

Complaint

Mrs S has complained about personal loans which National Westminster Bank Public Limited Company ("NatWest") provided to her. She's said that these loans were unaffordable and this created a cycle of her having to borrow further in order to make her repayments.

Background

Mrs S was provided with two loans by NatWest. Her loan history is as follows:

Loan	Date taken	Amount	Term*	Monthly payment	Settled
1	February 2014	£4,800.00	58	£119.05	February 2019
2	March 2020	£2,500.00	60	£76.20	February 2021

* in months

In January 2024, Mrs S complained saying that these loans were unaffordable and this created a cycle of her having to borrow further in order to make her repayments.

NatWest did not uphold Mrs S' complaint. It thought that it carried out reasonable and proportionate checks before agreeing to lend to Mrs S and these showed these loans to be affordable. When Mrs S' complaint was referred to our service, NatWest told us that we couldn't consider the complaint about loan 1 as it was made too late.

One of our investigators reviewed what Mrs S and NatWest had told us. She reached the conclusion that we could look at Mrs S' complaint about both of her loans. However, she wasn't persuaded that proportionate checks would have shown the loans were unaffordable for Mrs S. So the investigator didn't recommend that Mrs S' complaint be upheld.

Mrs S 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 part of Mrs S' complaint was made too late because she complained more than six years after it provided her with her first loan, 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 S and NatWest was unfair to Mrs S as described in s140A of the Consumer Credit Act 1974 ("CCA"). She 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 S' complaint. Given the reasons for this, I'm satisfied that whether Mrs 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 S' complaint should be considered more broadly than just the individual lending decisions. I consider this to be the case as Mrs S has not only complained about the circumstances behind NatWest's individual decisions to provide her with her loans, but also the fact she alleges that the provision of these loans created a cycle of her having to borrow further in order to make her repayments.

I'm therefore satisfied that Mrs 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 Mrs S' complaint about all of her loans, 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 S' case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mrs 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 S), 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 S' complaint, I therefore need to think about whether NatWest's respective decisions to lend to Mrs S, or its later actions resulted in the lending relationship between Mrs S and NatWest being unfair to Mrs S, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mrs S' relationship with NatWest is therefore likely to be unfair if it didn't carry out reasonable and proportionate checks into Mrs S' ability to repay these loans in circumstances where doing so would have revealed the monthly payments to have been unaffordable, or that it was irresponsible to lend. And if this was the case, NatWest didn't then somehow remove the unfairness this created.

Our typical approach to complaints about irresponsible or unaffordable lending

We've explained how we handle complaints about irresponsible and unaffordable lending on our website. And I've used this approach to help me decide Mrs S' complaint.

I think that it would be helpful for me to set out that we consider what a firm did to check whether loan payments were affordable (asking it to evidence what it did) and determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion – indeed the regulator's rules and guidance did not and still do not mandate a list of checks to be used. It simply sets out the types of things that a lender could do.

It is for a lender to decide which checks it wishes to carry out, although we can form a view on whether what was done was proportionate to the extent it allowed the lender to reasonably understand whether the borrower could make their payments.

Furthermore, if we don't think that the lender did enough to establish whether the repayments to an agreement were affordable, this doesn't on its own mean that a complaint should be upheld.

We would usually only go on to uphold a complaint in circumstances where we were able to recreate what reasonable and proportionate checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

I've kept this in mind when deciding Mrs S' complaint.

Application to Mrs S' complaint – Why I don't think that NatWest's decisions to lend to Mrs S were unfair or unreasonable

NatWest says it agreed to Mrs S' applications after she provided details of her monthly income and some information on her expenditure. It says it cross-checked this against information on credit searches which it carried out. In its view, all of this information showed Mrs S could afford to make the repayments she was committing to on both of these occasions.

On the other hand, Mrs S has said that these loans were unaffordable and they created a cycle of her having to borrow further in order to make her repayments.

The first thing for me to say is that this doesn't appear to be a case of NatWest simply accepting over-optimistic declarations of Mrs S' monthly disposable income at face value. Indeed, the notes from the time suggest that the first loan was taken for consolidation purposes and the information was gathered over a series of phone calls. The notes suggest that Mrs S overdraft was going to be consolidated with this loan. This appears to be supported by the fact that the earliest statements I've been provided with, from May 2014, show that Mrs S didn't have an overdraft at this stage.

NatWest has been unable to provide the results of the credit searches that it carried out at this time. Given this loan was provided more than eleven years ago, I don't think that this is unusual or surprising. So I'm not drawing any adverse consequences or conclusions as a result of this.

In any event, I haven't seen anything to indicate that Mrs S had any county court judgments ("CCJ") recorded against her. And while I acknowledge the possibility Mrs S may have had a defaulted account recorded against her – as her statements appear to show payments to a debt collector – she doesn't appear to have been paying much to other creditors

Equally, as this was a first consolidation loan NatWest was providing to Mrs S, there wasn't a history of Mrs S obtaining funds from it and then returning for funds for the same purpose either. And by closing Mrs S' overdraft, which was far more expensive, NatWest was reasonably entitled to conclude that this loan would help her too.

Bearing in mind all of this, I don't think that there wasn't anything that was obviously inconsistent or difficult to reconcile with the rest of information that NatWest had gathered, or anything else to call into question that the loan payments may not have been affordable for Mrs S, in the way that the information gathered suggested that they were. As this is the case, I don't think that it was unfair or unreasonable for NatWest to provide loan 1 to Mrs S.

Mrs S' second loan was taken out some six years after loan 1 was taken and more than a year after it had successfully been repaid. Furthermore, the credit searches will have shown that Mrs S hadn't had any significant adverse information such as defaulted accounts or county court judgments ("CCJ") recorded against him.

I've seen what Mrs S has said about cash withdrawals on her credit cards. I don't know if NatWest was aware of this, but I don't think that this was in itself a reason not to lend to her. This is especially bearing in mind the lack of any significant adverse information recorded against Mrs S at this at this time and the fact that the rest of the information gathered showed that the loan repayments were affordable for Mrs S.

In reaching my conclusion, I've also kept in mind that NatWest provided a second loan to Mrs S and that repeat borrowing in itself can sometimes be an indication of difficulty. But Mrs S had settled loan 1 more than a year prior to being provided with loan 2. So I can't reasonably say that NatWest ought to have realised that Mrs S applied for loan 2 because of the possibility that repaying loan 1 left a hole in her finances.

It's also worth noting that loan 2 was for a significantly lower amount than loan 1 and it had much lower monthly repayments too. Therefore, NatWest clearly wasn't increasing Mrs S overall indebtedness with loan 2. So while Mrs S being a repeat borrower here has led to me taking a closer look at the overall pattern of lending, I'm satisfied that it wasn't unfair for NatWest to have provided loan 2 to Mrs S on the basis that it ought to have realised that it was increasing Mrs S' indebtedness in a way that way unsustainable or otherwise harmful.

Having carefully considered everything and while I appreciate that this will disappoint Mrs S, I'm satisfied that NatWest carried out proportionate checks, which showed the low monthly payments were affordable, before it agreed to these loans. Furthermore, I don't think that Mrs S' pattern of borrowing meant that NatWest offered these loans in circumstances where it ought reasonably to have realised that they may have been unsustainable or otherwise harmful for her either.

Overall, and based on the available evidence I don't find that Mrs S' relationship with NatWest was unfair. I've not been persuaded that NatWest created unfairness in its relationship with Mrs S by irresponsibly lending to her when providing her with any of her

loans. I don't find that NatWest treated Mrs S unfairly in any other way either based everything I've seen.

So overall and having considered everything, while I can understand Mrs S' sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Mrs S. 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 S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 27 May 2025.

Jeshen Narayanan
Ombudsman