

The complaint

Mr H says National Westminster Bank Plc (NWB) lent irresponsibly when providing him with two loans in 2018.

What happened

On the same day in February 2018, NWB provided Mr H with two loans. The first was for £19,950 and the second was for £24,000. The term of both loans was 61 months.

In 2023, Mr H complained that NWB had lent irresponsibly to him and had worsened his already difficult financial situation.

Our investigator looked into the complaint and recommended that it should be upheld. They thought NWB hadn't carried out the checks it should have done prior to making the lending decisions. They felt that, if NWB had, it would have discovered that Mr H wasn't in a financial position to sustainably afford the loan payments. The investigator asked NWB to put things right for Mr H in line with our general approach.

NWB agreed with the investigator's assessment of the complaint. Mr H disagreed on grounds that included, in his view, that NWB was statute barred from pursuing repayment of the first loan, meaning that debt should be written off. So, the complaint was referred to me to review afresh.

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.

We've set out our approach to considering unaffordable and irresponsible lending complaints on our website – including the key relevant rules, guidance, good industry practice and law. And I've considered this in deciding Mr H's complaint.

I gather Mr H also complained about an overdraft facility NWB provided him with. We've considered that in a separate complaint and so I've not commented on that complaint here. Instead, I've focussed on the loans NWB provided to Mr H.

Having done so, I uphold the complaint. I'll explain why.

It's no longer in dispute that NWB's decisions to lend to Mr H were irresponsible. Suffice it to say that I confirm that I broadly agree with the investigator's findings on NWB's lending decisions and with the reasoning they've provided. I'm satisfied that the lending rules and provisions at that time meant NWB needed to assess, by way of undertaking proportionate checks, whether it felt Mr H would be able to repay the credit taking account of factors such as the amount and type of borrowing and his income and expenditure. In summary:

- I recognise NWB carried out some checks to satisfy itself that Mr H was eligible for the loans. I don't doubt that NWB had its own internal lending criteria. But, as I say,

there were wider rules and provisions that also needed to be considered by NWB, irrespective of its own policies.

- Mr H was looking to borrow substantial amounts and over a long period of time. I think this warranted checks in addition to those NWB carried out. For example, it would have been reasonable to seek to validate the information gathered. That's despite, for example, not uncovering recent adverse information on his credit file. So, I don't conclude on balance that the checks NWB undertook were proportionate.
- On review of Mr H's current account statements from the time, I consider it likely that proportionate checks would have revealed significant recent spending on gambling activities. There was insufficient disposable income with which Mr H could sustainably repay the loan amounts.
- This would all have indicated potential issues with the affordability of repaying such large loans.

Taking everything into account, I can't see that NWB carried out proportionate checks that would have enabled it to make a reasonable assessment of the affordability of the loans for Mr H. Had NWB done so, I don't think it would have satisfied itself that he was able to sustainably afford the credit it was offering. As such, NWB should put things right for him.

What remains in dispute is how NWB should put things right for Mr H. NWB's agreed to follow our usual approach to cases such as these. That is, to recognise that Mr H has had the benefit of the principal amounts lent, but to ensure he doesn't suffer any losses incurred as a result of interest and so on added to those amounts.

Mr H says NWB should go further than this. He says NWB's statute barred from pursuing repayment of the first loan since it didn't follow correct procedures – by issuing a default in a timely manner – when the account fell into arrears. As the investigator's explained to Mr H, it's not for me to decide whether NWB's statute barred as he suggests. Only a court would be able to determine that. What I can make a finding on, however, is whether it's fair and reasonable for NWB to pursue the debt in the circumstances of this particular case.

Taking everything into account, I see no reason why NWB's prevented from pursuing Mr H for the debt in question. I say that because, for example, he accepts he received the funds and that NWB wrote to him in 2023 requesting that the loan be repaid. I think NWB made it clear to Mr H as to his obligations and that it wanted him to repay the loan.

I've also considered whether NWB acted unfairly or unreasonably in any other way. That includes whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I've directed here results in fair compensation for Mr H 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.

Putting things right

I think it's fair and reasonable for Mr H to repay the principal amounts that he borrowed, because he had the benefit of that lending. But he's paid interest and charges on the loans that shouldn't have been provided to him. So, I think Mr H's lost out and that NWB should put things right for him. If it hasn't already done so, NWB should:

- a) Remove all interest, fees and charges applied to the loans from the outset. Any payments made by Mr H should then be deducted from the new starting balances. If the payments Mr H has made total more than the amount he was originally lent, then any surplus should be treated as overpayments and refunded to him with 8% simple annual interest† calculated on any overpayments made, from the date they were paid by Mr H, to the date the complaint's settled.

- b) If there's still an outstanding balance on the loans, then NWB should agree an affordable repayment plan with Mr H, bearing in mind the need to treat him positively and sympathetically in those discussions, and take account of his current ability to repay the loans.
- c) Remove any relevant adverse information recorded on Mr H's credit file as a result of the lending.

† HM Revenue & Customs requires NWB to take off tax from this interest. NWB must give Mr H a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons given, I uphold this complaint. I require National Westminster Bank Plc to put things right for Mr H as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 August 2024.

Nimish Patel
Ombudsman