

The complaint

Mrs H complains that National Westminster Bank Plc ('NatWest') irresponsibly provided her with an overdraft that she couldn't afford to repay sustainably.

What happened

In June 2011 NatWest agreed to provide Mrs H with an overdraft facility of £300.

Mrs H, who started her complaint with NatWest in June 2022, says that NatWest acted unfairly in providing her with the overdraft facility. She says it has affected her financial circumstances and was made worse by a health condition she was diagnosed with recently. It has also caused her and her husband considerable distress due to the long-term impact on their joint financial welfare.

NatWest says that it had followed its correct procedures in providing the overdraft facility – and it had continued to review how the overdraft was being used.

NatWest also said that part of Mrs H's complaint had been made too late. This was because the decision to provide the overdraft and apply some of the interest and charges had happened more than six years before Mrs H started her complaint. NatWest also said that Mrs H ought reasonably to have known she might have cause to complain about the overdraft on each occasion that interest and charges were added to the account. NatWest also said Mrs H ought to have known she had cause for making a complaint more than three years before she started it. And that meant she was too late under the time limit rules that this service must apply as part of our complaint handling rules.

Our investigator agreed that Mrs H had brought part of her complaint too late under the time limit. This was because the decision to provide the overdraft facility had been made more than six years before the complaint had been raised and interest and charges had also been added during this time. But any interest and charges added within six years of the complaint being raised would be within the six-year part of our time limit rules. And she thought the complaint was too late under the three-year part of our time-limit rules because Mrs H had made a complaint about another financial product she'd taken out with NatWest some years ago.

However, our investigator also thought Mrs H'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, she couldn't find sufficient evidence or information to make an uphold finding.

As Mrs H didn'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.

There are time limits for referring a complaint to the Financial Ombudsman Service, and NatWest has suggested that part of this complaint was referred to us too late because the decision to lend took place more than six years ago, as did the incurring of some of the overdraft charges and interest. Our investigator 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. Our investigator explained why – and I agree – there aren't any exceptional circumstances that apply to this complaint that would explain why the complaint has been made too late. I would add that I am sorry to hear of Mrs H's health situation and the impact this had on her financial welfare over the years. But unfortunately it's not something I'm able to treat as being an exceptional circumstances under the rules I must apply.

Seeing as I've decided not to uphold Mrs H's complaint and given the reasons for this (which I'll go on to explain), whether Mrs H referred her complaint about the specific lending decision that happened more than six years ago in time or not has no impact on that outcome. Like our investigator, I think Mrs H's complaint should be considered more broadly than just the decision to grant the credit, seeing as she has complained not just about the decision to lend but also the impact this had on her over the course of her relationship with NatWest. Mrs H's complaint in this respect can therefore reasonably be interpreted as a complaint about the fairness of her relationship with NatWest. I acknowledge that NatWest may still not agree we can look at the complaint, but given the outcome I have reached, 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 Mrs H'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 (Mrs H), 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 Mrs H has complained about, I therefore need to think about whether NatWest's decision to provide Mrs H with overdraft credit 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.

Mrs H'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, Mrs H's level of reliance on it and how long it would take her to sustainably pay it off.

Before agreeing the overdraft, I would have expected NatWest to look into Mrs H'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. The overdraft limit of £300 was relatively modest and Mrs H was already a NatWest customer and therefore known to NatWest. I haven't seen full details of what NatWest saw at the time, although I understand that Mrs H's request for an overdraft facility was accepted by way of automatic checks. I don't want to make too many assumptions about what it saw, but I do know that NatWest carried out checks with a credit reference agency and then used statistical information to help it to decide if the credit was likely to be affordable for Mrs H. However, as things stand, I can't definitely say that NatWest carried out reasonable and proportionate checks at the time it agreed the overdraft facility.

I've next looked at the bank statements covering the period since 2011, when the overdraft was first applied to the account. I've noted how often Mrs H was making use of her overdraft. There were certainly periods when she was making heavy use of it – although she rarely went over the agreed overdraft limit. For the most part the account stayed in credit, without any consistent evidence to show or suggest that Mrs H's financial situation was at real risk of or was in fact deteriorating. And given that this wasn't the account she had her monthly salary paid into, it isn't surprising that the available credit was provided by payments received from other accounts with NatWest or were payments made by other individuals.

I appreciate that there were times – and it may even have been often – that Mrs H felt she was becoming financially stretched and juggling her finances to some degree. I've kept in mind, though, that an overdraft is intended as a short-term or emergency borrowing facility to be relied upon on such occasions. Given that Mrs H was able to repay her overdraft fairly quickly each after time she dipped into it, she appears to have been relying on it in the way I would expect. I therefore can't say 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.

To summarise, I think it was reasonable for NatWest to have approved the overdraft and to continue to provide it. I therefore don't find that Mrs H's relationship with NatWest is currently unfair. It's not clear enough to me that NatWest created unfairness in its relationship with Mrs H by lending to her irresponsibly. And I don't find NatWest treated Mrs H unfairly in any other way, based on what I've seen.

I acknowledge this outcome will be disappointing for Mrs H. But I hope she will understand the reasons for my decision and that she 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 Mrs H to accept or reject my decision before 26 March 2025.

Michael Goldberg

Ombudsman