

Complaint

Miss S has complained about the overdraft charges National Westminster Bank Public Limited Company (“NatWest”) applied to her current account. She’s effectively said the charges applied to her account were unfair as she shouldn’t have been given the overdraft and this caused ongoing financial difficulty.

Background

Miss S originally applied for an overdraft in November 2018. Miss S’ application was accepted and she was provided with an overdraft with a limit of £250. In February 2019, the overdraft limit was increased to £500.

In January 2025, Miss S complained saying that NatWest shouldn’t have given her this overdraft and doing so caused ongoing difficulty as charges were applied even when she was unable to afford them.

NatWest didn’t uphold Miss S’ complaint. It did not think that it had done anything wrong or treated Miss S unfairly. Miss S remained dissatisfied after NatWest’s response and referred her complaint to our service. When Miss S’ complaint was referred to our service, NatWest told us that we couldn’t consider part of it as it was made too late.

One of our investigators reviewed what Miss S and NatWest had told us. He reached the conclusion that we could look at the entire period Miss S had her overdraft for. However, he wasn’t persuaded that NatWest had acted unfairly by providing an overdraft, increasing the limit, or allowing Miss S to use her overdraft in a way that was unsustainable or otherwise harmful. So the investigator didn’t think that Miss S’ complaint should be upheld.

Miss S 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.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. NatWest has argued that Miss S’ complaint was made too late because she complained more than six years after the decision to provide the overdraft and some of the charges on the overdraft were applied, as well as more than three years after she ought reasonably to have been aware of her cause to make this complaint.

Having carefully considered everything, I’ve decided not to uphold Miss S’ complaint. Given the reasons for this, I’m satisfied that whether Miss S’ complaint about some of the specific charges applied was made in time or not has no impact on that outcome.

Having considered matters, I'm satisfied that it is reasonable to interpret Miss S' complaint as being one alleging that the lending relationship between Miss S and NatWest was unfair to Miss S as described in s140A of the Consumer Credit Act 1974 ("CCA"). I consider this to be the case as Miss S 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 she alleges it ought to have seen she was experiencing difficulty caused ongoing hardship.

I'm therefore satisfied that Miss S' can therefore reasonably be interpreted as a complaint that the lending relationship between herself and NatWest was unfair to her. I acknowledge the possibility that NatWest may still disagree that we are able to look at the whole of Miss S' complaint, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Miss S' case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Miss S' complaint can be reasonably interpreted as being about that her lending relationship with NatWest was unfair to her, 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 (Miss S), 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.

Given Miss S' complaint, I therefore need to think about whether NatWest providing Miss S with an overdraft, increasing her limit or allowing her to use the overdraft in the way that it did, resulted in the lending relationship between Miss S and NatWest being unfair to Miss S, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove any such unfairness.

Miss S' relationship with NatWest is therefore likely to be unfair if it irresponsibly provided the overdraft or allowed Miss S to continue using her overdraft in circumstances where it ought reasonably to have realised that the facility had become unsustainable or otherwise harmful for her. And if this was the case, NatWest didn't then remove the unfairness this created somehow.

I've therefore considered whether this was the case.

NatWest's initial decision to provide Miss S with an overdraft for £250 and then increase the limit on it to £500

We've set out our general approach to complaints about unaffordable/irresponsible lending -

including the key rules, guidance and good industry practice - on our website. And I've referred to this when considering Miss S's complaint.

NatWest needed to make sure that it didn't lend irresponsibly. In practice, what this means is NatWest needed to carry out proportionate checks to be able to understand whether Miss S would be able to repay what she was being lent before providing any credit to her.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

NatWest says that it will have obtained some information on Miss S' income and her expenditure before deciding to lend to her. It says that this will have been cross-referenced against information it obtained on the funds going into Miss S's main account and her existing credit commitments which it obtained from credit reference agencies.

Miss S's overdraft was an open-ended (running account) agreement (in other words, while NatWest was required to periodically review the facility, there was no fixed end date) where there was an expectation that she'd repay what she borrowed plus the interest due within a reasonable period of time.

CONC didn't (and still doesn't) set out what a reasonable period of time was. So I think it's important to note that a reasonable period of time will always be dependent on the circumstances of the individual case. Although it's fair to say that overdraft limits of £250 and £500 will have required relatively low credits in order to clear the full amount that could have been owed within a reasonable period of time.

The information that NatWest has provided suggests that NatWest believed Miss S was in receipt of at least £1,400.00 a month at the time of her applications. Having reviewed her bank account statements there appear to be credits into her account that are commensurate with this at this time. Taking into account Miss S' account credits as well as the amount that needed to be repaid should Miss S owe £250 and/or £500, I think that NatWest was entitled to conclude that Miss S had sufficient funds to cover sustainable credits to her overdraft as well as also cover whatever regular monthly living costs she may have had.

This is especially the case in circumstances where Miss S didn't have any significant adverse information – such as defaulted accounts or county court judgments – recorded against her. I've seen what Miss S has said about having other credit at this stage. But there isn't anything prohibited, or even particularly unusual, about a lender agreeing to provide credit to an individual that has some existing credit. So I don't think that this in itself means that Miss S shouldn't have been lent to.

Furthermore, while I've noted what Miss S has said about incurring unarranged overdraft charges prior to being given this overdraft, I don't think that this was indicative of a problem. I say this as Miss S have been incurring unarranged overdraft fees as she didn't have an agreed overdraft.

When Miss S applied for an overdraft, unarranged overdraft charges and/or returned payment fees (which Miss S will have instead occurred for making payments that she didn't

have sufficient funds for) were far more expensive than arranged overdraft charges. So NatWest providing Miss S with an overdraft, which had a low limit and on the face of things appears to have been affordable, was always likely to be cheaper for Miss S than refusing her application and Miss S continuing to attempt payments in the way that she had been previously.

As this is the case and bearing in mind the low credits required to clear balances of £250 and £500 within reasonable period of time, I'm not upholding Miss S' complaint on the basis that she should not have been provided with an overdraft in November 2018 or the limit increase in February 2019.

Did NatWest unfairly allow Miss S to continue using her overdraft in a way that was unsustainable or otherwise harmful for her?

Before I go any further, as this aspect of Miss S' complaint essentially boils down to a complaint that Miss S was unfairly charged as a result of 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 its 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 Miss S if it applied this interest, fees and charges to Miss S' account in circumstances where it was aware, or it ought fairly and reasonably to have been aware that there was a clear reason it would have been unfair to do so. I've therefore considered whether such a reason existed which would have resulted in NatWest charging Miss S unfairly.

Having looked through the statements NatWest has sent, it's clear that Miss S has been using her overdraft since it was granted to her. I'm therefore satisfied that there can be no dispute that Miss S was using her overdraft over the period of time she's had it. Miss S' arguments appear to suggest that this in itself means that her complaint should be upheld.

However, Miss S' overdraft was arranged and an open-ended agreement credit agreement. This means that Miss S had an agreement to use her overdraft and as a result she was entitled to use it without having to reapply to do so. Therefore, Miss S using her overdraft in the period that she had it doesn't automatically mean that her complaint should be upheld.

That said, I do accept that the rules, guidance and industry codes of practice all suggest that prolonged and repeated overdraft usage can sometimes be an indication of financial difficulty. However, it isn't always the case that prolonged and repeated overdraft usage by a customer will always mean that they are, as a matter of fact, in financial difficulty. Indeed, if that were automatically the case, there would be an outright prohibition on revolving credit accounts being open ended, rather than there being a requirement for a lender to review how the facility is being used.

It's also worth saying that one such instance where a lender would be expected to act is where it was clear that the customer was experiencing financial difficulty. Nonetheless, it would need to be objectively clear to the lender, rather than a matter open to interpretation, that the overdraft charges were clearly making things worse and they were harmful as a result.

I've therefore considered whether NatWest acted fairly and reasonably towards Miss S, in this light. In other words, I've considered whether there were periods where NatWest continued charging Miss S 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 he was in financial difficulty.

Having looked through Miss S' account statements throughout the period concerned, I can't see that NatWest ought reasonably to have realised that Miss S was experiencing financial difficulty to the extent that it would have been fair and reasonable for it to have unilaterally taken corrective measures in relation to Miss S' overdraft.

I'll explain why I think this is the case in a little more detail.

To begin with, I can't see Miss S notified NatWest that she was struggling and that these charges were causing her difficulty, prior to her complaint. If she had NatWest would have known that the charges were causing harm and I would have expected it to act. Nonetheless, even though I can't see that Miss S directly told NatWest that she couldn't afford to pay these charges, I've also considered whether her account activity ought to have alerted it to this being the case.

In considering this matter, I'm mindful that in order to help with determining whether it is objectively the case that a customer was experiencing financial hardship, the regulator has set out guidance on what it considers to be potential indicators of financial difficulty.

The '*Guidance on financial difficulties*' states that things such as a customer failing to meet consecutive payments to credit, being unable to meet their commitments out of their disposable income, having adverse credit or other insolvency information recorded against them, or being in a debt arrangement should be considered as potential signs of a customer being in financial difficulty. Having looked at Miss S' account transactions, I've seen no indication that any of the potential signs of financial difficulty contained in the guidance, were obviously present in her circumstances during the entire period I've looked at.

I've also looked at Miss S' incomings and outgoings as well as her overdrawn balances and determined whether it was possible for her to have stopped using her overdraft, based on this. I think that if Miss S was locked into paying charges in circumstances where there was no reasonable prospect of her exiting her overdraft then her facility would have been unsustainable for her, even where the indicators of financial difficulties I've set out above weren't clearly present in her circumstances, when looking at the account transactions.

In reviewing this matter, I've noted that throughout the period of time I'm looking at, Miss S' account was in receipt of credits that were sufficient to clear the overdraft within a reasonable period of time. Indeed, given her credits exceeding her overdraft limit, Miss S regularly saw a credit balance.

In these circumstances, I'm satisfied that Miss S' case isn't one where a borrower was marooned in their overdrawn with no reasonable prospect of exiting it. The fact that Miss S was receiving regular credits into her account, which took her into a credit balance, is another reason why her overdraft doesn't appear to have been obviously unsustainable for her.

Furthermore, while I'm not seeking to make retrospective value judgements over Miss S expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Miss S' account. I accept that Miss S may well have had other credit commitments at this time. But this in itself does not mean that she was reliant on credit to meet her essential expenditure. And it isn't immediately obvious to me that Miss S was borrowing from unsustainable sources specifically to pay for these overdraft charges either.

Of course, I accept neither of these things in themselves (or when taken together) mean that Miss S was, as she says, thriving financially. But I don't think that Miss S' account conduct and overdraft usage obviously show that she was clearly in financial difficulty. And bearing in mind I'm satisfied that it is more likely than not that Miss S did not directly tell NatWest that she was experiencing financial difficulty, that's what I'd need to be persuaded of in order to uphold her complaint.

Looking from the outside, it looks like Miss S had the funds to be able to reduce the amount that she used her overdraft. Therefore, I don't think that Miss S was obviously locked into using her overdraft and paying the charges for doing so. In my view, there was a reasonable prospect of Miss S exiting her overdraft. And NatWest was reasonably entitled to believe that Miss S was choosing to use her overdraft in the way that she was, rather than a case that her financial circumstances meant that she had no choice other than to do so.

Bearing all of this in mind, I've not been persuaded that NatWest created unfairness in its relationship with Miss S either by providing Miss S with an overdraft, increasing her overdraft limit, or allowing her to use her overdraft in the way that she. Based on what I've seen, I don't find NatWest treated Miss S unfairly in any other way either.

Overall and having considered everything, while I can understand Miss S' sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Miss S. 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 Miss S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 13 October 2025.

Jeshen Narayanan
Ombudsman