

The complaint

Mr and Mrs S have complained that National Westminster Bank Plc (“NatWest”) acted unfairly by continuing to apply charges to their account when they were in financial difficulty.

What happened

Mr and Mrs S complained to NatWest that the charges applied to their overdraft were unfair when they were struggling financially.

NatWest said all charges were applied to Mr and Mrs S’s account correctly in line with the terms and conditions of the account.

Mr and Mrs S were dis-satisfied with this and brought their complaint to this service.

One of our adjudicators looked at this complaint and thought that NatWest acted unfairly when it continued charging overdraft fees from December 2016 as Mr and Mrs S hadn’t seen or maintained a credit balance for an extended period of time. NatWest should have realised that Mr and Mrs S weren’t using their overdraft as intended and shouldn’t have continued offering it on the same terms.

Our adjudicator thought NatWest should put things right by:

- Re-working Mr and Mrs S’s current overdraft balance so that all interest, fees and charges applied to it from December 2016 onwards are removed.

AND

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr and Mrs S, along with 8% simple interest on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then NatWest should remove any adverse information from Mr and Mrs S’s credit file.

HM Revenue & Customs requires NatWest to take off tax from this interest. NatWest must give Mr and Mrs S a certificate showing how much tax it’s taken off if they ask for one.

NatWest agreed to settle Mr and Mrs S’s complaint in-line with our adjudicator’s recommendations. NatWest confirmed that debit interest paid since 1 December 2016 was £2,240.95 and overdraft fees of £240 and that Mr and Mrs S’s account was in a credit position and it would calculate the 8% interest nearer the time of settlement.

Mr and Mrs S didn’t wish to accept this offer. They want further compensation for the distress and inconvenience caused as their physical and mental health was affected. They have asked for an ombudsman’s 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.

Firstly, just to be clear my decision solely relates to NatWest's overdraft lending from 17 November 2015.

Having carefully considered everything, I think that what NatWest has already agreed to do to put things right for Mr and Mrs S is fair and reasonable in all the circumstances of this complaint. I'll explain why I think this is the case.

It might help for me to start by explaining that where a business accepts (or we decide) it did something wrong, we'd expect the business to put the consumer in the position they would be in if that wrong hadn't taken place. And in an ideal world, we'd tell a business to put a consumer in the position they'd now be in if they hadn't been given the credit they shouldn't have.

So where a business increases or continued to allow a consumer to use a credit facility which it should have realised was unsustainable, we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any further interest and charges on that credit. This means we'd normally expect a lender to refund the interest and charges added to any credit from the point the lender ought to have realised it was unsustainable. And if those interest and charges were paid also add 8% simple interest per year.

In this case after reviewing Mr and Mrs S's statements, I'm in agreement with our adjudicator that by December 2016 it was evident Mr and Mrs S weren't managing their overdraft in a sustainable way. While their account still had regular credits coming in the overdraft wasn't reducing and Mr and Mrs S hadn't seen a credit balance in a significant period of time. If NatWest had carried out a proper review of their statements I think it ought to have realised it was unlikely Mr and Mrs S would be able to sustainably repay the overdraft within a reasonable period of time.

NatWest has agreed to settle Mr and Mrs S complaint in-line with this finding and Mr and Mrs S will be 'refunded' all of the interest, fees and charges caused by the overdraft facility and as the account is in credit, 8% simple interest will be paid on the overpayments. So NatWest has agreed to do what I'd normally expect it to do here.

That said, we do look at each case individually and on its own particular merits. And while we have a general approach to how we might tell a lender to put things right where it continued to provide credit it shouldn't have (such as here), we can and will tell it to do something different or something more if there's a strong reason to say that's what would be fair and reasonable to do in the circumstances of that individual case.

Mr and Mrs S say NatWest should do something different here. They say they both suffered from poor health which affected their ability to work and their income and that it was unjust NatWest took further funds out of their bank account. Mr and Mrs S say the charges affected their mental health and want to be compensated for this.

I've thought about what Mr and Mrs S have said. And what they have said is a reason for upholding their complaint rather than a reason for departing from our normal approach to putting things right in cases such as theirs. Mr and Mrs S have given us a background of their circumstances and while I sympathise with their position much of what they have told us happened outside the period being looked at and I haven't seen enough to persuade me that the main cause of the mental stress suffered is due to NatWest's overdraft lending –

rather than their personal circumstances alone. And I don't think this is a reason for departing from our normal approach to putting things right in cases such as theirs.

All the interest, fees and charges NatWest shouldn't have added will be removed and simple interest added. So bearing in mind all of this, I'm satisfied that what NatWest has already agreed to do to put things right for Mr and Mrs S is fair and reasonable in all the circumstances of this case and I'm not requiring it to do anything more. As this is the case, it's up to Mr and Mrs S to decide whether they wish to accept NatWest's offer.

My final decision

For the reasons I've explained, I'm satisfied that what National Westminster Bank Plc has already agreed to do to put things right for Mr and Mrs S is fair and reasonable in the circumstances of this case. So I'm not requiring it to do anymore.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 19 December 2022.

Caroline Davies
Ombudsman