

The complaint

Mr F complains National Westminster Bank Plc (NatWest) have unfairly charged him overdraft fees during a period of financial difficulties.

What happened

I issued a provisional decision setting out what'd happened, and what I thought about that. I've copied the relevant elements of this below, and they form part of this final decision.

In Summer 2022 Mr F started to set up a new business. As a consequence, his regular salaried monthly income was no longer being received. During this time, he made use of his £15,000 overdraft, and incurred £1,880.18 worth of charges. Mr F says these were exorbitant, unethical and akin to profiteering from a customer's time of financial difficulties. Mr F says other creditors found a way to help him, and he doesn't think it's right NatWest couldn't.

NatWest said they could see since August 2022 Mr F's interest per month has increased as the overdraft has been used more. They said the terms and conditions of the account explain he'll be charged interest if he uses the overdraft. Because of that, they didn't think they'd done anything wrong. NatWest also explained they'd refunded £403.06 worth of interest which had been agreed on 27 February 2023. This didn't form part of the £1,880.18 figure.

Unhappy with this, Mr F asked us to look into things. One of our Investigators did so, but overall didn't think NatWest had done anything wrong.

Mr F didn't accept this, he felt NatWest had still treated him unfairly, so the complaint's been passed to me to decide.

What I've provisionally 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.

The information I have shows Mr F's overdraft was

- *Opened on 3 April 2019 at £2,000*
- *Increased on 6 August 2019 to £6,500*
- *Increased again 7 October 2019 to £8,000*
- *Last increase on 9 December 2021 to £15,000*

The question Mr F has raised in this case, is whether NatWest have fairly charged him for using his overdraft.

But, I don't think that's the question I need to answer in this case. I say that because I'm not satisfied Mr F should have been given such a high overdraft anyway.

Overdrafts are repayable on demand. This essentially means NatWest could ask Mr F to repay the overdraft at any time. Because of that, he needs to be in a place to sustainably afford to repay it.

We define this type of complaint as unaffordable and / or irresponsible lending. We've explained on our website how we handle complaints about unaffordable and irresponsible lending, and I've used this approach to help me decide Mr F's case.

NatWest were required to make sure they didn't lend irresponsibly – which meant they had to gather details of Mr F's circumstances to ensure he could sustainably repay the overdraft. This is called carrying out proportionate checks. Our website sets out what proportionate checks are.

We generally say the higher the amount of borrowing, or the lower a borrower's salary, the more a lender needs to do to satisfy themselves they've gathered proportionate information. Equally, if the amount of borrowing is low, and the salary is high, then the less we'd say lenders need to do in order to show it didn't lend irresponsibly.

As this complaint hasn't been defined as an irresponsible lending complaint until now, we don't have any information about what checks NatWest carried out. I don't think this changes the outcome of this case though. I say that because NatWest had access to Mr F's accounts. So, they could have gathered proportionate information by checking the salary Mr F was paying in, and the amount he was spending. Then, after they'd carried proportionate checks they'd have to make a fair lending decision.

To decide whether NatWest made a fair lending decision, and Mr F could afford to sustainably repay the overdraft, I've looked at his statements from when it was first granted in April 2019 at £2,000.

In January, February and March 2019, Mr F received what looks like a salary payment of around £4,700 each month. Given Mr F's salary, it seems likely he could afford to repay the overdraft of £2,000 sustainably.

I've then looked at May, June and July 2019, before the next increase to £6,500 in August 2019. Across those three months, Mr F is paid around £4,800 each month.

Given the overdraft was £1,700 more than Mr F's income, if he were to use it, and NatWest require immediate repayment (as they're allowed to do) I can't see how Mr F could sustainably repay it. Because of that, I can't see how NatWest made a fair lending decision in August 2019. So, I'm currently planning to uphold this complaint from the first overdraft increase in August 2019. I've set out how NatWest need to resolve matters below.

Putting things right

I'm currently planning to require NatWest to:

Rework Mr F's account so that:

- 1. Interest, fees and charges are only applied on the first £2,000 of any overdrawn balance from 6 August 2019 to date.*
- 2. Any interest, fees and charges applied to balances over £2,000 from August 2019 should be removed.*

And then NatWest will need to follow one of the two options below.

If an outstanding balance remains

If an outstanding balance remains, then NatWest should contact Mr F to arrange a suitable repayment plan. I'd encourage Mr F to work with NatWest if this is the current situation. If NatWest think it's appropriate to record negative information with the credit reference agencies then they can, but this should reflect the 'new' position, where no interest, fees or charges have been applied on anything above a £2,000 overdraft. Finally, NatWest can reduce Mr F's overdraft by the amount of any refund if they think it's appropriate to do so – and if doing so won't put Mr F in an unauthorised overdraft position.

Alternatively:

If no outstanding balance remains

If carrying out the adjustments I've mentioned at 1. and 2. then anything extra needs to be treated as overpayments. These should be refunded to Mr F from the date of the overpayment to the date of the settlement with 8% simple interest. If no outstanding balance remains, then NatWest should remove any adverse information from Mr F's credit file. NatWest can also reduce Mr F's overdraft limit if they think it's appropriate to do so – and if doing so won't put Mr F in an unauthorised overdraft position.*

**HM Revenue and Customs requires NatWest to deduct tax from the interest payment referred to above. NatWest must give Mr F a certificate showing how much tax they've deducted if he asks them for one.*

Responses to my provisional decision

NatWest responded and made the suggestion that given I've decided they shouldn't have allowed an increase above £2,000, would it be reasonable to reduce the overdraft down to £2,000 as long as the refund does that?

Mr F had questions over what NatWest would do if he accepted the decision. Our Investigator advised him to speak to his personal banker to discuss his concerns, as ultimately it's up to NatWest what action they take. Mr F also asked when the overdraft interest is refunded up to. More recently, Mr F said he doesn't consent to anything which affects the operation of his account as it currently stands. And he said he doesn't accept any changes unless he's expressly agreed to them.

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.

Neither party has directly objected to the outcome I've reached – so I've seen no reason to change it, and still think an overdraft over £2,000 shouldn't have been granted.

NatWest have asked if they can reduce Mr F's overdraft down to £2,000. In the circumstances, it seems reasonable for NatWest to do that – otherwise I'm saying they shouldn't have granted it, but it's ok for it to stay – which doesn't feel right. But, this is NatWest's decision not mine.

If NatWest end up taking any action Mr F thinks is inappropriate or unfair, he can contact our Investigator again to query this. Most likely it'll be a new complaint Mr F would have to raise.

And while I've noted Mr F's comments about NatWest not being able to make changes unless he expressly agrees to them, that's between him and NatWest.

As for the overdraft interest, it'll be refunded up to date, so anything he's incurred during this process above £2,000 I'd expect to be refunded.

My final decision

I uphold this case and require National Westminster Bank Plc to carry out the actions in the 'Putting things right' section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 7 May 2024.

Jon Pearce
Ombudsman