

Complaint

Mrs B has complained about the overdraft charges National Westminster Bank Plc ("NatWest") applied to her current account. She's said the charges were applied unfairly as she was allowed to use her overdraft for a prolonged period and even when it was clear that she was struggling.

Background

NatWest provided Mrs B with an overdraft, which had a limit of £250, in February 2005. Mrs B's limit was increased in to £1,000.00 in September 2005.

Mrs B's complaint was looked at by one of our investigators. She explained that we could only look at Mrs B's complaint about the charges from 2018 onwards, as Miss B had complained to NatWest about the charges prior to 2018 at this point.

She also didn't think that NatWest had done anything wrong or treated Mrs B unfairly from 2018 onwards and so she wasn't recommending that the complaint be upheld. Mrs B disagreed with the investigator's assessment 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.

Having carefully considered everything provided, I'm not upholding Mrs B's complaint. I'll explain why in a little more detail.

Before I go any further, as this essentially boils down to a complaint that Mrs B was unfairly charged by being allowed to continue using her overdraft, I want to be clear in saying that I haven't considered whether the various amounts NatWest charged were fair and reasonable, or proportionate in comparison to the costs of the service provided. Ultimately how much a bank charges for services is a commercial decision. And it isn't something for me to get involved with.

That said, while I'm not looking at NatWest's charging structure per se, it won't have acted fairly and reasonably towards Mrs B if it applied this interest, fees and charges to Mrs B's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mrs B was experiencing financial difficulty. So I've considered whether there was an instance, or there were instances, where NatWest didn't treat Mrs B fairly and reasonably.

In other words, I've considered whether there were periods where NatWest continued charging Mrs B even though it ought to have instead stepped in and taken corrective measures on the overdraft as it knew, or it ought to have realised, that she was in financial difficulty.

I've looked through Mrs B's account statements throughout the period concerned. And I can't see that NatWest ought to have unilaterally taken corrective measures in relation to Mrs B's

overdraft. Mrs B did use her overdraft regularly. And Mrs B may argue that the fact that she did so, in itself, was an indication that NatWest ought to have taken action. But I think that it is far too simplistic to say that it automatically follows that someone was in financial difficulty simply because they were using a financial product that they were entitled to use.

I think it's important to look at overall circumstances of a customer's overdraft usage – particular in light of what this may suggest about their overall position. Therefore, in this case, I've considered Mrs B's incomings and outgoings as well as any overdrawn balance and thought about whether it was possible for her to have stopped using her overdraft, based on this. After all, if Mrs B was locked into paying charges because there was no prospect of her exiting her overdraft then her facility would have been unsustainable for her. So I've carefully considered whether this was the case.

The first thing for me to say is that this isn't a case where a customer was advanced an overdraft facility which had a limit that was well in excess of their monthly income. Indeed, I'm mindful that not only were the credits going into Mrs B's account sufficient to clear the overdraft within a reasonable period of time, but Mrs B had savings which could have cleared this balance for a significant period of the time that she's complaining about.

I note that Mrs B has said that the funds in her savings account were proceeds from the sale of a house and were required to pay other creditors. However, the balance in Mrs B's account fluctuated over a period of three years. Furthermore, given Mrs B had a balance in her savings account which was sufficient to clear her overdraft, it's difficult for me to accept that she couldn't use the funds to repay what she owed NatWest. Equally, I can't say that it was unfair for NatWest to charge Mrs B for using her overdraft, in circumstances where Mrs B says she decided to repay other creditors.

I'm therefore satisfied that this isn't a case where the borrower had no reasonable prospect of clearing their overdrawn balance – although I do accept that Mrs B is likely to have met the criteria of someone who displayed a pattern of repeat use of their overdraft. That said, even though this is the case, the question here is whether Mrs B's use of her overdraft was causing her to incur high cumulative charges that were harmful to her. And having considered matters, I don't think that this is the case.

To explain, while I'm not seeking to make retrospective value judgements over Mrs B's expenditure, nonetheless there are also significant amounts of non-committed, non-contractual and discretionary transactions going from Mrs B's account. Indeed, it's fair to say that a significant proportion of Mrs B's expenditure at the time was discretionary.

Equally, I can't see anything to indicate that the charges were causing her harm. For example, I can't see that Mrs B was borrowing from unsustainable sources in order to meet these charges or that her borrowing was increasing exponentially. I accept neither of these things in themselves (or when taken together) mean that Mrs B wasn't experiencing difficulty. But I don't agree that Mrs B was reliant on credit. She appears to have been able to make her commitments without using her overdraft. However, she was choosing to use her overdraft to make discretionary transactions.

Given the repeat usage letters Mrs B is likely to have been sent by NatWest, I think that she ought to have realised that how much she was paying for this. I also say all of this while mindful that I've seen no indication that any of the potential signs of financial difficulty contained in the regulator's guidance on financial difficulty (set out in CONC 1.3) – such as Mrs B failing to meet consecutive payments to credit, borrowing from payday or other high-cost lenders, or Mrs B failing to meet her commitments out of her disposable income – were present in Mrs B's circumstances at any time prior to her complaint.

Overall and having considered everything, I don't think that it was unreasonable for NatWest to have proceeded adding the charges that it did. This is particularly bearing in mind the consequences of NatWest taking corrective action, in the way that it would have done had it acted, would have been disproportionate.

I say this because I don't think that it would have been proportionate for NatWest to demand that Mrs B immediately repay her overdraft, in circumstances where there was a realistic prospect of Mrs B clearing what she owed in a reasonable period of time. This is especially given it is likely to have resulted in adverse credit information being recorded against Mrs B and this will have impacted on her ability to access other credit.

So overall and having considered everything, I'm satisfied that NatWest did not charge Mrs B in circumstances where it ought to have realised that it was unfair to do so.

In reaching my conclusions, I've also considered whether the lending relationship between NatWest and Mrs B might have been unfair to Mrs B under s140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've already explained, I'm satisfied that NatWest did not lend irresponsibly or act unfairly in allowing Mrs B to use her overdraft in the way that she did bearing in mind all of the circumstances. And I haven't seen anything to suggest that s140A CCA would, given the facts of this complaint, lead to a different outcome here.

As this is the case, I'm not upholding Mrs B's complaint. I appreciate that this will be very disappointing for Mrs B. 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 B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 31 March 2025.

Jeshen Narayanan
Ombudsman