DRN-5050104

## The complaint

Mr T complains that National Westminster Bank Plc (NatWest) didn't sufficiently check whether he could afford a loan they agreed to.

## What happened

In January 2020 Mr T entered into a Fixed Term personal loan with NatWest. The loan was for £9,500, after interest and charges were applied the total amount to be repaid was £12,690.24. This was repayable over 48 months at £263.14 a month. Mr T said he struggled to sustain the repayments, and if NatWest had properly checked they would have seen he was using his overdraft and struggling financial as he was gambling. He complained to NatWest.

NatWest said they'd checked Mr T's income. And Mr T had provided his expenditure details. They also checked his credit history, account activity management and internal lending history. Based on this they deemed the loan was affordable as Mr T had sufficient disposable income to maintain the repayments.

Mr T didn't agree and referred his complaint to us.

Our investigator said NatWest's checks had been proportionate and reasonable and that they'd made a fair lending decision.

Mr T didn't agree and asked for an ombudsman 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.

I appreciate my decision will disappoint Mr T but having done so I'm not upholding this complaint. I'll explain why.

Firstly, Mr T has referred to another decision made by this service that he says supports his complaint that NatWest had done something wrong. We consider each case on its own merits. So, the other decision Mr T has referred to doesn't set a precedent. And what was decided in that complaint doesn't limit or direct the decision I make in this case.

There's no set list of checks a lender must complete before agreeing to provide credit. We look at whether a business has completed proportionate checks to ensure the proposed credit is affordable and sustainable.

In considering what is fair and reasonable I have taken into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and what I consider having been good industry practice at the time. The rules that apply to credit agreements are set out in the consumer credit sourcebook (CONC) of the Financial Conduct Authority's handbook. Section 5.2A of CONC is relevant guidance as it covers the need for businesses like NatWest to complete reasonable and proportionate creditworthiness assessments before agreeing to lend.

Taking this into account, I think the overarching questions I need to consider in deciding what's fair and reasonable in the circumstance of this complaint are:

1. Did NatWest complete reasonable and proportionate checks to satisfy themselves that Mr T would be able to repay the credit in a sustainable way?

    a. if so, did NatWest make a fair lending decision?
    b. if not, would reasonable and proportionate checks have shown that Mr T could sustainably repay the borrowing?

2. Did NatWest act unfairly or unreasonably in some other way.

Checks must be proportionate considering the specific circumstances of the loan application. What constitutes a proportionate affordability check will generally depend on several factors such as the specific circumstances of the borrower, their financial history, current situation and whether there are any indications of vulnerability or financial difficulty.

Consideration should also be given to the amount, type and cost of credit they're applying for. This could mean a proportionate check could differ for the same borrower for different loan applications.

In this case, the NatWest online application asked Mr T for information about his income and expenditure. Mr T declared a monthly income of £1,600. His outgoings were said to be around £589 for housing costs, £161 for a loan repayment and £71 for other credit card/revolving debt. NatWest's assessment showed this left Mr T with around £779 disposable income each month before the new lending of £263.14 was factored in.

CONC 5.2a.15(2) says: *The firm must take reasonable steps to determine the amount, or make a reasonable estimate, of the customer's current income.*

Its not considered sufficient to solely rely on the consumers declared income. NatWest said they validated Mr T's income through a system generated account turnover check averaging the monies paid into his account across several months. And this check showed Mr T had more being paid into his account than the £1,600 he declared. So, I'm satisfied that NatWest made reasonable steps to determine Mr T's income.

CONC 5.2A.17(2) says: *The firm must take reasonable steps to determine the amount, or make a reasonable estimate, of the* customer's *current non-discretionary expenditure.*

NatWest said they'd carried out an automatic affordability assessment through Mr T's online application. And built into their processes are a number and variety of different business rules and warning triggers that check the information within the application is correct. NatWest said no triggers were activated. Payments to betting sites wouldn't necessarily be a trigger particularly if there is regular income into the account and the account is managed within its limits.

Apart from the expenditure information provided by Mr T NatWest said they also completed a credit search to look at how Mr T managed his other credit commitments. These checks showed that Mr T wasn't over indebted, and that there wasn't any adverse information on his credit file. As the new lending was to settle an existing loan account Mr T had with NatWest since March 2019, they also considered Mr T's history with them and said his loan account had been well run.

NatWest hasn't provided the credit report they saw at the time of the lending only a summary of what they say they saw. But Mr T has provided a credit report, created November 2023. From this I can see at the time of the lending that Mr T had two active credit cards with credit limits of £2,500 and £800, with outstanding balances of £2,854 and £712. He also had a hire purchase account due to end in April 2020, and another credit agreement payable at £12 a month again due to end in April 2020, a telecommunications account and motor insurance. All the accounts were being well run and up to date. NatWest in their assessment said Mr T had around £232 in credit commitments, and this I think is reflective of the credit history I've seen. Mr T has also said he was living with his parents, so I don't think its unreasonable for NatWest to use housing costs of £589. So, I'm satisfied NatWest took reasonable steps to determine Mr T's non-discretionary spending.

NatWest has provided the ledger records for Mr T's account. I've considered the three months prior to the lending October, November and December 2019. While these show the money in and out of Mr T's account, they don't detail the specific activity, so none show specifically as a gambling activity. I can see that Mr T's average income across the three months was £1,275 but he'd other income into the account, again from the ledgers I can't see the specific detail. In total these averaged close to £3,000 a month. So, I can understand why NatWest's check of Mr T's income showed more than the £1,600 he declared. I can see from the ledgers that Mr T did use his overdraft frequently but always stayed within the limit, during the three months his maximum overdraft usage was around £916 for an overdraft limit of £950. But I can also see that Mr T wasn't persistently using his overdraft and at various times wasn't using it at all.

I understand Mr T's frustration as he feels NatWest should have been aware of his gambling from the activity within the bank account he'd with them. But banks do not generally monitor their customers' accounts to see how they spend their money except in exceptional cases such as fraud. The bank is under no obligation to check customers' accounts for gambling.

I've not seen anything to suggest NatWest was made aware Mr T was gambling in his application. His accounts appear to have been either in credit or within agreed overdraft limits for the months before the application, the credit assessment showed he'd sufficient disposable income to sustain the repayments. Mr T's credit history showed he was managing his accounts with no adverse information and for a loan he already had with NatWest he was sustaining the repayments. Also, as the new lending settled the existing loan Mr T's increased monthly expenditure would be the difference between the existing loan of £132.88 and the new lending of £263.14. So, I think NatWest's checks were proportionate and reasonable and based on these I think NatWest made a fair lending decision as I don't think there's clear enough evidence that NatWest should have been aware of the gambling activity on Mr T's account or that lending to him would be irresponsible.

While I think NatWest carried out reasonable checks when assessing whether Mr T could afford the loan and I don't think they lent irresponsibly, if they haven't done so already, I would expect NatWest to treat Mr T positively and sympathetically in response to any ongoing debts or financial difficulty.

I've also considered whether NatWest acted unfairly or unreasonably in some other way given what Mr T has complained about including whether their relationship with him might have been viewed as unfair by a court under s.140A Consumer Credit Act 1974. But for the reasons I've already given, I don't think NatWest lent irresponsibly to Mr T or otherwise treated him unfairly. I haven't seen anything to suggest that Section 140A or anything else would, given the facts of this complaint, lead to a different outcome here.

## My final decision

I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr T to accept or reject my decision before 5 November 2024.

Anne Scarr
**Ombudsman**