

Complaint

Mrs H has essentially complained that National Westminster Bank Public Limited Company ("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 Mrs H's overdraft had become unsustainable for her by January 2019 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 Mrs H has effectively agreed with the investigator's findings on matters, this decision is only looking at whether NatWest acted fairly and reasonably towards Mrs H from January 2019 onwards. So while NatWest remains dissatisfied regarding conclusions reached prior to this period, as I'm not looking at the period prior to January 2019, 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 Mrs H's overdraft from January 2019. By this point, it was evident that Mrs H's overdraft had become unsustainable for her and that continuing to provide it was likely to cause significant adverse consequences.

Mrs H's account statements leading up to this period shows that Mrs H had been hardcore borrowing and hadn't seen meaningful credit balances for an extended period of time. In other words, she was using her overdraft over an extended period and in a way which suggested that she would struggle to return to credit from her income or any savings.

It also appears to be the case that Mrs H was on a low income. I'm mindful that the savings accounts statements NatWest has provided appear to show that she was trying to budget. But by January 2019 the vast majority of the funds she'd built up had been depleted.

However, I'm mindful that in this case Mrs H was also spending a significant portion of time towards the upper end of her overdraft limit. Furthermore, Mrs H was also exceeding her

overdraft in the lead up to this period too.

Overall I think that by January 2019, NatWest ought to have realised that Mrs H was struggling to manage 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 Mrs H with forbearance, even if this meant taking corrective action in relation to the facility. This is particularly as Mrs H had already demonstrated an ongoing inability to reduce and clear the overdrawn balance.

All of this means that NatWest should have realised that Mrs H 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 referral to the number of letters it sent Mrs H 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. I take the referral to these letters as NatWest effectively arguing that Mrs H should have reached out if she was struggling.

I've carefully thought about the letters that were sent. But the mere fact that NatWest felt the need to send Mrs H so many letters means that it recognised there was a problem with the way that Mrs H was using her overdraft. Indeed, if I take such an argument, relating to the letters, to its logical conclusion, I see it as being that NatWest acted fairly and reasonably towards Mrs H because it sent her letters as it had identified that her overdraft usage had become a problem.

But because Mrs H 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 Mrs H didn't contact NatWest, 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 there wasn't anything in Mrs H's account usage suggesting that her circumstances had improved.

So as NatWest didn't react to not receiving a response to letters that Mrs H's problematic overdraft usage had triggered and instead continued charging in the same way, I think that it failed to act fairly and reasonably.

Mrs H ended up paying additional interest, fees and charges on her overdraft at a time when she was already experiencing difficulty. So I think that Mrs H lost out because of what NatWest did wrong and that it should put things right.

I note that NatWest says that refunding Mrs H the interest that she paid provides her with an unfair advantage. It's not entirely clear what point that NatWest is making here. Nonetheless, I do accept that putting things right in this situation this many years after NatWest should have taken action is not straightforward.

I accept that rather than immediately preventing Mrs H from using the overdraft at all, NatWest could instead have taken steps to gradually reduce her overdraft limit from January 2019. I also accept that it didn't need to offer an interest free overdraft to Mrs H. However, speculating what NatWest may or may not have done, had it decided to act, in circumstances where all it did was send letters, a number of years later, is difficult a number of years later.

Taking into account my role to resolve complaints quickly and with the minimum of formality, bearing in mind that NatWest shouldn't have allowed Mrs H to continue using the overdraft in the same way and it didn't take any steps at all to actually help Mrs H, I'm satisfied that refunding the interest, fees and charges that she paid is fair and reasonable in this instance.

I don't agree that Mrs H is gaining an unfair advantage over customers who were legitimately charged for a service that they agreed to, that they could afford and most importantly where NatWest didn't do anything wrong when lending (and continuing to lend) to them.

In reaching my conclusions, I've also considered whether the lending relationship between NatWest and Mrs H might have been unfair to Mrs H 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 Mrs H 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 Mrs H

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mrs H's complaint for NatWest to put things right by:

- Reworking Mrs H's current overdraft balance so that all interest, fees and charges applied to it from January 2019 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made NatWest should contact Mrs H to arrange a suitable repayment plan, Mrs H 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 Mrs H'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 January 2019. NatWest can also reduce Mrs H'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 Mrs H 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 Mrs H's credit file. NatWest can also reduce Mrs H'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 Mrs H 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 Mrs H's complaint. National Westminster Bank Public Limited Company 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 Mrs H to accept or reject my decision before 1 May 2025.

Jeshen Narayanan
Ombudsman