

The complaint

With the help of a professional representative (PR) Mr G complains that National Westminster Public Limited Company (NatWest) lent to him irresponsibly. For ease, I've referred to the PR's actions as being those of Mr G.

What happened

Mr G has had a current account with NatWest for many years. In 2006, he applied for and received an overdraft of £50, which was increased to £250 in December 2007. There appears to have been some small reductions and increases up to 2017, but his limit was still £250 in January 2018. From there, it was increased many times as follows (where more than one increase took place in one month, I've shown the highest limit in that month):

Date	Event	New limit
June 2018	Overdraft Limit Increase (OLI) 1	£500
July 2018	OLI2	£900
September 2018	OLI3	£1,100
October 2018	OLI4	£1,250
March 2019	OLI5	£1,900
April 2019	OLI6	£2,200
August 2019	OLI7	£2,400
September 2019	OLI8	£3,000
October 2019	OLI9	£3,200
January 2020	OLI10	£4,500

On 9 April 2024, Mr G complained to NatWest. He said it had failed to carry out proper checks when agreeing to lend to him and if it had, it wouldn't have agreed such a high overdraft limit. He said the high limit (and the interest and charges applied as a result) meant that he relied on the overdraft for his day-to-day expenses. This led to his credit relationship with the bank becoming unfair as described in Section 140A of the Consumer Credit Act 1974 (s.140).

NatWest looked into his complaint and said that more than six years had passed since many of the lending decisions had been made. It said that those lending decisions had taken place too long ago for it to consider under the complaint handling rules of the Financial Conduct Authority (FCA). It looked into the increases agreed since April 2018 – six years before the complaint was raised - and said that it had conducted reasonable checks. NatWest felt it had not lent irresponsibly so it didn't uphold Mr G's complaint.

Mr G didn't accept NatWest's response, so he referred his complaint to our service and one of our investigators looked into it. Our investigator said that the complaint had been brought in time as it wasn't just about the lending decisions but also about the fairness of the credit relationship. But he agreed with NatWest that it had conducted reasonable checks and felt the overdraft was affordable for Mr G. He didn't uphold the complaint.

Mr G didn't agree with our investigator's opinion of the complaint. He referred to regulations set out in the Conduct of Business Sourcebook (CONC) which set out the expectations for

banks with regards to monitoring their customers' accounts. As there was no agreement, it has been passed to me for a 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 thinks this complaint was referred to us too late. Our investigator explained why he didn't, as a starting point, think we could look at a complaint about the lending decisions that happened more than six years before the complaint was made. But he also explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in s.140, and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

For the avoidance of doubt, I agree with our investigator that I have the power to look at the complaint on this basis. Mr G has complained that his credit relationship was unfair as he says the increases were not properly assessed or monitored. This led to him paying more in interest than he could afford and he was unable to reduce the debt. I acknowledge 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 Mr G's complaint can be reasonably interpreted as being about the fairness of his relationship with NatWest, relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974.

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 (Mr G), 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 Mr G has complained about, I need to consider whether NatWest's decision to lend to him and increase his overdraft, or its later actions, created unfairness in the relationship between the parties such that the bank ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr G's relationship with NatWest is therefore likely to be unfair if it didn't carry out proportionate affordability checks and doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.

I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did NatWest carry out reasonable and proportionate checks to satisfy itself that Mr G was in a position to sustainably repay the overdraft?
- If not, what would reasonable and proportionate checks have shown at the time?
- Did NatWest make a fair lending decision?
- Did NatWest act unfairly or unreasonably towards Mr G in some other way?

NatWest had to carry out reasonable and proportionate checks to satisfy itself that Mr G would be able to repay the credit sustainably. It's not about NatWest assessing the likelihood of it being repaid, but it had to consider the impact of the credit on him.

CONC 5.2A.12(1) says a business should consider the customer's ability to make repayments under the agreement... "*within a reasonable period*", from income or savings.

There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the credit, and the overall circumstances of the borrower.

Did NatWest carry out reasonable and proportionate checks?

Limits agreed before 2018

Mr G first applied for an overdraft in 2006 for £50 which was increased and decreased a few times, but never exceeded £250 until 2018. Due to the time elapsed, we don't have details of the checks NatWest carried out. I'm not surprised by that as businesses are not obliged to retain records indefinitely.

But we do have copies of Mr G's bank statements dating back to January 2006, so I've reviewed those to see if there are any signs of unfairness that NatWest ought to have done something about. At the start of the period, I can see that Mr G received an income of around £1,350 per month and, while he did use the overdraft, his account ran mainly in credit. His income increased over the years – by 2018, he was earning in excess of £2,000 a month and his account was largely in credit with small overdrawn positions seen.

So I'm satisfied that the overdraft limits agreed for Mr G prior to June 2018 were suitable and affordable for him. There is no sign of Mr G experiencing financial difficulties or incurring high charges as a result of his use of the facility. I've seen nothing to suggest NatWest treated him unfairly in this part of the relationship.

Limits agreed since June 2018

There is no dispute that this service has the power to look at these lending decisions as they all took place in the six-year period prior to Mr G raising his complaint.

Between June and October 2018, Mr G applied for increases in his overdraft on several occasions – starting with an increase to £500 and up to £1,250. NatWest says that on each occasion that Mr G applied for a limit increase it used information he provided and it held already, along with information obtained from a credit reference agency to assess his application.

Mr G declared a monthly income of £2,230 with mortgage/rent of £585. NatWest could see these going through his current account. His credit file didn't show any issues such as defaults or County Court Judgements (CCJs).

I've not seen anything in the information provided by each party to the complaint – including Mr G's bank statements – which leads me to think that NatWest ought to have had any concerns about Mr G's ability to afford an overdraft of up to £1,250. His account continued to move back into credit each month and, looking at the usage of the account, he had sufficient disposable income to reduce and repay the overdraft quickly if he wished to do so. I've not seen any signs that Mr G was experiencing financial difficulties that I would have expected NatWest to have identified or reacted to.

From March 2019, Mr G applied for 16 increases in his limit taking it from £1,500 to £4,500 in nine months. In terms of the information assessed by NatWest when it looked at his applications, Mr G's situation was similar throughout. He declared an income of around £2,250 per month. His rent varied slightly but remained less than £600. His credit file showed no defaults or CCJs. Mr G had run his account within limits and had no excesses or returned payments. Most of Mr G's expenditure was non-essential spending which meant he could have reduced or repaid his overdraft within a reasonable period of time had he wished to. I don't think NatWest's decisions to agree the overdraft limits for him were unfair.

Did NatWest act unfairly or unreasonably towards Mr G in some other way?

Monitoring of the account

Mr G has referred to regulations CONC which set out the expectations for banks with regards to monitoring their customers' accounts.

CONC 5D.2 says:

“A firm must establish, implement and maintain clear and effective policies, procedures and systems to:

(1) monitor and review periodically the pattern of drawings and repayments of each of its customers under an arranged overdraft or an unarranged overdraft, and other relevant information held by the firm; and

(2) identify as early as possible, by reference to an appropriate collection of factors that take account of any relevant information held by the firm, any customers in respect of whom there is a pattern of repeat use, and then sub-divide those customers into the following two categories:

(a) customers in respect of whom there are signs of actual or potential financial difficulties;

(b) all other customers who show a pattern of repeat use (that is, all customers within CONC 5D.2.1R(2) who are not in category (a)).”

CONC 5D.2.3(5) sets out indicators which *may* be considered as signs of financial difficulty alongside repeated use of an overdraft and they include *“an upward trend in a customer's use of the overdraft over time, having regard to one or both of...the number of days of use per month; and the value of the customer's borrowing”*.

CONC 5D.3 sets out what a bank must do if it identifies repeat use of an overdraft where a customer is showing signs of actual or potential financial difficulty.

From July 2019, Mr G had increased his overdraft limit very quickly and was using it consistently. So I think at the next review, this could have been considered as a sign of financial difficulty had the circumstances remained the same.

Banks generally review accounts on an annual basis. Given the last limit increase on Mr G's

account was January 2020, I've considered the next annual review was likely to be January 2021 and I've thought about what NatWest would have seen at that time.

On 8 September 2020, Mr G received a credit of around £6,200 and on 14 September 2020 he paid around £1,600 to a PR which dealt with Payment Protection Insurance (PPI) mis-sale claims. So it appears he'd had a successful PPI claim which gave him £4,600 or so. This meant when Mr G's salary came in, he was in credit. I think this gave him the opportunity to repay or significantly reduce the overdraft.

Other than the fee to the PR, I've not identified any other significant expense using the extra money Mr G received as a result of the PPI refund. Rather there are significant numbers of small discretionary expenditure such as pubs, restaurants and retail shopping. Due to the pattern of expenditure, I don't think I'd have expected NatWest to consider that Mr G was in financial difficulty in January 2021 – he could have cleared the overdraft but had chosen not to. He still appeared to have sufficient disposable income to repay the overdraft in a reasonable period of time if required to do so.

By January 2022, Mr G's account hadn't seen a credit balance, other than for a few days during a car sale and purchase in June 2021. He was using his whole limit every month and even though his income had increased to around £2,400 a month, it wasn't sufficient to return the account to credit. But Mr G hadn't increased his borrowing – there was no upward trend (or other signs of difficulty) as described in CONC. Mr G still had a significant amount of non-essential expenditure going through his account which, if he wished to, would have enabled him to repay the overdraft over a reasonable period of time.

So in my view, while it's clear Mr G was persistently using his overdraft, I don't think he fell into the category of actual or potential financial difficulties as described by CONC. Mr G was in receipt of a steady income, didn't exceed his limit or have items returned unpaid, and I've not seen evidence of short-term finance taken elsewhere – such as payday loans.

I've considered what I would expect NatWest to have done in view of Mr G's repeat use, bearing in mind that I wouldn't have expected it to categorise him as being in financial difficulties. I can see that the bank has written to Mr G several times about his overdraft use – eight times between June 2020 and October 2024 – explaining the costs he was incurring and asking him to speak to it if he's struggling. He hasn't responded to those letters.

So I don't think NatWest acted unfairly or unreasonably towards Mr G. While he hasn't responded to While he hasn't responded to NatWest's letters so far, I would encourage him to reach out to the bank for help whether or not he feels he's experiencing difficulties.

My final decision

My final decision is that I don't uphold Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 21 May 2025.

Richard Hale
Ombudsman