

## **The complaint**

Mr L has complained that National Westminster Bank Plc (“NatWest”) acted unfairly by continuing to apply charges to his account when he was in financial difficulty.

## **What happened**

Mr L held an account with NatWest with an overdraft facility. The last limit increase on Mr L’s overdraft was in February 2011 taking his limit up to £1,800.

Mr L complained to NatWest that it acted irresponsibly by providing him with an overdraft and that the charges applied to his account were unfair as he was struggling financially.

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

Mr L was dis-satisfied with this and brought his complaint to this service.

A jurisdiction decision was issued on 17 March 2023 deciding that we were unable to look at Mr L’s complaint regarding irresponsible lending prior to September 2016 because it was made out of time.

So my decision will only be looking at the merits of Mr L’s complaint from September 2016.

One of our adjudicators looked at this complaint and thought that NatWest acted unfairly when it continued charging overdraft fees from December 2017 as Mr L’s statements showed that Mr L hadn’t seen or maintained a credit balance for an extended period of time.

Our adjudicator thought NatWest should put things right by:

- Re-working Mr L’s current overdraft balance so that all interest, fees and charges applied to it from December 2017 onwards are removed.

**AND**

- If an outstanding balance remains on the overdraft once these adjustments have been made NatWest should contact Mr L to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr L’s credit file, it should backdate this to December 2017.

**OR**

- 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 L, 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 L’s credit file.

HM Revenue & Customs requires NatWest to take off tax from this interest. NatWest must give Mr L a certificate showing how much tax it’s taken off if she asks for one.

NatWest agreed to settle Mr L's complaint in-line with our adjudicator's recommendations.

Mr L doesn't wish to accept this and has 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.

Having carefully considered everything, I think that what NatWest has already agreed to do to put things right for Mr L 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 L's statements, I'm in agreement with our adjudicator that by December 2017 it was evident Mr L wasn't managing his overdraft in a sustainable way. While Mr L had kept within his overdraft limit from September 2016 he hadn't seen or maintained a credit balance February 2017 and although there were some credits to the account, they weren't regular and not enough to reduce the overdraft.

While I accept that during this period there doesn't appear to be any priority bills coming out of the account and that the majority of spending was on food and discretionary, non-committed transactions, that doesn't mean the lending should continue without a review. And if NatWest had carried out a proper review of his statement's I think it ought to have realised it was unlikely Mr L would be able to sustainably repay the overdraft within a reasonable period of time.

NatWest has agreed to settle Mr L complaint in-line with this finding and Mr L will be 'refunded' all of the interest, fees and charges caused by the overdraft facility. I understand Mr L would like the lending looked at prior to September 2016 but a jurisdiction decision has already been issued explaining we are unable to look at the lending before this.

So bearing in mind all of this, I'm satisfied that what NatWest has already agreed to do to put things right for Mr L 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 L to decide whether he now wishes 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 L 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 L to accept or reject my decision before 2 June 2023.

Caroline Davies  
**Ombudsman**