

The complaint

Ms J, who is represented by a third party, complains that National Westminster Bank Plc ('NatWest') irresponsibly provided her with an overdraft that she couldn't afford to repay sustainably.

What happened

In January 2003 NatWest agreed to provide Ms J with an overdraft facility and then went on to increase its limits on nine occasions between then and October 2012. The initial overdraft facility was for £100 and by October 2012 it had reached £1,200. A further overdraft increase granted in June 2021 took the limit up to £5,000.

Ms J, who started her complaint with NatWest in January 2024, says that NatWest acted unfairly in providing her with the overdraft facility. She also says NatWest failed to realise she was becoming over-reliant on it.

NatWest says it correctly followed its own procedures in providing the overdraft facility and the increases that followed – and that it had continued to review how the overdraft was being used. It also says it made attempts to contact Ms J to provide support with her overdraft in 2021 and 2022 but wasn't able to make contact with her. However, in 2023 she got help from NatWest due to specific difficult circumstances that started to impact both her health and her financial well-being.

Our investigator said that the part of the complaint about the overdraft limit increases and fees and charges that were added more than six years before the complaint was raised had been made too late under the time limit rules that are set by the Financial Conduct Authority's complaint handling rules. However, the June 2021 increase had been granted within six years of Ms J starting her complaint. He also noted that NatWest had been writing to Ms J to offer her support which meant by then she was or ought to have been aware that NatWest had responsibilities towards her and that something might have gone wrong in relation to the lending.

However, our investigator also thought Ms J's complaint could be interpreted as being about an unfair credit relationship as described in Section 140A of the Consumer Credit Act 1974 (s140), which is in time under the rules. But, having looked into the merits of the complaint, he couldn't find sufficient evidence or information to make an uphold finding.

As Ms J doesn't agree, her complaint has been passed to me for a final 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.

Our investigator explained why, as a starting point, we couldn't look at part of this complaint under the time limit rules this service operates by, given that the decisions to lend were made more than six years earlier. And he went on to explain why Ms J was or ought to have been aware that by October 2021 at the latest that NatWest might be at least partly to blame

for the difficulties she'd been experiencing due to the lending decisions. But they also explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in Section 140A of the Consumer Credit Act 1974, and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

Seeing as I've decided not to uphold Ms J 's complaint and given the reasons for this (which I'll go on to explain), whether Ms J referred her complaint about the lending decisions that were made more than six years ago in time or not has no impact on that outcome.

For the avoidance of doubt, I agree with our investigator that I have the power to look at the complaint on this basis. I think this complaint can reasonably be considered as being about an unfair relationship given that Ms J says the increases made her situation worse given that she had to pay more in interest than she could afford. I acknowledge that NatWest still doesn't agree we can look at this complaint, but as I don't think it should be upheld, I don't intend to comment on this further.

In deciding what is fair and reasonable, I am required to take relevant law into account. Because Ms J 's complaint can be reasonably interpreted as being about the fairness of her relationship with NatWest, the relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974 ("CCA").

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

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 J has complained about, I therefore need to think about whether NatWest's decision to provide Ms J with overdraft credit or other 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.

Ms J 's relationship with NatWest is therefore likely to be unfair if it didn't carry out proportionate affordability checks that might have shown the provision of overdraft credit to be irresponsible or unaffordable, and if it didn't remove that unfairness if the overdraft went on to become unsustainable or otherwise harmful.

When assessing affordability, there wasn't a set list of checks that NatWest needed to complete, but they needed to be borrower focussed and proportionate to things like the type of lending, its cost, Ms J 's level of reliance on it and how long it would take her to sustainably pay it off.

Before agreeing the overdraft and the increases that followed, I would have expected NatWest to look into Ms J's financial situation to find out whether the overdraft was likely to be affordable for her and something she'd be able to use in a way that was both affordable and sustainable. Unfortunately, as our investigator has explained, we don't know what NatWest based its lending decisions on for the period between the first overdraft decision in January 2003, all the way up to the one in October 2012. So it's simply not possible to say whether or not reasonable and proportionate checks were carried out.

Given that I can't say reasonable and proportionate checks were carried out between 2003 and 2012, I've also thought about what better checks would have been likely to have shown had they been carried out at the time. We have statements from between January 2010 and December 2012, but not from before. I've seen that Ms J was receiving a consistent level of monthly income of around £1,800 net in the three months before October 2012 limit increase. I've also seen that Ms J was only making limited use of her overdraft prior to the limit increase. She was always well within the agreed overdraft limit. So I can't fairly say I've seen enough to show or suggest that Ms J's financial situation was at real risk of or was in fact deteriorating.

I therefore don't think NatWest was likely to have made an unfair lending decision for the overdraft increase in October 2012.

For the June 2021 lending decision, when the overdraft limit was increased to £5,000, NatWest provided evidence that shows Ms J had a monthly income of around £3,500. NatWest also relied on information obtained from a credit reference agency, which didn't reveal any adverse information in her recent credit history, such as defaults or consistent arrears. NatWest also looked at how she was managing her existing accounts with NatWest, including any previous borrowing she'd had with them. It also used statistical data to work out whether the new credit was likely to be affordable.

Having reviewed the information NatWest gathered, I'm satisfied that the checks completed showed the new credit was likely to be affordable to Ms J. I say this because it showed Ms J had committed monthly spending each month of around £2,800, leaving her with sufficient disposable income, and there was no recent evidence of her having financial difficulty showing in her credit history. I've noted some occasional use of her overdraft when it was being relied on for a few days at a time, but I don't consider that either the frequency or level of that use was enough to give rise to any particular concerns. And what I can see about her income broadly supports what NatWest found when it checked. To comment briefly on one particular issue that was raised, I've also seen that Ms J was transferring funds to a savings account designated for a family member. I agree with our investigator that this tends to suggest she had some surplus funds at the time.

I've kept in mind that an overdraft is intended as a short-term or emergency borrowing facility. Given that Ms J was able to repay her overdraft fairly quickly after each time she dipped into it, she appears to have been relying on it in the way I would expect. Based on the evidence and information I've seen, I therefore don't think there's enough to suggest that she was getting into difficulties – or that NatWest ought to have taken action to get in touch with her about it in ways other than it's already done in the course of her being a NatWest customer.

For all these reasons, I don't think NatWest acted unfairly when approving the June 2021 overdraft increase.

Finally, I've thought about whether NatWest ought to have done more to support Ms J with her overdraft and the interest and charges that were being added to her account. I've seen

that NatWest kept Ms J informed of how much her overdraft was costing her by sending her annual statements showing its charges. This was taking place since 2015. And from early 2020 NatWest started writing to customers to make it clear that an overdraft was only recommended to be used for short-term borrowing purposes. It also signposted that they could get an in-branch financial health check or seek advice from a debt charity. I've also seen evidence suggesting that NatWest made at least four attempts to contact Ms J to try to discuss her overdraft – in October 2021, June 2022, November 2022 and December 2022 – but was unsuccessful.

All of this leads me to conclude that there's insufficient evidence to demonstrate that NatWest may have acted unfairly or unreasonably in some other way.

I therefore don't find that Ms J's relationship with NatWest is currently unfair. It's not clear enough to me that NatWest created unfairness in its relationship with Ms J by lending to her irresponsibly. And I don't find NatWest treated Ms J unfairly in any other way, based on what I've seen.

I acknowledge this outcome will be disappointing for Ms J, particularly in view of the difficult personal circumstances she's told us about, which I was sorry to hear of. But I hope she and those representing her will understand the reasons for my decision and that Ms J will at least feel her concerns have been listened to.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 9 May 2025.

Michael Goldberg

Ombudsman