

Complaint

Mr and Mrs B have complained about the overdraft charges NatWest Bank Plc (trading as "NatWest") applied to their current account.

Mr and Mrs B are being represented in their complaint by a Claims Management Company ("the representative").

The representative has said the charges applied to Mr and Mrs B's account were unfair as there was a failure to take account of their patterns of reliance on debt and hardcore borrowing. In the representative's view, there was no proper consideration of the longer-term impact of the borrowing on him.

Background

As I understand it, NatWest initially provided Mr and Mrs B with an overdraft of £500 in September 2014. This limit was increased to £1,000.00 in November 2014, £2,250.00 in May 2017, £2,750.00 in June 2017 and finally £3,000.00 in August 2019.

Mr and Mrs B's complaint was looked at by one of our investigators. She thought that NatWest shouldn't have increased Mr and Mrs B's overdraft limit in May 2017. So she partially upheld the complaint and thought that NatWest needed to refund all the overdraft interest and charges that it added to Mr and Mrs B's account from May 2017 onwards.

NatWest accepted the investigator's assessment. However, the representative, on behalf of Mr and Mrs B, disagreed with the investigator. It said that all overdraft interest and charges should be refunded from May 2017 onwards and asked for an ombudsman's decision.

As the parties are in agreement that the limit increases from May 2017 shouldn't have been provided, I'm simply looking at whether what NatWest has agreed to do is fair and reasonable in all the circumstances, or whether it needs to do anything more.

My findings

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

Having carefully considered everything provided, I'm satisfied that what NatWest has already agreed to do to put things right for Mr and Mrs B is fair and reasonable in all the circumstances of their complaint. I'm therefore not requiring NatWest to do anything more or anything further.

NatWest has agreed that it shouldn't have provided Mr and Mrs B with any of the limit increases on their overdraft from May 2017 onwards. And it has agreed to limit the amount that Mr and Mrs B repay to the amount that the amount lent, plus any interest on the first £1,500.00 of any overdrawn balance, in order to put things right.

Our typical approach to putting things right in cases such as Mr and Mrs B's

It might help for me to start by explaining that where a business accepts (or we decide) it did something wrong, we'd expect the business to put the consumer in the position they would be in if that wrong hadn't taken place.

And in an ideal world, we'd tell a business to put a consumer in the position they'd now be in if they hadn't been given the credit they shouldn't have. However, that's not possible in cases where funds that shouldn't have been advanced were advanced. This is because typically those funds will have already been spent like they have been done here.

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. Where a business provided credit that it shouldn't have 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 the credit that shouldn't have been provided.

This would see the customer repay the funds that they borrowed and had the use of but we'd normally expect the lender to refund (or remove) any extra interest and charges that were added. And if those interest and charges were paid also add 8% simple interest per year.

Having looked at everything provided I'm satisfied that this is precisely what NatWest has agreed to do here. So NatWest has already agreed to do what I'd normally expect a firm to do in these circumstances.

Why I don't think that NatWest needs to refund all of the overdraft interest and charges added to Mr and Mrs B's account from May 2017 onwards

The representative argues that NatWest needs to do more. It says that as Mr and Mrs B were constantly overdrawn they should be refunded all of the interest that they were charged.

I've thought about what the representative has said.

Before I go any further, as this essentially boils down to a complaint that Mr and Mrs B were unfairly charged as a result of being allowed to continue using their 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 Mr and Mrs B if it applied this interest, fees and charges to Mr and Mrs B's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr and Mrs B were experiencing financial difficulty. So I've considered whether there was an instance, or there were instances, where NatWest didn't treat Mr and Mrs B fairly and reasonably.

In other words, I've considered whether there were periods where NatWest continued charging Mr and Mrs B 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 they were in financial difficulty, or that an overdraft limit of £1,500.00 was unaffordable.

Having looked through Mr and Mrs B's account statements throughout the period concerned, I can't see that NatWest ought reasonably to have unilaterally taken corrective measures in order to Mr and Mrs B's overdraft completely. I accept that Mr and Mrs B used their overdraft. The representative's arguments appear to suggest that this in itself means that

Mr and Mrs B were experiencing financial difficulty and therefore the complaint should be upheld. But I think that it is far too simplistic to say that it automatically follows that a customer was in financial difficulty simply because they were using a financial product that they were entitled to use.

I accept that the rules, guidance and industry codes of practice all suggest that prolonged and repeated overdraft usage can sometimes be an indication of financial difficulty. However, this is not the same as saying that prolonged and repeated overdraft usage by a customer will always mean that they are, as a matter of fact, in financial difficulty.

So I think it's important to look at overall circumstances of a customer's overdraft usage as part of considering their overall financial position. And, in this case, I've considered Mr and Mrs B's incomings and outgoings as well as any overdrawn balances and thought about whether it was possible for them to have stopped using their overdraft, based on this. NatWest has also provided copies of Mr and Mrs B's sole current accounts and I've also considered this information.

I think that if Mr and Mrs B were locked into paying charges in circumstances where there was no reasonable prospect of them exiting an overdraft with a limit of £1,500.00, then their facility would have been unsustainable for them. But if they were choosing to run their finances in this way and they could afford to do so, I wouldn't necessarily expect NatWest to have withdrawn the facility completely. So I've carefully considered the position.

The first thing for me to say is that Mr and Mrs B's sole accounts were both in receipt of credits, which were sufficient to clear an overdraft of £1,500.00 within a reasonable period of time. I'd also add that the representative's obsession with CONC 5D and why, in its opinion, this means all overdraft interest and charges should be refunded from May 2017 is concerning because this provision didn't come into force until more than eighteen months later, in December 2019.

Notwithstanding the fact that CONC 5D didn't come into force until December 2019, I've, in any event, considered whether Mr and Mrs B's use of their overdraft (and NatWest continuing to allow them to use it) was causing them to incur high cumulative charges that were harmful to them. And having considered matters, I'm satisfied that this isn't the case.

To explain, while I'm not seeking to make retrospective value judgements over Mr and Mrs B expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going out from Mr and Mrs B's three accounts. Indeed, it fair and reasonable to say that Mr and Mrs B could have credited the joint account with increased funds had they wished to do so.

Given the repeat usage letters Mr and Mrs B are likely to have been sent by NatWest, from 2020 onwards once CONC 5D did come into force, I think that they ought to have realised that how much they were paying for running their finances in the way that they were. So I simply don't agree that Mr and Mrs B was using their overdraft purely for essential spending, because they didn't have any other choice. They were made informed of the costs and as far as I can see were in a position to alter their spending and behaviour if they wanted.

Indeed, it's fair to say that the funds in their sole accounts suggested they could have cleared an overdraft of £1,500.00 within a reasonable period of time had they wished to do so. Equally, I can't see that they were borrowing from unsustainable sources in order to meet these charges or that their borrowing was increasing exponentially.

Mr and Mrs B did have credit commitments and other living expenses going from this account. But this does not mean that they were reliant on credit to meet their essential

expenditure. It simply appears to be the case that this is how they chose to run their household finances and their individual accounts.

I accept neither of these things in themselves (or when taken together) mean that Mr and Mrs B weren't experiencing difficulty. But I don't agree that Mr and Mrs B were reliant on credit. They were able to arrange their finances so that they were using their overdraft in a more sustainable way. However, they consciously decided that they did not wish to do so.

Overall and having considered everything, I don't think that it was unreasonable for NatWest to have adding charges on balances of up to £1,500.00. This is particularly bearing in mind the consequences of NatWest taking action to remove the overdraft completely, in the way that it would have done had it acted in way that the representative is suggesting it should have, would have been disproportionate.

I say this because I don't think that it would have been proportionate for NatWest to demand that Mr and Mrs B immediately repay a £1,500.00 overdraft, in circumstances where there was a realistic prospect of Mr and Mrs B clearing such a balance in a reasonable period of time.

I'm therefore satisfied that placing Mr and Mrs B, as close as possible, to the position that they would be in had their overdraft not been increased over £1,500.00 is fair and reasonable in all the circumstances of this complaint.

In reaching my conclusions, I've also considered whether the lending relationship between NatWest and Mr and Mrs B might have been unfair to Mr and Mrs B under s140A of the Consumer Credit Act 1974.

However, I'm satisfied that what NatWest has agreed to do results in fair compensation for Mr and Mrs B given the overall circumstances of their complaint. For the reasons I've explained, I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

As this is the case, I'm satisfied that what NatWest has already agreed to do to put things right for Mr and Mrs B is fair and reasonable in all the circumstances and I'm not requiring it to do anything more or anything further. I appreciate that this will be very disappointing for Mr and Mrs B. But I hope they'll understand the reasons for my decision and that they'll at least feel their concerns have been listened to.

Fair compensation – what NatWest needs to do to put things right for Mr and Mrs B

Having thought about everything, I'm satisfied that it would be fair and reasonable in all the circumstances of Mr and Mrs B's complaint for NatWest to put things right by:

- Reworking Mr and Mrs B's current overdraft balance so that from May 2017 onwards overdraft interest, fees and charges are only applied to the first £1,500.00 owing. This is to reflect the fact that NatWest shouldn't have increased Mr and Mrs B's overdraft limit above £1,500.00.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made NatWest should contact Mr and Mrs B to arrange a suitable repayment plan, Mr and Mrs B are encouraged to get in contact with and cooperate with NatWest to reach a suitable agreement for this. If it considers it appropriate to record negative information on Mr and Mrs B's credit files, it should

reflect what would have been recorded had it started the process of taking corrective action on the overdraft in May 2017. NatWest can also reduce the overdraft limit on Mr and Mrs B's account by the amount of any refund if it considers it appropriate to do so, as long as doing so wouldn't leave them in an unarranged overdraft.

OR

- If the effect of reworking Mr and Mrs B's account results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr and Mrs B along with 8% simple interest† on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then NatWest should remove any adverse information from Mr and Mrs B's credit files. In these circumstances, NatWest can remove Mr and Mrs B's overdraft as long as doing so wouldn't leave them with an unarranged overdraft balance.

† HM Revenue & Customs requires NatWest to take off tax from this interest. NatWest must give Mr and Mrs B a certificate showing how much tax it has taken off if they ask for one.

My final decision

For the reasons I've explained, I'm satisfied that what National Westminster Bank Plc has already agreed to do to put things right for Mr and Mrs B is fair and reasonable in all the circumstances. So I'm not requiring it to do anything more or anything further and I leave it up to Mr and Mrs B to decide whether they wish to accept the offer that has been made.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 6 January 2025.

Jeshen Narayanan
Ombudsman