

The complaint

Ms Y complains that National Westminster Bank Plc lent to her irresponsibly.

What happened

Ms Y had two current accounts with NatWest.

Account 1 had a relatively small overdraft limit of up to £600 from November 2002. She repaid it in full and the limit was removed in February 2008.

Account 2 – a student account – opened in August 2003 and had an overdraft limit of £1,250. By December 2005, the limit reached £2,000. It remained in place until March 2016 when she took a loan with NatWest to repay it along with some other debts she'd accrued elsewhere. That loan has been refinanced twice more – a total of three loans.

On 10 October 2022, Ms Y complained to NatWest saying she felt it had lent to her irresponsibly. As a result of the lending, Ms Y is under a debt relief order, and her credit score and mental health have suffered.

NatWest looked into Ms Y's complaint and issued a final response letter. It said that most of her complaint – that concerning the overdraft limits and first loan – had been brought too late under the complaint handling rules of the Financial Conduct Authority (FCA). NatWest considered Ms Y's complaint about the two subsequent loans which had been brought in time but rejected the complaint.

Ms Y didn't accept NatWest's response, so she referred her complaint to our service. For operational reasons, the complaint was split between the overdrafts and loans – this complaint concerns the overdrafts.

One of our investigator's looked into the complaint. She agreed with NatWest that the overdraft lending decisions took place too long ago for us to consider them and that we didn't have the power to consider Ms Y's complaint about account 1. But she said we could look into her complaint about Account 2 complaint as being about an unfair credit relationship in view of Ms Y's allegation that NatWest charged her more than she could reasonably afford. However, she said that if we did look into it in this way, we wouldn't be able to make an award to Ms Y.

Ms Y didn't accept what our investigator said and asked for a second opinion. As there was no agreement, the complaint has been passed to me for a decision.

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.

There are time limits for referring a complaint to the Financial Ombudsman Service, and NatWest thinks this complaint was referred to us too late. Our investigator explained why she didn't think we could look at a complaint about the lending decisions that happened

more than six years before the complaint was made. But she also explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in Section 140 of the Consumer Credit Act 1974 (Section 140), and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

For the avoidance of doubt, I agree with our investigator that I don't have the power to look at Ms Y's complaint about Account 1, but I can look at Account 2. I think this complaint can reasonably be considered as being about an unfair relationship as Ms Y says NatWest charged her more than she could reasonably afford to pay. This may have made the relationship unfair. I acknowledge NatWest still doesn't agree we can look at the complaint about either account, but as I don't intend to make any award to Ms Y, I won't comment on this further.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Ms Y's complaint can be reasonably interpreted as being about the fairness of her relationship with NatWest, relevant law in this case includes Section 140A-C.

Section 140A says that a court may make an order under Section 140B if it determines that the relationship between the creditor (NatWest) and the debtor (Ms Y), 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.

But the case law also says that the court may not make an award for an unfair relationship where the claimant had knowledge of the facts relevant to their claim, but substantially delayed making it. So I've taken this into account when deciding a fair and reasonable outcome for this complaint.

The case law doesn't provide a fixed period that would constitute a substantial delay, but in the case of *Smith v Royal Bank of Scotland Plc* [2023] UKSC 34, the Supreme Court approved the District Judge's comment that a court would be slow to remedy unfairness in a situation where the claimant delayed more than six years after knowing the facts.

S.140B 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 what Ms Y has complained about, I need to consider whether NatWest's decisions to lend to her, or its later actions, created unfairness in the relationship between her and NatWest such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

NatWest hasn't been able to supply details of the lending decisions it took regarding the overdrafts because they took place at least 17 years before Ms Y raised her complaint. I don't think that is unreasonable.

The overdraft limit for Account 1, was removed in February 2008. I think it's likely Ms Y

would have been aware that the relationship felt unfair at the time, so I'd have expected her to complain about that sooner. As that credit relationship ended more than six years ago and more than three years from when she'd have been aware of her cause for complaint, Account 1 is outside our jurisdiction and I don't have the power to consider a complaint about it.

Turning to Account 2, while the overdraft was repaid in March 2016, the debt owed under it was consolidated into a loan with NatWest. This means the debt remained in existence and the credit relationship continued. That relationship was ongoing through subsequent refinances and remained open at the time this complaint was raised. So as I've already said, I think I can look at the whole relationship for this account under our jurisdiction.

I note that at the time the overdraft was first agreed and subsequently increased, Account 2 was on Student terms and the limit was likely to be part of the package offered. Ms Y didn't begin to pay interest or charges on the account until February 2006, so I think it's unlikely there will have been any unfairness that we could redress prior to that.

NatWest has provided statements for Ms Y's account going back to 2010 which is more than I'd ordinarily expect. And Ms Y hasn't been able to provide anything older than that, so I've based my review of the relationship on those statements.

There does seem to have been some potential unfairness between 2010 and 2014. I say this because Ms Y was constantly in her overdraft in excess of £1,500 and didn't come out of it for more than a few days in April 2013 (following a large credit) and quickly fell back overdrawn until May 2014. I can see that throughout that period NatWest was charging Ms Y interest up to £30 a month and from September 2013, £6 a month usage fee.

But while Ms Y was using the overdraft extensively, I'm not persuaded she was necessarily reliant upon it, or that her use of it was due to financial difficulties. I say this because from January 2014, Ms Y began to reduce her overdraft usage significantly and, as I've mentioned the account returned to credit in May 2014. While it dipped over a little after that, by August 2014 the account returned to credit for a sustained period of time. She appears to have repaid the overdraft through wages and a reduction in her discretionary spending. I think at this point, any potential unfairness was corrected – certainly Ms Y had taken steps to ensure she was no longer suffering a loss.

Ms Y would have been aware of any unfairness in the relationship at the point while it was happening. Only she can say whether the relationship truly felt unfair and whether the interest or charges were causing her problems and she was unhappy with paying them. Even if I were to find there was unfairness, I don't think it would be fair or reasonable for me to tell NatWest to remedy that now.

Ms Y ran her account in credit until April 2015, and I can see transactions from abroad throughout the first quarter of 2015. It appears Ms Y returned to the UK in May 2015 and began to make full use of the overdraft again. Regular income began to be paid into the account from June 2015.

Banks are expected to monitor overdrafts and they generally review them on an annual basis. Ms Y had demonstrated her ability to repay the overdraft previously and was now in fact earning more than she had been before she'd gone away. By March 2016, Ms Y had repaid the overdraft by transferring the balance to a loan, and the limit had been cancelled. So I don't think I would have expected NatWest to have intervened in Ms Y's overdraft usage between April 2015 and March 2016 when the overdraft was removed.

As I've said however, I think Ms Y's credit relationship continued into the loans that were

agreed for her. These have been investigated separately, so I won't go into a great deal of detail here. But I can see that our investigator who looked into those loans, upheld Ms Y's complaint about one of these loans – drawn in June 2019 – and recommended that NatWest should refund charges and interest on that. Both Ms Y and NatWest agreed to this recommendation.

Overall, I think Miss Y would have been aware of any potential unfairness in the relationship while it was ongoing. This includes the period from 2010 to 2014. In other words, I think she would have been aware of the facts of the case so, bearing in mind what the court said in the Smith judgement, I don't think it would be fair and reasonable to expect the bank to remedy any potential unfairness from so long ago.

So I'm sorry to disappoint Ms Y but, while I think we can look at the whole of her relationship in relation to Account 2 with NatWest, I can't reasonably make any further award. For that reason, I don't uphold her complaint about NatWest.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms Y to accept or reject my decision before 13 February 2025.

Richard Hale
Ombudsman