

The complaint

Mr E seeks to complain about National Westminster Bank Plc's actions in relation to an overdraft facility he's held with the bank since 2012. He believes the bank should have done more to take proper account of the suitability of the credit limit he had in light of his changing financial circumstances during the course of the borrowing.

Background

I recently issued my provisional conclusions setting out the events leading up to this complaint, and how I thought the dispute should be resolved. I've reproduced my provisional decision below, which forms part of this final decision. I invited both parties to let me have any further comments they wished to make in response to my provisional conclusions.

What happened

Mr E opened his National Westminster current account in 2011. A year later, National Westminster approved an overdraft limit of £1,500, having first agreed lower sums. The account had broadly operated in credit up to that point. However, after this limit was approved, Mr E's account was regularly overdrawn; a situation that (with some brief exceptions) has prevailed to this day. During this period National Westminster applied charges and interest to Mr E's account balance.

Mr E says that he was struggling both financially and with his health, and had resorted to gambling and payday loans. He thinks the bank should have identified his difficulties and taken proactive steps to help him, and that the approved overdraft wasn't affordable for him.

National Westminster believes that its decision to approve the overdraft falls outside the time limits in our rules. It also says that it has made efforts to assist Mr E with his finances. It has pointed to refunds of charges it made in response to a previous complaint from Mr E. The bank says that in 2016 it placed controls on Mr E's overdraft facility, and that it has prevented numerous subsequent overdraft limit increases. And in March 2019 it agreed a debt management plan with Mr E to reduce the overdraft balance, following a credit review it undertook at that time.

Our investigator didn't think we could deal with Mr E's complaint. She felt it had been referred to us outside our time limits, noting that the overdraft limit was approved in 2012 and that in 2019 Mr E had brought a complaint to us about a lending decision (made by a different provider). The investigator considered that this was relevant to whether Mr E ought reasonably to have become aware he had cause for complaint about National Westminster's lending. As Mr E didn't bring his complaint to us until 2023, more than three years after that point, she concluded we couldn't deal with it.

Mr E didn't agree with the investigator's findings. He said he only became aware he could complain about National Westminster more recently, when speaking with Citizens Advice. He said he'd spoken with the bank several times over the years about his financial struggles and his physical and mental health, but that it did nothing to help. Mr E also referenced the

Covid-19 pandemic and the death of a close friend by way of explanation for the time taken to contact us.

What I provisionally decided – and why

I'm minded to conclude that, while there are some aspects of the complaint that fall outside my power to deal with, Mr E's complaint isn't solely about National Westminster's decision to approve the overdraft facility in 2012. He's also expressed concern over the bank's handling of his financial difficulties since that point, up to and including the current position. So where appropriate, I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

National Westminster's decision to approve Mr E's credit limit

The relevant time limits are those set out in DISP 2.8 of our rules, found in the Financial Conduct Authority ("FCA") Handbook. They say that where a firm hasn't consented to us looking into a complaint, I generally can't do so if it's referred to us more than six years after the event. Or, if it's later, more than three years since the complainant became aware (or ought reasonably to have become aware) he had cause for complaint.

Mr E brought his complaint to us in February 2023, having first raised it with National Westminster shortly before. While there's evidence that he was in contact with the bank about his financial situation as far back as 2016, there's no indication of him complaining to National Westminster about this particular aspect prior to February 2023.

That's clearly more than six years after November 2012, which is the latest point at which his overdraft credit limit increase took place. So for the complaint to have been brought in time, I would need to be satisfied that there was no basis on which Mr E became aware (or ought reasonably to have become aware) he had cause for complaint before February 2020, three years before he raised his complaint.

Mr E's correspondence has focused on the point at which he was aware he had cause for complaint, following his conversation with Citizens Advice. But that isn't the only test. The time limit rule requires that I also consider when a complainant ought reasonably to have become aware he had cause for complaint.

That test is an objective one. It is based on the legal concept of what the 'reasonable person of ordinary prudence' would do in the same or similar circumstances. I can't fairly depart from the legal position, which is that the test is based not on what happened to Mr E as an individual, but what that 'reasonable person' in his position would have done.

Mr E was experiencing significant financial hardship from at least 2016, and possibly earlier. His own comments, account statements and National Westminster's file notes demonstrate this. In addition, in March 2019 he had a conversation with National Westminster – prompted by the credit review the bank has mentioned – that included a structured reduction of the overdraft limit. Having thought carefully about this, I'm of the opinion that there was by then sufficient information that the reasonable person ought reasonably to have become aware they had cause for complaint.

With this in mind, I find the point at which Mr E ought reasonably to have become aware he had cause for complaint about the credit limit approved by National Westminster was reached before February 2020. So I can only properly conclude that this aspect of the complaint has been referred to us outside the time limit in DISP 2.8.2(2)R.

There are some circumstances in which I might disapply the time limit. First, where the respondent firm has consented to us dealing with the complaint. National Westminster hasn't consented to this. The other reason is where in my view the failure to comply with the time limit was as a result of exceptional circumstances.

Mr E has undoubtedly had some very difficult issues to deal with. But throughout this, his own evidence is that he was in touch with National Westminster. I can see he was dealing with the bank in relation to his ongoing financial matters and in complaining about account charges, which he did in 2021. So I'm not minded to say the circumstances he's described, as difficult as they were, explain the failure to comply with the time limit.

I therefore find that I can't deal with this aspect of Mr E's complaint.

Account charges applied by National Westminster

As I've mentioned here, in 2021 Mr E complained to National Westminster about charges applied to his account. The bank's response (dated 17 March 2021) indicates that it reviewed Mr E's account from 2012, confirming charges were applied for unarranged borrowing, returned items and the use of the agreed overdraft facility. National Westminster went on to say that it had refunded arranged overdraft charges applied between 2018 and 2021, in addition to previous refunds of unarranged borrowing fees.

National Westminster's letter gave Mr E referral rights to our service. It told him he had six months in which to refer matters. So for me to be able to review those charges, I'd need to see that Mr E contacted us no later than 17 September 2021. As previously noted, however, Mr E didn't complain to us until February 2023, some time after the time limit had passed.

Bearing in mind this timescale and what I've already said about the circumstances in light of this delay, I find that this aspect of Mr E's complaint has been brought too late for me to be able to deal with it.

National Westminster's response to Mr E's financial difficulty

Mr E has been experiencing financial difficulty for many years. He's also been aware of those difficulties, and there's clear evidence of him discussing this with the bank dating back to at least 2016. A key aspect of his complaint is about the way in which National Westminster responded to his difficulty, and his belief that it ought to have done more to assist him.

I see no reason to conclude that this aspect of the complaint has been brought out of time. It relates to an ongoing obligation on the part of the bank. Having been raised as a complaint in February 2023, I can deal with events dating back to February 2017. I can also take into account events prior to that point where they are relevant to an understanding of the subsequent position, bearing in mind the constraints I've already mentioned.

Mr E believes that National Westminster didn't do enough to identify his difficulties and assist him in dealing with his situation. He points to a number of factors – the fact an overdraft should not be treated as a long-term borrowing relationship, his gambling spending, and his entry into payday loans.

National Westminster has provided evidence to show that in 2016 Mr E was in touch with it about setting up an overdraft control. I've no reason to think the bank wrongly lifted this control. I can also see that National Westminster rejected several overdraft limit increases since that point.

In 2018 the FCA undertook a consultation following a review into the high-cost credit market, which identified (among other things) the potential for consumer detriment arising from long-term overdraft use. National Westminster has demonstrated that following that exercise, in March 2019 it contacted Mr E to conduct a review of his financial circumstances.

That review gathered information about Mr E's gambling, his payday loan borrowing, his income and his expenditure. As a result the bank set up a repayment plan designed to reduce Mr E's overdraft limit (and balance) from £1,500 to £700 by July (later extended to September) 2020. So I'm satisfied that up to that point, the bank took reasonable steps to assist and support Mr E in dealing with his situation.

Unfortunately, by November 2019 Mr E's financial circumstances had taken a turn for the worse. He'd lost his job and was unable to secure new employment, which severely limited his income. As I understand it, at that point he was also dealing with debt collection companies and intending to speak with a debt management company to make a long-term plan for dealing with his creditors. I'm conscious that National Westminster at that time suggested managing Mr E's account through its specialist team. From what I can see, Mr E declined that option.

The FCA's Consumer Credit Sourcebook (CONC) sets out rules that govern treatment of customers in financial difficulty. CONC 7.3.4R says that a firm must treat customers in default or in arrears difficulties with forbearance and due consideration. Although in November 2019 Mr E wasn't in arrears with the overdraft reduction plan, the bank was on notice that he wouldn't be able to keep to it. So I think it's fair to treat the CONC provisions as a relevant consideration.

In terms of forbearance, it's been fairly long-standing guidance¹ that a lender dealing with a borrower in financial difficulty and able only to make 'token' payments should consider reducing or stopping interest and charges. Based on the information National Westminster had in its possession in November 2019, it's fair to say that Mr E was in such a position.

I can understand Mr E might have been reluctant to have his account passed to National Westminster's specialist team. However, even if that was the case, this doesn't mean National Westminster gave proper consideration to the impact of continuing to charge Mr E interest on the overdraft balance. I accept that Mr E's financial problems ran rather deeper than the cost of borrowing from National Westminster, but I do think the bank should have suspended further interest at that point. It was clear the situation was unsustainable for Mr E, given the extent to which his income exceeded his expenses, and the indications were that this was unlikely to improve any time soon.

I'm aware that in 2021 the bank refunded charges predating this point, and that Mr E has more recently been able to get a job. So I think he and the bank might be in a position to resume the debt reduction plan agreed in March 2019. National Westminster should contact Mr E to conduct a further review of his financial position, with a view to reaching mutually acceptable arrangements in this respect. But I think it's reasonable that the bank also reduces Mr E's current indebtedness by an amount equivalent to the interest it's charged on the overdraft balance since November 2019, to further assist Mr E and recognise a step it should properly have considered at that time.

Subject to any further comments or submissions received from either party, my provisional conclusions were that I couldn't deal with the matters I considered hadn't been referred to us in time, but that in respect of the aspects I could deal with, the bank should reduce Mr E's

¹ See for example, CONC 7.3.5(1)G and paragraph 7.4 of the Office of Fair Trading (OFT) Irresponsible Lending Guidance March 2010

outstanding balance by an amount equivalent to the interest it charged since November 2019. I also proposed that the bank engage with Mr E with a view to reaching a mutually acceptable debt reduction plan, including whether it would be appropriate to charge interest on his remaining balance.

response to my provisional findings

Neither National Westminster nor Mr E expressed any reason for me to change my provisional findings, which I adopt in full in this final decision. National Westminster provided additional information about the interest refund and the steps it would be able to take to deal with Mr E's financial situation going forward. I'll cover these points below.

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.

National Westminster has calculated the interest it applied from 5 November 2019 as being £944.65 in total. It has said Mr E's current overdraft facility is £1,200, which he is fully utilising. So a refund of interest would reduce Mr E's balance to £255.35.

The bank has proposed reducing the overdraft limit to this sum, which would help to alleviate Mr E's current situation as well as reduce the possibility of him simply running up the debt again. National Westminster has also said it will waive any pending charges. In light of what Mr E has said about his financial problems and indebtedness, this all seems sensible to me.

Noting what the bank has said and the extent of the debt reduction, it might not now be necessary for the parties to agree a further plan to deal with the remaining balance. Mr E's financial circumstances have quite possibly improved as a result of him recently getting a job, and it may not be desirable for him to enter into a payment arrangement with the bank if he's comfortable with the reduced level of overdraft facility, given that doing so would likely have an impact on his credit file.

If, however, Mr E does want to discuss such an arrangement with National Westminster, the bank has said he can discuss suitable options with its overdraft team. It has provided a contact number of 0800 029 4219, which I'm happy to share with Mr E. I'm also pleased to note the bank has measures in place that enable its operatives to be aware of Mr E's vulnerabilities whenever he contacts it. Hopefully such measures will assist in reducing the risk of Mr E finding his finances unmanageable in future.

My final decision

For the reasons I've set out above, my decision is that:

- I've no power to deal with National Westminster Bank Plc's original lending decision in 2012 or to review the charges it refunded in 2021, as those aspects of the complaint haven't been referred within the relevant time limits in our rules
- National Westminster Bank Plc should reduce Mr E's outstanding overdraft balance (and limit) by £944.65, being the amount it has calculated as the overdraft interest it has charged Mr E since 5 November 2019. It should provide Mr E with a breakdown of its calculation
- Subject to Mr E contacting it, National Westminster Bank Plc should engage with any review he seeks of his current financial circumstances and an affordable debt reduction plan. The bank is aware that any such plan should include regard for

whether it is appropriate to charge interest on the remaining balance going forward, which will depend on Mr E's financial circumstances at the time

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 14 December 2023.

Niall Taylor
Ombudsman