

Complaint

Mrs N has complained that National Westminster Bank Plc (“NatWest”) unfairly continued allowing her to use an overdraft even when it should have been removed after annual reviews were carried out.

Background

One of our investigators looked at Mrs N’s complaint and he thought that NatWest hadn’t acted unfairly in relation to Mrs N’s overdraft. So he didn’t think that the complaint should be upheld.

Mrs N disagreed with the investigator’s assessment and asked for an ombudsman’s review.

My provisional decision of 30 October 2023

I issued a provisional decision – on 30 October 2023 - setting out why I intended to partially uphold Mrs N’s complaint. I won’t copy that decision in full, but I will instead provide a summary of my findings.

I started by explaining that both NatWest and our investigator had focused on what happened when Mrs N was initially provided with her overdraft. I agreed that Mrs N’s overdraft did appear to have been affordable when it was initially provided – she appeared to have had sufficient funds to clear the balance within a reasonable period of time as she continually did so (at least in the early days).

However, as Mrs N had pointed out, I thought that both NatWest and our investigator had missed the fact that Mrs N was also unhappy at NatWest’s failure to consider her overdraft usage as part of any reviews it carried out.

I then explained that NatWest was familiar with all the rules, regulations and industry codes of practice we consider when looking at whether a bank treated a customer fairly and reasonably when applying overdraft charges.

And having carefully considered everything provided, I was minded to conclude that NatWest acted unfairly when it continued charging overdraft interest and associated fees from September 2019 onwards. While Mrs N might not have got in touch to confirm this, nonetheless by this point, it was evident Mrs N’s overdraft had become demonstrably unsustainable for her.

A cursory look at her statements leading up to this period showed that Mrs N had been hardcore borrowing for an extended period. And the transactions taking place on Mrs N’s account indicated that there was little prospect of her being able to repay what she owed without undue difficulty or borrowing further. I said this because it is clear that the only reason that she’d seen credit balances was because she was borrowing from elsewhere.

It was my view that by this point it was clear that Mrs N was in a cycle of payday and other high-cost lending, which she’d been using to supplement the funds in her account and meet

her day-to-day expenditure. So I thought that NatWest ought to have seen from Mrs N's overdraft usage that she wasn't using her overdraft for short-term emergencies and instead that she was using it over a much longer and unsustainable term.

I'd seen that NatWest was relying on having sent Mrs N a number of letters telling her that using an overdraft in the way that she was, was expensive and that she should get in contact if she was experiencing difficulty. As I understood it, it then sent further letters and communications from 2020 onwards as a result of the regulator's repeat overdraft use rules. NatWest said that Mrs N should have reached out if she was struggling.

I thought about what NatWest had said. But I thought that the mere fact that it felt the need to send Mrs N so many letters within such a period meant that it recognised there was a problem with the way that Mrs N was using her overdraft.

I thought that if I took NatWest's argument to its logical conclusion, I saw it as being that it acted fairly and reasonably towards Mrs N because it sent her letters as it had identified that her overdraft usage had become a problem. But because Mrs N didn't respond to the letters it was reasonable to continue allowing her to use her overdraft in the same way, notwithstanding that it had identified her use of her overdraft as being problematic.

In my view, this ignored the fact that there comes a point where a lender cannot continue simply relying on a borrower not wanting to discuss the situation. After all there are many reasons why a consumer might not want to get into discussions about their finances even though they're in a situation where they're struggling, or they may even go further and say they can and will make payment when the reality is they can't.

While Mrs N didn't contact NatWest, most likely because she didn't realise the impact failing to deal with the matter at hand was having and she was instead focusing on making ends meet, I didn't think it was reasonable for NatWest to conclude that her problematic overdraft usage would correct itself.

In any event, I was satisfied that NatWest should have stopped providing the overdraft on the same terms and treated Mrs N with forbearance by September 2019, which well was ahead of when it started sending letters anyway. As NatWest didn't react to Mrs N's account usage and have regard to her account activity, I was minded to conclude that it failed to act fairly and reasonably towards her.

I thought that Mrs N ended up paying interest, fees and charges at a time when her overdraft was already unsustainable. So I was satisfied that Mrs N lost out because of what NatWest did wrong and I concluded by setting out my intention to issue a final decision directing it to put things right for her.

Responses to my provisional decision

Mrs N confirmed that she accepted my provisional decision and didn't provide anything further to me to consider.

NatWest also confirmed that it accepted my provisional decision and didn't have anything further for me to consider.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I thank the parties for their responses and I'm pleased to see that they agree with my findings and conclusions.

I set out in some detail why I intended to uphold Mrs N's complaint in my provisional decision of 30 October 2023. As the parties have accepted these conclusions and haven't provided anything further to consider, I see no reason to alter my conclusions.

So overall and having considered everything, I'm still upholding Mrs N's complaint and I remain satisfied that NatWest needs to put things right.

Fair compensation – what NatWest needs to do to put things right for Mrs N

Having thought about everything, I'm satisfied that it would be fair and reasonable in all the circumstances of Mrs N's complaint for NatWest to put things right by:

- Reworking Mrs N's current overdraft balance so that all interest, fees and charges applied to it from September 2019 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made NatWest should contact Mrs N to arrange a suitable repayment plan, Mrs N is encouraged to get in contact with and cooperate with NatWest to reach a suitable agreement for this. If it considers it appropriate to record negative information on Mrs N's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in September 2019. NatWest can also reduce Mrs N's overdraft limit by the amount of any refund if it considers it appropriate to do so, as long as doing so wouldn't leave her over her limit.

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 Mrs N 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 Mrs N's credit file. NatWest can also reduce Mrs N's overdraft limit by the amount of refund if it considers it appropriate to do so.

† HM Revenue & Customs requires NatWest to take off tax from this interest. NatWest must give Mrs N a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained above and in my provisional decision of 30 October 2023, I'm upholding Mrs N's complaint. National Westminster Bank Plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 4 December 2023.

Jeshen Narayanan
Ombudsman