

Complaint

Ms T has essentially complained that National Westminster Bank Plc (“NatWest”) unfairly continued applying charges to her overdraft even when it was clear that she was in financial difficulty and failing to see a credit balance for an extended period.

Background

One of our investigators looked at this complaint and thought NatWest should have realised that Ms T’s overdraft had become unsustainable for her by May 2020 and so it shouldn’t have added the charges it did from this point onwards.

NatWest, predominantly because of matters which are no longer in dispute, didn’t agree with the investigator’s assessment. As NatWest didn’t agree with the investigator’s assessment the complaint was passed to an ombudsman for a final decision, as per the next stage of our dispute resolution process.

Furthermore, as Ms T has effectively agreed with the investigator’s findings on matters, this decision is only looking at whether NatWest acted fairly and reasonably towards Ms T from May 2020 onwards. So while NatWest remains dissatisfied regarding conclusions reached prior to this period, as I’m not looking at the period prior to May 2020, I can confirm that those factors do not affect my decision in this instance.

My findings

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

NatWest will be familiar with all the rules, regulations and good industry practice we consider when looking at whether a bank treated a customer fairly and reasonably when applying overdraft charges. So I don’t consider it necessary to set all of this out in this decision.

Having considered everything provided, I think NatWest acted unfairly when it continued adding interest and associated fees and charges to Ms T’s overdraft from May 2020. By this point, it was evident that Ms T’s overdraft had become unsustainable for her and that continuing to provide it was likely to cause significant adverse consequences.

Ms T’s statements leading up to this period show that she had been hardcore borrowing and hadn’t seen meaningful credit balances for an extended period of time. Indeed, NatWest’s own records appear to suggest that it sent Ms T a termination letter on the overdraft, in April 2019 and she required help bringing matters under control.

As NatWest already believed that there was a problem as far back as April 2019, it’s difficult for me to see how it could have reached the conclusion that she was in a position to repay what she owed within a reasonable period of time, when she wasn’t seeing a credit balance or receiving sufficient funds to do so.

Overall I think that by May 2020, NatWest ought to have realised that Ms T was struggling and unlikely to be able to sustainably repay her overdraft without help. In these circumstances, NatWest should have stopped providing the overdraft on the same terms. It should have instead treated Ms T with forbearance, even if this meant taking corrective action in relation to the facility. This is particularly as Ms T had already demonstrated an inability to clear the balance. All of this means that NatWest should have realised that Ms T wasn't using her overdraft as intended and as the account conduct had suggested it had become unsustainable shouldn't have continued offering it on the same terms.

In reaching my conclusion, I've considered NatWest's arguments in relation to the number of letters it sent Ms T which told her that she was using an overdraft in the way that was expensive and that she should get in contact if she was experiencing difficulty. NatWest is effectively arguing that Ms T should have reached out if she was struggling and it was limited in what it could do in circumstances where she didn't. I've thought about what NatWest has said. But the mere fact that NatWest felt the need to send Ms T so many letters, within a short period, means that it recognised there was a problem with the way that Ms T was using her overdraft.

Indeed, if I take NatWest's argument to its logical conclusion here, I see it as being that it acted fairly and reasonably towards Ms T because it sent her letters as it had identified that her overdraft usage had become a problem. But because Ms T didn't respond to the letters it was reasonable to continue allowing her to use her overdraft in the same way, notwithstanding that it had identified her use of her overdraft as being problematic.

In my view, this ignores the fact that there comes a point where a lender cannot continue simply relying on a borrower not wanting to discuss the situation. After all there are many reasons why a consumer might not want to get into discussions about their finances even though they're in a situation where they're struggling, or they may even go further and say they can and will make payment in circumstances where they simply cannot do so.

While Ms T didn't contact NatWest until 2024, because she didn't realise the impact failing to deal with the matter at hand was having, I don't think it was reasonable for NatWest to conclude that her problematic overdraft usage would correct itself. This is particularly as NatWest's records do appear to show that Ms T did get in contact in April 2019 and measures were put in place to rectify her usage, when she was told the overdraft would be withdrawn.

So as NatWest didn't react to not receiving a response to letters that Ms T's problematic overdraft usage had triggered and instead continued charging in the same way, I think that it failed to act fairly and reasonably. Ms T ended up paying additional interest, fees and charges on her overdraft at a time when she was already experiencing difficulty. So I think that Ms T lost out because of what NatWest did wrong and that it should put things right.

In reaching my conclusions, I've also considered whether the lending relationship between NatWest and Ms T might have been unfair to Ms T under section 140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I direct NatWest to do, in the following section of this final decision, results in fair compensation for Ms T given the overall circumstances of her 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.

Fair compensation – what NatWest needs to do to put things right for Ms T

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Ms T's complaint for NatWest to put things right by:

- Reworking Ms T's current overdraft balance so that all interest, fees and charges applied to it from May 2020 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made NatWest should contact Ms T to arrange a suitable repayment plan, Ms T is 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 Ms T's credit file, it should reflect what would have been recorded if it had started the process of taking corrective action on the overdraft in May 2020. NatWest can also reduce Ms T's overdraft limit by the amount of refund if it considers it appropriate to do so, as long as doing so wouldn't leave her over her limit.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Ms T 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 Ms T's credit file. NatWest can also reduce Ms T's overdraft limit by the amount of refund if it considers it appropriate to do so.

† HM Revenue & Customs requires NatWest to take off tax from this interest. NatWest must give Ms T a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained, I'm upholding Ms T's complaint. National Westminster Bank Plc should put things right in the way that I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 14 March 2025.

Jeshen Narayanan
Ombudsman