before providing any credit to him. Our website sets out what we typically think about when deciding whether a lender's checks were proportionate.

Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship. But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty.

I've kept all of this in mind when thinking about whether NatWest did what it needed to before agreeing to Mr N's overdraft. Mr N was given what was an open-ended credit facility. So overall this means the checks NatWest carried out had to provide enough for it to be able to understand whether Mr N would be able to repay his overdraft within a reasonable period of time.

NatWest says Mr N applied for a £750 overdraft in September 2013. This was reduced to £550 in October and paid off in January 2014. Mr N didn't apply for any further lending until February 2016 when he was given a limit of £100 and a further increase to £250 was approved a year later in February 2017.

NatWest have said all applications were fully credit scored taking into account information Mr N provided about his income and how Mr N had managed his accounts held with it, as well as information held by other lenders provided through credit reference checks. And based on this information NatWest was satisfied his score was high enough to provide him with the overdraft facility he requested.

I accept that Mr N's financial position may well have been worse than the credit check carried out showed or in any information he disclosed to NatWest at the time. And it is possible that further checks might have told NatWest this. But NatWest was reasonably entitled to rely on the credit check it carried out. Given there wasn't any adverse information shown on the credit check, or significant outstanding debts elsewhere and the amount of credit being advanced was relatively low, short term and reducing, I think NatWest's checks went far enough.

This means that I don't agree NatWest provided Mr N's with an overdraft facility unfairly or irresponsibly. That said, even though Mr N's overdraft and increases and decreases in limits weren't provided irresponsibly, NatWest still won't have acted fairly and reasonably towards Mr N if it applied any interest, fees and charges to Mr N's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr N was experiencing financial difficulty.

So I've considered whether there were instances where NatWest didn't treat Mr N fairly and reasonably. I don't think that NatWest did treat Mr N unfairly or unreasonably though. I say this because having looked at Mr N's statements I can't see anything to suggest that NatWest ought to have realised he might have been experiencing financial difficulty.

I accept that Mr N did utilise his overdraft but more often than not Mr N was in credit and when he did become overdrawn he was able to transfer money across to reduce the balance significantly or pay it off. And I can't see that he ever exceeded his limit or that there were any other transactions shown in Mr N's bank statements themselves which ought to have alerted NatWest to any potential financial difficulty. And in these circumstances I don't think that it was unreasonable for NatWest to proceed with adding the interest, fees and charges it did.

So overall and having considered everything, I don't think that NatWest treated Mr N unfairly or unreasonably and this means that I'm not upholding this complaint.

My final decision

For the reasons I've explained, I'm not upholding Mr N's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 6 July 2022.

Caroline Davies
Ombudsman