

The complaint

Mr T complains that National Westminster Bank Plc (NatWest) acted irresponsibly by agreeing to lend to him.

What happened

In November 2016 Mr T entered into a Fixed Loan Sum agreement with NatWest. The application was made online for a loan of £10,000. The loan was agreed with a 9.9% Annual Percentage Rate (APR) payable over 60 months in monthly instalments of £209.93.

In May 2017 Mr T entered into another Fixed Loan Sum agreement with NatWest. Again, the application was made online for a £10,000 loan. The loan was agreed with a 18.9% APR payable over 60 months in monthly instalments of £251.10.

Mr T complained to NatWest as he didn't think they'd done enough to make sure the loans were affordable for him. He said if they had they'd have seen he had a gambling problem and was being paid cash in hand.

NatWest said that Mr T had met their automated lending criteria for both loans. He'd also applied for two other loans in between these which had been declined. And another after the second loan which had also been declined. NatWest said they'd a policy and process rule about gambling, and Mr T's gambling fell below this threshold, so they said they hadn't acted irresponsibly in lending to him.

Mr T wasn't happy with NatWest's response and referred his complaint to us.

Our investigator didn't think NatWest had done proportionate checks before agreeing to lend to Mr T. If they had they would have seen that the account Mr T had with them was regularly in the overdraft, and that there were a high number of gambling transactions and cash withdrawals. Also by the time of the second loan Mr T's gambling had increased further. They said NatWest had acted irresponsibly in lending to Mr T. And to put things right they should:

- Refund any payments Mr T had made more than the amount originally lent. And should add 8% simple interest per year* from the date of each overpayment, if there were any, to the date of settlement and
- Remove any adverse information recorded on Mr T's credit file regarding the agreements once any outstanding balance has been repaid.

NatWest accepted that further checks could have established Mr T's increased gambling habit. And on balance, said the redress to put things right was fair.

Mr T didn't agree he said NatWest shouldn't have lent to him and so he shouldn't have any responsibility to repay any of the debt. He asked for an ombudsman to decide.

I issued a provisional decision in November 2023 that said:

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.

NatWest has agreed that they should have done more before lending to Mr T in November 2016 and May 2017. So in effect, Nat West have said their checks weren't proportionate. So I've considered what would be a fair outcome for this complaint based on what NatWest should have known at the time. I'll set out my thoughts with each loan below.

Loan A - £10,000 in November 2016 paid directly to Mr T.)

As NatWest have agreed this loan shouldn't have been approved, I won't go into great detail about what their checks should have shown. In reaching my decision I need to determine whether to ask NatWest to write off this loan as Mr T is wanting them to do, or if I agree to what NatWest has accepted as our investigator's outcome. So I've considered Mr T's situation around the time this loan was approved.

I have reviewed Mr T's bank statements prior to Loan A being approved. In the two months leading up to the loan approval, I can see that Mr T was using his overdraft for most of the two months, the amount varied, increasing and decreasing. But by the end of the second month it had increased by more than double. And the increases correlate to when some gambling transactions started to show on Mr T's account towards the end of the second month.

Mr T has said he was paid cash in hand, and I can see from his bank statements the only non-discretionary spending was for a mobile phone. And this is supported by Mr T's credit history. The bank statements don't show any transactions for day to day living. I can see that when monies were paid into the account, they were taken out virtually immediately as cash withdrawals. So, it would appear to show that Mr T managed his day to day living expenses with cash. I can see a large credit paid into his account for over £5,000 which was immediately transferred.

As already outlined, I think, and NatWest has agreed that it was irresponsible to lend to Mr T. But I'm not persuaded that it would be foreseeable to NatWest from these bank statements that Mr T would use the loan money to gamble with. I say this because Mr T's gambling prior to the loan being approved looked to be made from his available income.

So, I'm not persuaded that it would be proportionate for NatWest to write off Loan A's balance. But as they have admitted they shouldn't have loaned Mr T this money. I'll set out at the end of my decision the actions they should take on this loan.

Loan B - £10,000 in May 2017 paid directly to Mr T.)

I've considered Mr T's bank statement for the three months prior to the loan being entered into. And whether it would have been foreseeable for NatWest to know that Mr T would likely use any loan funds to gamble. And I'm persuaded that it would've been apparent to them

that Mr T would use future borrowing to gamble, and I'll explain why.

Mr T had only been approved for his last NatWest personal loan in November 2016, which was only six months earlier. And NatWest has told us that he'd applied for two loans in between this time which they'd declined. I can also see Mr T's gambling activity had intensified as he started spending more than his income (which had also reduced), on gambling transactions.

Mr T's statement show that when he received his wages or credits into his account he tended to make his gambling transactions the same day. And there were times when Mr T's gambling transactions would increase over the day which would suggest Mr T may have been trying to chase his losses, (although this wasn't always the pattern).

And his use of his overdraft had also considerably increased. Between the two loans Mr T's overdraft had doubled to consistently being around £3,000.

NatWest's records show the loan was taken out to consolidate debt, but the only debt I can see that Mr T had was his existing loan with them (November 2016) and his mobile phone. Mr T had his current account with NatWest and so they'd information which would suggest that Mr T was spending his funds on gambling making multiple transactions over a short period of time and using other borrowing (his overdraft) to pay for them. So based on the information NatWest had I'm persuaded it was foreseeable that Mr T would spend any funds he borrowed on gambling and this would cause him harm and further indebtedness.

Mr T has struggled to make the loan repayments since the loan was granted and has only repaid a small amount of the loan since inception. At the time of the lending NatWest said Mr T's income was around £2,000 per month. But since then, Mr T's health has deteriorated, and he is no longer able to work and is in receipt of benefits. This leads me to conclude that there's little prospect of Mr T repaying the outstanding amount (on top of the repayments he needs to make for Loan A) and requiring him to do so would cause undue financial hardship.

Mr T has also shared that he's struggling with his mental wellbeing which has been impacted by his gambling and financial struggles.

Putting things right

Where we find that a business did something wrong, we'd usually expect that business – in so far as is reasonably practicable – to put the consumer in the position they would be in now if that wrong hadn't taken place. But when it comes to complaints about irresponsible lending this isn't straightforward.

Mr T has received the funds in question and will have used them. So, in these circumstances, we can't undo what's already been done. So I've considered what I think is fair and reasonable taking into account the particular circumstances of the case.

Loan A

Mr T has had use of the money he was lent and so it's fair that he should pay back the money lent to him. But NatWest should refund all the interest, fees and charges added as a result of the funds that were irresponsibly lent and ensure that Mr T pays no more than the amount lent.

So a new starting balance consisting of only the amount lent is left - and NatWest should deduct any payments Mr T has already made. If this results in him having paid too much,

*then any overpayments should be refunded, adding *8% simple interest from the date of payment to the date of settlement.*

If after all adjustments have been made and Mr T has a balance outstanding it isn't unfair for this amount to be repaid. I can see that NatWest has sold on Mr T's debt and that he currently has a payment plan in place. It will be for NatWest to make known to the debt purchaser how much Mr T has left to repay (if any) after all the adjustments have been made.

Loan B

*For Loan B I think NatWest should write off the outstanding balance, refund all the repayments Mr T has made towards the loan to date, along with *8% interest on each payment amount from the date it was made to the date it's refunded.*

And NatWest should remove any adverse information relating to both loans from Mr T's credit file and reflect that Loan B has been written off.

Responses to my provisional decision

NatWest accepted my provisional decision. And didn't ask for any further considerations to be made.

Mr T agreed with the outcome for Loan B but said that Loan A should also be written off.

Mr T said that his financial situation at the time NatWest lent to him showed he was using his overdraft and that gambling transactions were evident. By NatWest accepting they shouldn't have lent to him showed they'd failed in their duty of care as a lender. And by so doing they should put things right by writing off the loan. He also said NatWest should refund all charges on his overdraft since his case has gone over to the collections department.

I've carefully considered Mr T's comments, but I've not been persuaded to change my thinking. I'll explain why.

As I mentioned in my provisional decision where we find that a business did something wrong, we'd usually expect that business – in so far as is reasonably practicable – to put the consumer in the position they would be in now if that wrong hadn't taken place. But when it comes to complaints about irresponsible or unaffordable lending this isn't straightforward.

This is because the consumer will have received the funds in question and will have used them. So, in these circumstances, we can't undo what's already been done as things will have significantly moved on. And it's simply not possible to put the consumer back in the position they would be in if the lender hadn't lent to them.

Mr T has said towards the end of the financial period before Loan A was taken out his financial circumstances did show some gambling transactions and an increase in the use of his overdraft. But I don't think it would have been foreseeable for NatWest to take from this that the money lent to Mr T would be solely used to fund his gambling transactions. And so Mr T would have had some benefit from the loaned amount.

Our starting point for putting things right in this situation would be that as the borrower will have had the use of the money, they were lent it's fair that they should repay the amount they were lent. But nothing more. So we'd ask the lender to refund all the interest, fees and charges added as a result of the funds that were irresponsibly lent, so that the consumer paid no more than the amount lent. And this is what I've asked NatWest to do for Loan A.

I've considered the redress for Loan B differently as I think NatWest when they decided to lend to Mr T his financial situation was such that NatWest should have seen that it was now more likely than not that Mr T would use these funds for gambling. And so, Mr T wouldn't have had the benefit from the funds he was lent.

I appreciate Mr T will be disappointed by my decision, but I've considered what I think is a fair and reasonable outcome to his complaint. It will now be for Mr T to decide whether he wishes to accept or reject my decision.

My final decision

I uphold this complaint. And ask National Westminster Bank Plc for:

Loan A to

- Remove all interest and charges applied. If the rework results in a credit balance, this should be refunded to Mr T along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement.
- if after the rework there is still an outstanding balance, they should make known to the debt purchaser how much Mr T has left to repay after all the adjustments have been made. Or buy back the debt to ensure any redress is carried out.
- Remove any adverse information regarding this account from Mr T's credit file.

Loan B to

- End the agreement and clear any outstanding balance.
- Remove all interest and charges applied. If the rework results in a credit balance, this should be refunded to Mr T along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement.
- Remove any adverse information regarding this account from Mr T's credit file.

*If National Westminster Bank Plc considers that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr T how much they've taken off. They should also give Mr T a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 14 January 2024.

Anne Scarr
Ombudsman