

The complaint

Mr M complained about withdrawal fees applied to his charge card account by National Westminster Bank Plc ('NatWest'). He also complained about advice he received from his NatWest personal bank manager ('PBM'). Mr M also said NatWest didn't get his consent before it used and exceeded his overdraft facility on his current account to clear his final charge card balance.

What happened

The details of this complaint are well known to both parties, so I'll just provide an overview of key events here.

Mr M took out a packaged bank account with NatWest some years ago. In August 2017 NatWest downgraded Mr M's packaged bank account and soon after told him that he could no longer use the charge card account and current account attached to it. NatWest used the overdraft facility on Mr M's current account to clear the charge card balance of £10,383.66 in September 2017 and £1,476.85 in October 2017.

In February 2019 NatWest stopped all banking facilities for Mr M and transferred his accounts to an external debt collection agency.

Mr M raised a number of complaints with NatWest, including about the advice given by his PBM on how to manage his current account and charge card account, and that NatWest exceeded his overdraft facility to pay a significant final balance on his charge card.

NatWest issued a final response in August 2019 and the points relevant to this decision were:

- NatWest apologised for the service provided by Mr M's PBM not being to the standard Mr M would have liked.
- It was unable to locate a complaint raised by Mr M in November 2017.
- NatWest offered Mr M £50 compensation by way of an apology.
- NatWest acted in line with its terms and conditions when it used Mr M's current account to pay his charge card balance.
- It made a commercial decision in February 2019 to tell Mr M it would stop all banking facilities and transfer Mr M's account to its recoveries department and no legal explanation was required.

Mr M remained unhappy and so brought his complaint to this Service in August 2019. In relation to the complaint points being dealt with in this decision he said:

- His NatWest charge card balance of £11,806.51 was debited from his NatWest current account in September 2017 without his permission.
- He was encouraged by his PBM, over a 15 year period, to make cash withdrawals from his charge card to settle the overdraft on his current account, and vice versa. He said this incurred exorbitant charges.
- His accounts were passed to a third party debt collection agency.

Mr M's complaints about his current account and the mis-sale of the packaged bank account were dealt with separately by this Service.

NatWest told this Service it hadn't issued a final response letter to Mr M in relation to fees and charges incurred on his charge card account, but it gave this Service consent to look into this complaint without the need for a final response.

Our Investigator upheld this complaint. He thought NatWest acted unfairly when it continued to charge Mr M cash withdrawal fees on his charge card account from January 2014. He said Mr M was making regular cash withdrawals from his charge card, with the same amount then being deposited into his current account. Our Investigator said he could also see that Mr M was using his overdraft to pay off his charge card balance. He said using one form of credit to pay off another each month was an indication of financial difficulties.

Our Investigator thought NatWest should have known by January 2014 that Mr M was in persistent debt and therefore not in a position to repay his debt in a reasonable period of time. He thought Mr M's position was made worse by the withdrawal fees he incurred on the charge card and this could have been prevented if NatWest had reacted to Mr M's charge card usage, instead of allowing him to withdraw cash to deposit into his current account. Our Investigator asked NatWest to refund the cash withdrawal fees incurred on the charge card since January 2014. He also asked NatWest to ensure Mr M's credit file reflected what should have been recorded had it taken corrective action on the charge card from January 2014.

NatWest agreed with what our Investigator said. It said it would refund a total of £5,369.32. It proposed that the refund to be paid into Mr M's current account that serviced the charge card. It said money was currently owed on that account and the refund would reduce that balance. Our Investigator agreed.

Mr M responded and said he accepted what our Investigator said in principle, but he didn't think the refund should be offset against the overdraft balance. Mr M also thought there were some complaint points made by him that hadn't been addressed.

As Mr M didn't agree with what our Investigator said, this matter came to me to consider.

I contacted NatWest and told it I thought this Service had jurisdiction to look at the withdrawal fees applied to Mr M's charge card from November 2011. NatWest agreed and also said it would refund fees from that point in time. NatWest calculated the total refund due to Mr M was now £10,253.05.

I contacted Mr M and let him know what had been agreed with NatWest. I said I thought it was fair for the entire refund to be applied against the current account balance. Mr M didn't agree that it was fair to apply the refund in this way.

Mr M also highlighted complaint points that were, as yet, unaddressed. I asked Mr M to send any comments or evidence he wanted me to consider in relation to these complaint points, which he did.

I issued a provisional decision on 17 March 2023. I outlined what I intended to say about this Service's jurisdiction to look into Mr M's complaint. I thought the fairness of charge card cash withdrawal fees applied could only be considered from November 2011 until the account closed. And I said that NatWest had agreed to return all cash withdrawal fees that had been applied by it during that time.

I also said I didn't think this Service had jurisdiction to consider Mr M's complaint about the advice given to him by his PBM regarding how to manage his charge card and current account.

In relation to Mr M's complaint about NatWest's decision to exceed his overdraft limit to make two payments to clear his final charge card balance, I said I thought NatWest had made errors here. However, I said I didn't intend to ask it to take any further action as NatWest had already agreed to refund all interest, charges and fees on the current account back to around 2014.

I gave both parties the opportunity to respond.

Mr M responded and provided details of his personal circumstances and asked me to consider whether these amount to exceptional circumstances as to why two of his complaints were not made at an earlier point.

NatWest responded and didn't have anything further to add.

I am now in a position to issue a final 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.

When Mr M brought his complaint against NatWest to this Service in August 2019, he raised a number of complaint points. This Service opted to deal with these complaint points as three separate complaints. Two of these complaints – about the sale of Mr M's packaged bank account and the management of his current account – have been investigated and closed by this Service. So I will not be looking at any complaint points already dealt with as part of those two complaints. What I am looking at here is:

- Mr M's complaint about cash withdrawal fees applied to his charge card.
- The advice given by Mr M's PBM regarding managing payments on his charge card and current account.
- NatWest using an amount greater than his agreed overdraft facility to pay the final balance on the charge card, without his consent.

Charge card fees

In my provisional decision I set out why I intended to say I was satisfied this Service had jurisdiction to consider the fairness of charges applied to Mr M's charge card from November 2011 until the account was closed.

Mr M provided further information about his personal circumstances that he asked me to consider as exceptional circumstances that he feels got in the way of him from bringing elements of his complaint sooner. I want to assure Mr M that I've considered all the new testimony provided by him.

However, as our Investigator explained to Mr M after this information was received, the bar for exceptional circumstances is high – the example given in the rules our Service has to abide by is that of a consumer being incapacitated. So, I would have to be satisfied that Mr M was in some way unable to raise these elements of his complaint within the time limits. While I have a great deal of sympathy for the circumstances described by Mr M, I don't think these prevented him, in the long term, from making a complaint. This means my position has

not changed and I will only consider charge card fees applied from November 2011 until the account closed.

Turning now to the merits of this particular complaint point, when I contacted NatWest it agreed to look at the fees applied to Mr M's account in the six years prior to November 2017 and agreed to refund these to him. This means the total refund of withdrawal fees that had been applied to the charge card is £10,253.05. And as NatWest has agreed to the refund, I don't need to look further at the fairness of the charges applied.

Mr M said he agrees in principle that it's fair to refund the fees, but he would like the refund to be paid directly to him, rather than being deducted from his current account overdraft balance, as suggested by our Investigator. However, I'm satisfied that offsetting the refund against the current account balance is a fair outcome here. I say this because, from what I can see, the charge card balances from September and October 2017 were paid off using funds from Mr M's current account. So the final charge card balance rests, in its entirety, in the current account overdraft balance. By applying the refund to the current account balance, the charge card balance is effectively reduced. I'm satisfied this outcome is fair to both parties.

Advice given by Mr M's PBM

Mr M said that he managed his charge card and current account in the way his PBM advised him to, namely that he withdrew cash from the charge card which was then deposited into his current account, and then used the current account to pay off the charge card. He feels this was bad advice, which cost him a considerable sum of money over the years because of the cash withdrawal fees incurred on his charge card.

The difficulty here is that I have no way of knowing what was said during any meeting or phone conversations Mr M had with his PBM over the years. I haven't been provided with evidence of what advice was given to Mr M. I can certainly see that Mr M has managed the two accounts in the way he said he was advised to for a number of years but, as I said, I just don't have enough evidence to be able to say that it's more likely than not this is how his PBM told him to manage his accounts.

In any event, I said in my provisional decision that I didn't think I could consider this particular complaint point because of the time limits that apply to making complaints. As I said earlier in relation to jurisdiction, I've considered the information Mr M presented about his personal circumstances and looked at whether exceptional circumstances apply. But, although I have a great deal of sympathy for Mr M's situation, I'm satisfied he wasn't unable, in the long term, to make his complaint earlier.

This means I'm satisfied this part of Mr M's complaint was not brought to this Service in time and is not one we can consider.

Final charge card payment

Mr M complained that NatWest exceeded his agreed overdraft limit when it made a payment of £11,806.51 – the September and October 2017 payments combined – to clear his charge card balance. He said this was done without his consent. For its part, NatWest told Mr M in August 2019 that it had acted within its terms and conditions.

Having looked at the terms and conditions of both the current account and the charge card account provided by NatWest, I can't see that they allowed NatWest to act in the way it did. The charge card terms say that NatWest has:

“... the right to use any credit balance on any other account you hold with us to reduce or repay any payment arrears due by you to us under this agreement.”

But Mr M didn't have a credit balance on the current account when the two charge card payments were made in September and October 2017. His current account was already more than £5,000 overdrawn at that point.

However, I can see that NatWest did transfer those balances – albeit temporarily – out of Mr M's current account around a year later and into a repayment account, so that arrangements could be made for him to repay the debt without the balance remaining in the current account and being subject to interest and other charges. However, I think NatWest should have done this sooner so that the charge card balance wasn't accruing interest and charges while it remained in the current account.

At this stage, NatWest has already agreed to refund all interest, charges and fees on the current account back to around 2014. So any additional interest that might have accrued as a result of the charge card balances sitting in the current account for longer than necessary have already been refunded. This means that NatWest don't need to take any further action here. This Service doesn't punish businesses for errors made – that's not our role. We look to put consumers back in the position they would have been in if errors hadn't been made. The refund of interest on the current account means that any cost incurred by Mr M as a result of the transfer of the balances to the current account has been remedied.

Mr M also thought that NatWest shouldn't have made arrangements for a debt collection agency to recover money owed while this Service was looking into his complaints. It's certainly the case that this Service can ask businesses if they are willing to suspend debt collections while we are considering a complaint. But businesses aren't obliged to do that. They are allowed to continue making business decisions about debt collection while this Service looks into complaints.

Putting things right

- NatWest should refund all cash withdrawal fees charged to Mr M's charge card account from November 2011 to the time the charge card account closed.
- NatWest can deduct this refund from the balance owed on Mr M's current account.
- If an outstanding balance remains on the overdraft once the refund has been applied, then NatWest should contact Mr M to arrange a suitable repayment plan. I would encourage Mr M to cooperate with NatWest to agree a suitable arrangement.
- If necessary, and depending on what may already have been recorded on Mr M's credit file, NatWest should ensure Mr M's credit file reflects what would have been recorded if it had taken corrective action on the charge card from November 2011.
- If there is no longer an outstanding balance after the refund has been applied, then any credit balance should be treated as an overpayment and should be returned to Mr M along with 8% simple interest on the overpayments from the date they were applied until the date of settlement.

My final decision

I uphold Mr M's complaint and require National Westminster Bank Plc to take the actions outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 April 2023.

Martina Ryan
Ombudsman