

Complaint

Mrs M has complained about the overdraft charges National Westminster Bank Plc ("NatWest") applied to her current account.

She's said the charges were applied unfairly as she was allowed to use her overdraft for a prolonged period and even when it was clear that she was struggling.

Background

Mrs M was granted an overdraft with a limit of £1,600.00 on a student account by NatWest in September 2008. As far as I can see the overdraft limit remained at this amount going forward.

In March 2024, Mrs M complained saying that she was unfairly allowed to continue using her overdraft for a prolonged period and even though NatWest ought to have realised that she couldn't afford it.

NatWest did not uphold Mrs M's complaint. It didn't think that it had done anything wrong in providing Mrs M with her overdraft or allowing her to use it in the way that she did. Mrs M was dissatisfied at NatWest's response and referred her complaint to our service. When Mrs M referred her complaint to us, NatWest told us that it considered Mrs M's complaint was made too late.

One of our investigators reviewed what Mrs M and NatWest had told us. He reached the conclusion that he wasn't persuaded that NatWest had acted unfairly by allowing Mrs M to use her overdraft in a way that was unsustainable or otherwise harmful. So the investigator didn't recommend that Mrs M's complaint be upheld.

Mrs M disagreed with the investigator and asked for an ombudsman's decision.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. NatWest has argued that Mrs M's complaint was made too late because she complained more than six years after some of the charges on the overdraft were applied, as well as more than three years after she ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why it was reasonable to interpret the complaint as being one alleging that the lending relationship between Mrs M and NatWest was unfair to Mrs M as described in s140A of the Consumer Credit Act 1974 ("CCA"). He also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Mrs M's complaint. Given the reasons for this, I'm satisfied that whether Mrs M's complaint about some of the specific charges applied was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mrs M's complaint should be considered more broadly than just the individual charges or lending decisions that were made. I consider this to be the case as Mrs M has not only complained about the circumstances behind the application of the individual charges, but also the fact that NatWest's failure to act during the periods she alleges it ought to have seen she was experiencing difficulty caused ongoing hardship.

I'm therefore satisfied that Mrs M's complaint can therefore reasonably be interpreted as a complaint that the lending relationship between herself and NatWest was unfair to her. I acknowledge the possibility that NatWest may still disagree that we are able to look at the whole of Mrs M's complaint, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mrs M's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mrs M's complaint can be reasonably interpreted as being about that her lending relationship with NatWest was unfair to her, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (NatWest) and the debtor (Mrs M), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Mrs M's complaint, I therefore need to think about whether NatWest's allowing Mrs M to use her overdraft in the way that it did, resulted in the lending relationship between Mrs M and NatWest being unfair to Mrs M, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove any such unfairness.

Mrs M's relationship with NatWest is therefore likely to be unfair if it allowed Mrs M to continue using her overdraft in circumstances where it ought reasonably to have realise that the facility had become unsustainable or otherwise harmful for her. And if this was the case, NatWest didn't then remove the unfairness this created somehow.

Did NatWest unfairly allow Mrs M to continue using her overdraft in a way that was unsustainable or otherwise harmful for her?

Before I go any further, as this essentially boils down to a complaint that Mrs M was unfairly charged by being allowed to continue using her overdraft, I want to be clear in saying that I haven't considered whether the various amounts NatWest charged were fair and reasonable, or proportionate in comparison to the costs of the service provided. Ultimately how much a bank charges for its services is a commercial decision. And it isn't something for me to get involved with.

That said, while I'm not looking at NatWest's charging structure per se, it won't have acted fairly and reasonably towards Mrs M if it applied this interest, fees and charges to Mrs M's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mrs M was experiencing financial difficulty. So I've considered whether there was an instance, or there were instances, where NatWest didn't treat Mrs M fairly and reasonably.

In other words, I've considered whether there were periods where NatWest continued charging Mrs M even though it ought to have instead stepped in and taken corrective measures on the overdraft as it knew, or it ought to have realised, that she was in financial difficulty.

I've looked through Mrs M's account statements throughout the period concerned. And I can't see that NatWest ought to have unilaterally taken corrective measures in relation to Mrs M's overdraft. Mrs M did use her overdraft regularly and she may argue that the fact that she did so was, in itself, a reason why NatWest ought to have taken action. But I think that it is far too simplistic to say that it automatically follows that someone was in financial difficulty simply because they were using a financial product that they were entitled to use.

I think it's important to look at overall circumstances of a customer's overdraft usage – particular in light of what this may suggest about their overall position. Therefore, in this case, I've considered Mrs M's incomings and outgoings as well as any overdrawn balance and thought about whether it was possible for her to have stopped using her overdraft, based on this.

After all, if Mrs M was locked into paying charges because there was no prospect of her exiting her overdraft then her facility would have been unsustainable for her. So I've carefully considered whether this was the case.

The first thing for me to say is that this isn't a case where a customer was allowed to continue using an overdraft facility with a limit that remained well in excess of their monthly salary. Indeed, I'm mindful that Mrs M was not only in receipt of a monthly salary that had the potential to clear what she could owe within a reasonable period of time, her salary did go on to reach an amount that significantly exceeded her overdraft limit.

So this isn't a case where the borrower was permanently in their overdraft. There were periods where Mrs M was in credit – although I do accept that there were periods Mrs M (certainly earlier on) where Mrs M was spending longer periods of the month in her overdraft. It is also likely that Mrs M met the criteria of someone who displayed a pattern of repeat use of their overdraft.

That said, even though this is the case, the question here is whether Mrs M's use of her overdraft was causing her to incur high cumulative charges that were harmful to her. And having considered matters, I don't think that this is the case.

To explain, while I'm not seeking to make retrospective value judgements over Mrs M's expenditure, nonetheless there are also significant amounts of non-committed, non-contractual and discretionary transactions going from Mrs M's account. Indeed, it's fair to say

that while Mrs M had other creditors, a proportion of her expenditure appears to have been discretionary.

Equally, I can't see anything to indicate that the charges were causing Mrs M harm. For example, I'm mindful that I've seen no indication that any of the potential signs of financial difficulty contained in the regulator's guidance on financial difficulty (set out in section 1.3 of the Consumer Credit Sourcebook) – such as Mrs M failing to meet consecutive payments to credit, borrowing from payday or other high-cost lenders, or Mrs M failing to meet her commitments out of her disposable income – were present in Mrs M's circumstances.

I accept neither of these things in themselves (or when taken together) mean that Mrs M wasn't experiencing difficulty. But I don't agree that Mrs M's account usage clearly shows that she was reliant on credit, or that there was no prospect of her clearing what she owed. Indeed Mrs M appears to have been able to exit her overdraft, but her discretionary expenditure was seeing her continuing to use it.

Given the repeat usage letters Mrs M is likely to have been sent by NatWest, I think that she ought to have realised that how much she was paying for using her overdraft. And in circumstances, where there appears to be no dispute that Mrs M did not expressly reach out to NatWest and ask it for help to repay her balance, I think that it would have been unfair for NatWest to have imposed a corrective solution.

This is particularly bearing in mind the consequences of NatWest taking corrective action, in the way that it would have done had it acted. It's worth noting that the failure to meet a final demand which is the action the terms and conditions of Mrs M's overdraft facility required NatWest to take, is likely to have resulted in NatWest terminating Mrs M's overdraft and issuing a default against her.

I don't think that such action could fairly and reasonably be seen to have been proportionate measure based on Mrs M's account activity. I say this because Mrs M's transactions suggested that there was a realistic prospect of her clearing what she owed in a reasonable period of time. So there was no obvious reason why NatWest needed to step in.

Overall and having considered everything, I don't think that it was unreasonable for NatWest to have proceeded adding the charges that it did. Therefore, I don't find that the relationship between Mrs M and NatWest was unfair to Mrs M. I've not been persuaded that NatWest created unfairness in its relationship with Mrs M by allowing her to use her overdraft in the way that she did. Based on what I've seen, I don't find NatWest treated Mrs M unfairly in any other way either.

So overall and having considered everything, while I can understand Mrs M's sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Mrs M. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 21 March 2025.

Jeshen Narayanan
Ombudsman