DRN-4872913

The complaint

Mr P is being represented by a claims manager. He's complaining about National Westminster Bank Plc because he says it lent irresponsibly by providing a loan he couldn't afford.

What happened

Following his application, in December 2021, NatWest gave Mr P a loan for £15,000. This was repayable over 63 months at £379 per month. The loan defaulted shortly afterwards, in March 2022, and I understand Mr P is now subject to an IVA.

After the complaint was referred to me, I issued my provisional decision setting out why I believe it should be upheld. My reasons were as follows:

> *Before lending to Mr P, NatWest was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, the key questions I need to consider are:*
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> - *Did NatWest complete reasonable and proportionate checks to establish Mr P would be able to repay the loan in a sustainable way?*
> - *If so, was the decision to lend fair and reasonable?*
> - *If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?*
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> *The rules, regulations and good industry practice in place at the time the loan was approved required NatWest to carry out a proportionate and borrower-focused assessment of whether Mr P could afford the repayments. This assessment also had to consider whether the loan could be repaid sustainably. In practice this meant NatWest had to satisfy itself that making payments to the loan wouldn't cause undue difficulty or adverse consequences. In other words, it wasn't enough to simply think about the likelihood of him making payments, it had to consider the impact of the repayments on Mr B.*
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> *The affordability assessment and associated checks also had to be proportionate to the specific circumstances. What constitutes proportionate checks depends on a number of factors including, but not limited to, the particular circumstances of the consumer (for example their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of the credit being considered. Even for the same customer, a proportionate check could be different for different applications.*
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> *In general, I think a reasonable and proportionate assessment should be more thorough:*
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> - *the lower the customer's income, reflecting that it could be more difficult to*

make repayments 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 longer the term of the credit, reflecting the fact that the total cost is likely to be greater and the customer is required to make payments for an extended period; and*
- *the greater the instances and frequency of credit, and the longer the period of time during which a customer has been given credit, reflecting the risk that repeated refinancing may signal borrowing has become unsustainable.*

There may also be other factors that could influence how detailed a proportionate check
should have been for a given application, including any indications of borrower vulnerability or foreseeable changes in future circumstances.

NatWest has described the information it gathered to assess whether Mr P's loan was affordable before it was approved. This included:

- *information contained in his application, including his income, which was separately verified;*
- *information obtained from a credit reference agency (CRA), giving details of his existing credit arrangements and any past issues with credit, including missed payments and defaults; and*
- *an expenditure assessment using a combination of modelled data for key expenses, along with actual data from the CRA about the cost of his existing credit arrangements.*

NatWest maintains its affordability assessment was proportionate to the loan being given and demonstrated it was affordable.

In considering this case, I'm conscious NatWest was providing a large loan of £15,000 and the monthly repayment accounted for a significant proportion of the £1,900 per month income it believed Mr P was receiving. In view of this information alone, I think NatWest should have carried out further checks before approving the loan.

NatWest has provided limited details from its credit check, but the credit file provided by Mr P shows his mortgage cost £870 per month and also that he had multiple other credit commitments, including a loan for £5,000 with monthly repayments of £217 taken in September 2021, only three months before he applied to NatWest. It also shows he took three short-term loans in the six months before he applied to NatWest. If NatWest saw this information from its credit check, that would only reinforce my view that further enquiries were required to complete a proportionate affordability assessment in this case.

I can't know exactly what further checks NatWest might have carried out at the time, but I think a consideration of Mr P's actual income and expenditure would have been reasonable. So we've obtained copies of his bank statements for the three months prior to the lending to establish what information could reasonably have been discovered.

A review of the statements shows Mr P was consistently overdrawn by as much as £1,500, indicating that he was spending more than he was earning. But of greater concern, the statements show Mr P was gambling extensively. In the three months *before he applied to NatWest, I counted 73 gambling transactions with a value of over £4,700. If NatWest had seen this information, it's my view that it shouldn't have lent to Mr P.*

In summary, if NatWest had adequately assessed whether the loan repayments were affordable and sustainable, it's my current view it shouldn't have lent to Mr P. It's for this reason that that I'm proposing to uphold this complaint.

Mr P's representative confirmed he had nothing further to add. NatWest noted that I said Mr P's mortgage cost £870 per month, whereas he declared in his application that this was £417. It believes the mortgage is in joint names and that Mr P only paid half the amount due. If this is correct, then the loan was affordable.

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.

Having done so, my findings haven't changed from those I set out previously. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

I note NatWest comments about Mr P's contribution to the monthly mortgage payment but it's not clear that it tried to establish this at the time so it wouldn't necessarily have been appropriate to assume he was only liable for half the cost without making further enquiries about his partner's circumstances.

This notwithstanding, the key issue here for me is the extent of Mr P's recent gambling that I believe NatWest should have discovered if it had carried out a proportionate affordability assessment. Irrespective of the cost of the mortgage and how much Mr P contributed to this, I think it was irresponsible to lend to someone in his position.

Putting things right

The principal aim of any award I make must be to return Mr P to the position he'd now be in but for the errors or inappropriate actions of NatWest. But that's not entirely possible here as the lending provided can't be undone.

Because I don't think NatWest should have lent to Mr P, I don't think it's fair for him to pay interest or charges on the amount borrowed. But he has had use of the money that was lent, so I think it's fair he repays the amount borrowed (without the addition of interest or charges).

To put things right, I believe NatWest should now take the following steps:

- Calculate the total of all Mr P's payments towards the loan, including all interest, fees, charges and insurances (not already refunded).

- If this exceeds the £15,000 borrowed, any excess above £15,000 should be paid to him with simple interest at 8% per year from the date of each overpayment to the date of settlement.

HM Revenue & Customs (HMRC) requires NatWest to deduct tax from any interest. It must provide Mr P with a certificate showing how much tax has been deducted if he asks for one. If NatWest intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- Remove any adverse information recorded on Mr P's credit file relating to this loan, once any outstanding balance has been repaid via his IVA.

If NatWest no longer owns the debt, it should liaise with whoever does to ensure any payments Mr P has made since moving the account are factored into the calculation of the compensation that's due or the balance that remains outstanding.

Mr P is currently subject to an IVA and the company overseeing this arrangement has told us that it should receive any compensation due.

In reviewing this complaint, I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Mr P in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

My final decision

For the reasons I've explained, I'm upholding Mr P's complaint. Subject to his acceptance, National Westminster Bank Plc should now put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 23 July 2024.

James Biles
Ombudsman