

Complaint

Mr P has complained about the overdraft charges National Westminster Bank Public Limited Company ("NatWest") applied to his two current accounts. He's effectively said the charges applied to his accounts were excessive and unfair and as he had to borrow further to repay them, they led to ongoing difficulty going forward.

Background

Mr P applied for an overdraft of £100 on his first account with NatWest in June 2008. The limit on it was increased to £200 in April 2009 and then £550 in May 2015. Mr P's second account had an overdraft with a limit of £550 added in May 2015. The limit on the second account was never increased.

Mr P had difficulties with both accounts from late 2016 onwards and in early 2017 NatWest took the decision to default both accounts. As more than six years have passed since the defaults, NatWest is no longer reporting any information on these accounts to credit reference agencies.

In July 2024, Mr P complained to NatWest saying that the fees applied to his accounts were unfair as he was given overdrafts he couldn't afford and as he had to borrow further to repay the fees, they led to ongoing difficulty going forward.

NatWest didn't uphold Mr P's complaint. As far as it was concerned, it didn't do anything wrong when providing the overdrafts or adding the charges that it did. Mr P remained dissatisfied at NatWest's response and referred his complaint to our service.

When Mr P's complaint was referred to our service, NatWest told us that we couldn't consider it as it was made too late. One of our investigators reviewed what Mr P and NatWest had told us. He reached the conclusion that we could look at the entire period Mr P had his overdrafts for but thought that as NatWest hadn't charged any interest on the overdrafts in the six years prior to Mr P making his complaint, it wouldn't be fair and reasonable to require it to compensate him.

Mr P disagreed with the investigator 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.

The time limits for making a complaint to our service

There are time limits for referring a complaint to the Financial Ombudsman Service. NatWest has argued that Mr P's complaint was made too late because he complained more than six years after the charges on the overdrafts were applied, as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

The rules I must apply say that, where a business doesn't agree, I can't look at a complaint made more than six years after what's been complained about, or if later, more than three years after the complainant (in this case, Mr P) knew, or should really have known they had reason to complain. Dispute Resolution rule 2.8.2R can be found online.

Mr P has complained about the charges that were applied to what, he says, were the unaffordable overdrafts on his accounts. This means Mr P had, at least, six years from when the charges in question were applied December 2016 at the latest (on the first account) and March 2017 (on the second account) - in order to complain.

Mr P didn't complain until July 2024. I'm therefore satisfied that Mr P clearly complained more than six years after all of the charges in question were added to his accounts.

However, DISP 2.8.2R (2)(b) can potentially provide a consumer with longer than six years to complain, as long as they complained within three years of when they were aware, or they ought reasonably to have been aware, they had cause to. So I've considered whether DISP 2.8.2R (2)(b) provides Mr P with longer to complain here.

I want to start by saying that I think that in order for it to be the case that Mr P was aware, or he ought reasonably to have been aware of his cause for complaint, it would have to be the case that he was aware or ought reasonably to have been aware that:

- there was a problem – in this case his overdraft charges were excessive and therefore unfair;
- the overdraft charges caused him loss;
- another party's actions (or its failure to act) may have caused the loss; and
- the other party was NatWest.

Mr P's account statements would have made him aware of the charges he is now complaining about when they were being applied. And he certainly would have been aware of them by the time that the accounts were defaulted in 2017. I think that in knowing about the charges themselves Mr P had enough information to decide whether he considered these charges to be excessive and whether he thought NatWest applying them in the circumstances that it did was unfair.

I also think that Mr P would have known that these charges were causing him a loss given what he has said about struggling to repay them and borrowing further in order to do so. Equally, as it was NatWest that was charging Mr P, I think that he ought reasonably to have realised that NatWest might have been responsible for his problem too. I'm therefore satisfied that Mr P ought to have been aware of his cause to complain at the time that these charges were applied.

Three years from when each of the respective charges were applied does not provide Mr P with longer (than six years from when the charges were applied) to complain. So I don't think that DISP 2.8.2R (2)(b) does apply in this case and as he complained more than six years after the respective events he is complaining about took place, Mr P complained too late.

I can look at a complaint made outside of the time limit if I'm persuaded that this was because of exceptional circumstances. However, Mr P hasn't told us about anything that would have stopped him from complaining in time. As this is the case, I don't think that exceptional circumstances do apply in this case.

Section 140A of the Consumer Credit Act 1974 and its relevance to this complaint

Our investigator also explained why it was reasonable to interpret Mr P's complaint as being one alleging that the lending relationship between Mr P and NatWest was unfair to Mr P as described in s140A of the Consumer Credit Act 1974 ("CCA"). He also explained why this complaint about an allegedly unfair lending relationship had been made in time.

For the sake of completeness, I wish to confirm that I'm in agreement with the investigator that Mr P's complaint should be considered more broadly than just the individual charges or lending decisions. I consider this to be the case as Mr P has not only complained about the circumstances behind the application of the individual charges, but also the fact NatWest's failure to act during the periods he alleges it was applying these excessive and unfair charges caused ongoing hardship.

In deciding what is fair and reasonable in all the circumstances of Mr P's case, I am required to take relevant law into account. As I'm satisfied that Mr P's complaint can be reasonably interpreted as being about that his lending relationship with NatWest was unfair to him, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (NatWest) and the debtor (Mr P), 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. S140B 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.

Application to Mr P's complaint

NatWest has provided copies of Mr P's current account statements for both of his accounts. These show that Mr P wasn't charged any interest after December 2016 on his first account and interest ceased to be added on the second account from March 2017. Furthermore, NatWest is no longer reporting any information regarding these overdrafts to credit reference agencies. This effectively means that there is no unfairness to remedy on the first account from December 2016 onwards and no unfairness to remedy on the second account from March 2017.

It is possible that any such unfairness may have existed earlier. For example, it is possible that NatWest applied charges in circumstances where it shouldn't have done so prior to December 2016 and March 2017. However, just because there may have been unfairness in a debtor's relationship with a creditor doesn't automatically mean it would be fair to refund all of the interest and charges on the account from when that unfairness began.

In *Smith v Royal Bank of Scotland Plc*¹, the Supreme Court pointed out that remedies for unfair relationships are at the court's discretion and the court may deny a remedy where the

¹ *Smith and another v Royal Bank of Scotland plc* [2023] UKSC 34.

claimant had knowledge of the facts relevant to their claim, but substantially delayed making that claim.

There is no fixed period of delay that brings this principle into play, but the Supreme Court approved the District Judge's comment in the case that a court would be slow to remedy unfairness in a situation where the claimant delayed more than six years after knowing the facts.

Therefore, in determining a fair and reasonable outcome to Mr P's complaint and what is fair compensation, it's important for me to take this into account as relevant law. I consider that a complainant would have knowledge of the facts that caused any unfairness when they became aware of a problem and that they were suffering a loss.

Where a consumer had knowledge of the relevant facts, our typical approach to cases of this nature is for the respondent firm to refund to them, the interest and charges they paid for the six years before they made their complaint. 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 the consumer, along with 8% simple interest on the overpayments from the date they were made until the date of settlement.

In the section of this decision relating to time limits, I've already explained why I think that Mr P had enough to know whether he considered the overdraft charges excessive and unfair and that he knew he was suffering a loss as NatWest continued to charge him and he had to borrow elsewhere in order to pay these charges. I'm satisfied that this is sufficient for Mr P to have had knowledge of the relevant facts. However, Mr P didn't do anything about this until he complained in July 2024. So I think it's right that any refund of interest and charges should be limited to the six-year period prior to Mr P making his complaint.

As I've explained, NatWest didn't charge Mr P any interest in the six years prior to him making his complaint. Furthermore, it is no longer reporting any information regarding these overdrafts to credit reference agencies. So this means that even if I were to have found that any unfairness began earlier than July 2018 (which is six years prior to Mr P making his complaint), which may or may not be the case, I still wouldn't have required NatWest to have compensated Mr P. This is because I think that he had knowledge of the facts relevant to his claim, but substantially delayed making that claim. As this is the case, I don't think that it would be fair and reasonable to require NatWest to do anything in this instance.

Finally, I've seen that Mr P is unhappy at the way that NatWest has handled his complaint. For example, I've seen that Mr P feels that NatWest was trying to do everything it could to stop him referring his complaint here. However, Mr P was able to refer his complaint here and I don't see how he could have lost out as a result of NatWest's handling of matters relating to his complaint.

In any event and most importantly, complaint handling isn't an activity which falls within my jurisdiction. Ultimately, it is the regulator which monitors firms' actions in relation to the complaint handling rules and which deals with any non-compliance in this area. So while I appreciate that Mr P is unhappy at the way NatWest handled his complaint, I'm afraid that this isn't a matter I can consider or award him compensation for.

Overall and having considered everything, while I can understand Mr P's sentiments and appreciate why he is unhappy, I'm satisfied that it wouldn't be fair and reasonable in all the circumstances of this complaint for me to require NatWest to pay Mr P compensation. Therefore, I'm not upholding this complaint. I appreciate this will be very disappointing for Mr P. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 8 July 2025.

Jeshen Narayanan
Ombudsman