

## The complaint

Miss B complains that a loan approved for her by National Westminster Bank Plc ("NatWest") was lent irresponsibly.

## What happened

NatWest approved a loan for Miss B in July 2017. It was for £6,000 repayable over 48 months. With the interest it was just under £8,935 in total to repay.

Miss B has said that as she was on a zero-hours contract and as NatWest had access to her bank account as an existing current account customer then it ought to have known that she was not able to afford this loan.

After Miss B had complained in May 2023, NatWest contacted her by telephone. The recording of that call was requested and the recording sent to us cut off before the customer verification with Miss B could be done and so I have not been able to hear what was discussed. I am disappointed not to have received it.

Following this telephone call, NatWest issued its final response letter (FRL) and explained that it had verified her income at the declared figure Miss B had given to NatWest of £1,200 each month by cross-referring it with the credits to her bank account. It had carried out a credit check and had information about her monthly expenditure. It did not uphold her complaint.

Miss B referred her complaint to the Financial Ombudsman and one of our adjudicators looked at it. She carried out a review and did some calculations and considered that after repaying all that Miss B had to repay and the new NatWest loan she would have been left with very little each month.

Our adjudicator's view was that *'she would have been left with less than £80 disposable income, which I don't believe is enough for any emergency bills or payments.'* And so, Miss B would not have been able to repay this loan sustainably over 48 months.

NatWest objected to this and gave several reasons why all of which I have reviewed and I address in the main body of the decision. The unresolved complaint was passed to me to decide.

After I had reviewed it I asked NatWest for some further information not all of which was sent to me.

## 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/irresponsible lending - including all the relevant rules, guidance and good industry practice - on our website.

Taking into account the relevant rules, guidance and good industry practice, what I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are whether NatWest completed reasonable and proportionate checks to satisfy itself that Miss B would be able to repay in a sustainable way? And, if not, would those checks have shown that Miss B would've been able to do so?

If I determine that NatWest did not act fairly and reasonably in its dealings with consumer and that he has lost out as a result, I will go on to consider what is fair compensation.

The rules and regulations in place required NatWest to carry out a reasonable and proportionate assessment of Miss B's ability to make the repayments under this agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so NatWest had to think about whether repaying the loan would be sustainable and/or cause significant adverse consequences for Miss B. In practice this meant that NatWest had to ensure that making the payments to the loan wouldn't cause Miss B undue difficulty or significant adverse consequences.

In other words, it wasn't enough for NatWest to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Miss B. Checks also had to be "proportionate" to the specific circumstances of the loan application.

In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

I've carefully considered all the arguments, evidence and information provided in this context and what this all means for Miss B's complaint.

NatWest has provided evidence to show that before lending it checked Miss B's credit history and current commitments and used her declared income figure of £1,200 which it had verified using her bank account. Based on those checks NatWest thought it was fair to lend.

Based on the term of the loan and/or repayment amount, I consider that a full financial review was required. It was a large sum - £6,000 – over 48 months which is a lengthy loan term.

Added to which I do not consider that £1,200 a month was a particularly large income – I'd describe it as relatively modest. And having seen the records from NatWest it seems that in November 2016 Miss B had asked for an overdraft or an increase in her overdraft which was '*accepted with warning*', which suggests to me that NatWest's view of her ability to repay that overdraft may not have been the strongest. So that history was on the records NatWest has sent us as part of this assessment for the £6,000 loan a few months later. All these elements point to it being proportionate for a full financial review to have been done.

I do accept that it was not likely that NatWest would have known Miss B was on a zero-hours contract and her bank account transactions do not indicate an erratic series of paycheques crediting her account in the months up to 7 July 2017 which may have indicated that. And so unless Miss B had told it of that zero-hours element of the contract then I would not have expected NatWest to have known of this. There's no evidence that Miss B told it that.

NatWest said it carried out a credit search. I asked for those details but none were available and as the loan was several years ago that seems reasonable.

It has sent to us details entered onto a spreadsheet and shows what it had checked before lending and what Miss B had declared to them for various outgoings. These were:

- Mortgage /rent commitments £200 for the month,
- living costs of £389 for a month,
- other bank loan existing repayment of £191 a month,
- and her credit card repayments monthly of £158.

These all came to £938 each month. This plus the new NatWest loan commitment for 48 months was due to be just over £186 each month if I divide £8,935 by 48 months and as we have no copy loan agreement that is the figure I have used. The figure repayable each month may have been more but it was unlikely to have been less and so I consider it reasonable to use this figure.

That figure of £938 plus £186 comes to £1,124 which would have left Miss B with £76 if she had earned £1,200 each month which was the figure NatWest used. Whereas Miss B's bank statements showed that she earned £1,138.79 on 22 June 2017. So the amount left over would have been around £14 each month.

In addition, I've seen from the bank transaction lists NatWest has sent us that Miss B's overdraft interest and charges plus the unarranged overdraft charges were debited each month to the account. For April 2017 those combined charges were just under £30, for May 2017 £24.18, for June 2017 £54 and on 4 July 2017 the combined charge was £47.

And I consider that the fact Miss B was regularly exceeding her agreed overdraft limit would have been another factor to alert NatWest to her ability to repay this loan.

So, whether I utilise £1,200 or the actual salary of just under £1,139 I think that on NatWest's figures then the loan was unaffordable. Alternatively, I think that Miss B was left with so little left over that the repayment over the 48 months was likely unsustainable.

In response to the adjudicator's view NatWest wanted to know how the adjudicator had come to that view – that Miss B would have not been left with enough disposable income when all the affordability assessment it had carried out had come to '*net free income*' of £262 (£1,200 minus £938). And it also questioned why the £6,000 capital loan money had not been factored into the calculations.

I do not consider that CONC was designed that a creditworthiness assessment on the

affordability of a loan would have expected the professional lender to add into the assessment the 'available funds' from the not yet approved loan on which it was making a decision. That seems illogical and in fact if one were to expand on that then potentially all loans would be affordable if the lender were to add in the funds it was about to lend to the applicant when carrying out the creditworthiness assessment.

To assist me in coming to this conclusion I have reviewed CONC. I refer to the CONC rules and guidance applicable in July 2017 and CONC 5.2.3G, linked with CONC 5.2.2R is duplicated here for completeness:

*CONC 5.2.3G 'The extent and scope of the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), in a given case, should be dependent upon and proportionate to factors which may include one or more of the following:*

*(1) the type of credit;*

*(2) the amount of the credit;*

*(3) the cost of the credit;*

*(4) the financial position of the customer at the time of seeking the credit;*

*(5) the customer's credit history, including any indications that the customer is experiencing or has experienced financial difficulties;*

*(6) the customer's existing financial commitments including any repayments due in respect of other credit agreements, consumer hire agreements, regulated mortgage contracts, payments for rent, council tax, electricity, gas, telecommunications, water and other major outgoings known to the firm;*

*(7) any future financial commitments of the customer;*

*(8) any future changes in circumstances which could be reasonably expected to have a significant financial adverse impact on the customer;*

*(9) the vulnerability of the customer, in particular where the firm understands the customer has some form of mental capacity limitation or reasonably suspects this to be so because the customer displays indications of some form of mental capacity limitation (see CONC 2.10).'*

This makes it clear that NatWest needed to look at Miss B's existing financial commitments and her financial position at the time she was seeking the credit. So, I reject NatWest's suggestion that the potential loan funds ought to be included in the creditworthiness assessment.

And for Miss B to be left with very little or no funds after paying all her commitments off then applying my fair and reasonable remit I do not consider that to have been fair or reasonable in July 2017.

NatWest also questioned as to why it was that we would not have factored into the equation what it considered to be the inevitable increase in Miss B's wages that would have taken place over the 48 months of the term of the loan. But in the same way it has said to Miss B in the FRL that it cannot take into account future events when carrying out its assessment then I'd reiterate the same sentiment to NatWest.

Referring to CONC 5.2.3G again, then (8) makes it clear that the consideration would be any future changes which may likely to have ‘*a significant financial adverse impact on the customer*’. There’s no mention in this part of factoring in likely promotions and pay rise increases as that would not be considered ‘*adverse*’.

If Miss B had informed NatWest that she was in line for a promotion or due a salary increase then my understanding of CONC is that NatWest may have been able to account for that. But there’s no evidence of Miss B having told NatWest that here.

CONC 5.3.1G (2017) assists in that it says:

*(3) A firm in making its creditworthiness assessment or the assessment required by CONC 5.2.2R (1) may take into account future increases in income or future decreases in expenditure, where there is appropriate evidence of the change and the repayments are expected to be sustainable in the light of the change.*

And CONC 5.3.1G (4) goes on to explain that:

*‘(a) the firm should take account of actual current income or expenditure and reasonably expected future income or expenditure (to the extent it is proportionate to do so) where it is reasonably foreseeable that it will differ from actual current income or expenditure over the anticipated repayment period of the agreement;*

*(b) it is not generally sufficient for a firm to rely solely for its assessment of the customer’s income and expenditure, on a statement of those matters made by the customer;*

*(c) its assessment should be based on what the firm knows at the time of the assessment.’*

As there’s no evidence that NatWest asked about or knew of her zero-hours contract situation then it’s unlikely that it asked or knew about her future career or employment prospects. And I’ve seen no evidence it did make such enquiries. And more than a simple statement or an assertion by the customer is what CONC expected – CONC 5.3.1G(4) (b). So, I am not persuaded that it was proportionate and reasonable of NatWest to have relied on that supposition of a salary increase for the four year term.

Having assimilated all the evidence, I have and considered NatWest’s submissions I uphold the complaint.

### **Putting things right – what NatWest needs to do**

Miss B has told us in her complaint form that she has been paying this loan off since 2017 and still has more to repay. So, I have approached the redress as if that was the situation. NatWest needs to buy back the loan if it has sold it (to retain it in-house) and then do as follows. If the loan has been paid off then no repayment plan would be necessary and the refund can be paid directly to Miss B in the usual way. NatWest needs to:

- remove all interest, fees and charges applied to the loan,
- treat any payments made by Miss B as payments towards the capital amount of £6,000,
- If Miss B has paid more than the capital then any overpayments should be refunded to Miss B with 8%\* simple interest from the date they were paid to the date of settlement,
- but if there’s still an outstanding balance, NatWest should come to a reasonable

- repayment plan with her.
- remove any adverse information about the loan from Miss B's credit file which ought to include the default Miss B has said was applied to the loan account.

\*HM Revenue & Customs requires NatWest to take off tax from this interest. It must give Miss B a certificate showing how much tax it's taken off if she asks for one.

### **My final decision**

My final decision is that I uphold the complaint and I direct that National Westminster Bank Plc does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 4 October 2023.

Rachael Williams  
**Ombudsman**