

The complaint

Miss Q has complained that National Westminster Bank Plc (“NatWest”) gave her a loan she couldn’t afford to repay because it didn’t carry out sufficient affordability checks.

Miss Q has also raised a number of other points including that she didn’t understand the interest rate and she says that financial firms should consider “*developmentally appropriate*” financial services.

What happened

NatWest advanced Miss Q a personal loan of £5,000 in October 2021 with a term of 60 months and monthly payments of £133.91. The loan APR was 22.2%. Miss Q has had some difficulties repaying the loan and it seems to have defaulted in June 2023 and then passed to a third-party collection agency in August 2023.

Following Miss Q’s complaint NatWest wrote to her explaining why it wasn’t going to uphold the complaint because it had carried out proportionate checks which demonstrated Miss Q could afford her loan. Unhappy with this response, Miss Q referred the complaint to the Financial Ombudsman.

The complaint was considered by an Investigator who upheld the complaint. He said further checks were needed because based on NatWest’s own figures Miss Q was due to use most of her disposable income each month to repay this loan. Had NatWest carried out further checks it would’ve discovered Miss Q didn’t have a job but was in fact a student and so with the associated costs she didn’t have enough money to afford the loan.

NatWest agreed with the assessment and said it would put things right for Miss Q as directed by the investigator.

Miss Q while agreeing with the uphold for her complaint, still wanted an Ombudsman to consider the matter again with reference to the Financial Conduct Authority’s (FCA) guidance FG21/1 – “*Guidance for firms on the fair treatment of vulnerable customers*”. As no agreement could be reached the complaint has been passed to me to decide.

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 general approach to complaints about unaffordable/irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website. And I’ve used this approach to help me decide Miss Q’s complaint.

NatWest needed to make sure it didn’t lend irresponsibly. In practice, what this means it needed to carry out proportionate checks to be able to understand whether Miss Q could afford to repay any credit it provided.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for checks to be less thorough – in terms of how much information is gathered and what is done to verify it – in the early stages of a lending relationship.

But we might think more needed to be done if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So, we'd expect a firm to be able to show that it didn't continue to facilitate a customer's loans irresponsibly.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Miss Q's complaint. Having looked at everything I have decided to direct NatWest to do what it has already agreed to do.

Miss Q does seem to accept that her complaint should be upheld but she wanted an Ombudsman to consider the complaint in light of the FCA guidance that I quoted above. So, it does seem that both parties accept the loan ought to not have been provided and so I don't intend to review this part of the complaint again because it appears to be resolved – that being NatWest ought to not have granted the loan to Miss Q.

I'll come on to Miss Q's other comments later in this decision, but I do think the compensation that NatWest has agreed to pay is fair and reasonable in the circumstances, and I've outlined why below.

I think that it might help for me to start this section by explaining that where we decide a business did something wrong, as a general starting point we'd look to the business putting the consumer, as close as practically possible, in to the position they would be in if that wrong hadn't taken place.

In an ideal world, this would mean us expecting a business to put a consumer in the position they'd now be in if what has been complained about hadn't happened. However, in cases concerning irresponsible lending that's simply not possible as the funds that shouldn't have been advanced were lent. As the lent funds will have been used and spent it's effectively too late to wind things back.

In these circumstances, we have to look at some other way of asking a business to put things right in a fair and reasonable manner and bearing in mind what is practically possible. Where a business provided a loan that would have resulted in unaffordable payments for a borrower, we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any interest and charges on that loan.

This would see the customer repay the funds that they borrowed and had the use of, and NatWest's compensation payment – that has been put to Miss Q does, as far as I can tell, do that.

NatWest has said that no payments have been made by Miss Q since January 2023 and its offering to pay back the amount of interest she has paid. It then directed her to contact the third party to put in place a sustainable repayment plan.

So, I'm satisfied the redress that NatWest has offered in this case – which appears to be in line with what the investigator's recommendation is fair and reasonable and I'm not proposing to depart from that.

Other considerations.

Miss Q as part of her complaint has said she didn't understand the interest rate – she's not provided any further details around this. But the interest rate, and the monthly cost were outlined in the credit agreement, and its likely she would've received a copy of this document after the loan was agreed.

At that point, if she had any concerns, she could've raised these with NatWest and of course she also had the 14-day cooling off period that she could've used if she didn't think, at a later date, that the loan was sustainable for her. I am therefore not upholding this element of Miss Q's complaint.

I've also considered what Miss Q has said about suitable financial products – but the role of the Financial Ombudsman is to determine whether something may have gone wrong – and in this case, NatWest accepts that it has. It isn't the role of the Financial Ombudsman to tell lenders or other institutions what sort of financial products they ought to offer and how these are to be provided or marketed. That is a matter for themselves and the FCA.

I've also considered the FCA guidance Miss Q referenced in response to NatWest's settlement offer and for much the same reasons above. It isn't my role to tell NatWest what products it ought to offer and to which group of people. And, NatWest has already accepted it ought to not have approved the loan due to the inadequate affordability checks and a further review of this guidance wouldn't led me to a different outcome in this complaint.

I understand from Miss Q that at the time her mental health was poor and I'm sorry to hear that and Miss Q has told us she has sought help, which I'm pleased to hear. I do hope things are better for her now. But even if NatWest was fully aware of Miss Q's situation at the time that doesn't mean that NatWest would've been wrong to have lent to Miss Q for this reason.

As it turns out, it was wrong to have lent to Miss Q and NatWest has already accepted it would've known that had it carried out a proportionate check. But that is different to saying as it may have been aware of a particular vulnerability that it should automatically decline the loan.

Thinking about the circumstance of this complaint, the FCA guidance referenced by Miss Q doesn't, in my view lead to a different outcome or a modification of the compensation NatWest has already agreed to pay.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below is fair compensation for Miss Q in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

For completeness I've set out below what NatWest has already agreed to do – and what it should do in order to put things right for Miss Q.

NatWest should buy the debt back if it is able to do so and then carry out the below. If NatWest isn't able to purchase the debt back then it should liaise with the new debt owner to achieve the same results as outlined below.

- Add up the total amount received by Miss Q and the repayments she'd made should be deducted from this amount and

- A. If this results in Miss Q having paid more than she received any overpayments should be refunded along with 8% simple interest per year calculated from the date the overpayment arose to the date of settlement*
 - B. If any capital balance remains outstanding than NatWest should look to arrange a mutually agreeable repayment plan with Miss Q. I would also remind NatWest of its obligation to treat Miss Q fairly and with forbearance.
- Remove any negative information recorded on Miss Q's credit file in relation to this loan.

*HM Revenue & Customs requires NatWest to deduct tax from this interest. NatWest should give Miss Q a certificate showing how much tax it has deducted, if she asks for one.

My final decision

For the reasons given above, I'm upholding Miss Q's complaint and National Westminster Bank Plc should put things right for Miss Q in the way it has already agreed to do and in line with what I've directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss Q to accept or reject my decision before 17 October 2024.

Robert Walker
Ombudsman