

Complaint

Miss N 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 they were applied when she was in financial difficulty.

Background

Miss N originally applied for an overdraft in December 2015. Miss N's application was accepted and she was provided with an overdraft with a limit of £2,750.00. As I understand it, this limit was never increased but it was decreased to £800 in May 2024.

In May 2024, Miss N complained saying that NatWest applied overdraft charges to her account during periods where it was clear that a mismatch developed between her income and the limit and she became unable to afford the charges.

NatWest didn't uphold Miss N's complaint. It did not think that it had done anything wrong or treated Miss N unfairly. Miss N remained dissatisfied after NatWest's response and referred her complaint to our service. When Miss N'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 N and NatWest had told us. She reached the conclusion that we could look at the entire period Miss N had her overdraft for. However, she wasn't persuaded that NatWest had acted unfairly by allowing Miss N to use her overdraft in a way that was unsustainable or otherwise harmful. So the investigator didn't think that Miss N's complaint should be upheld.

Miss N 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 N's complaint was made too late because she complained more than six years after 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 N's complaint. Given the reasons for this, I'm satisfied that whether Miss N'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 N's complaint as being one alleging that the lending relationship between Miss N and NatWest was unfair to Miss N as described in s140A of the Consumer Credit Act 1974 ("CCA"). I consider this to be the case as Miss N 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 N'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 N'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 N's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Miss N'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 N), 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 N's complaint, I therefore need to think about whether NatWest's allowing Miss N to use her overdraft in the way that it did, resulted in the lending relationship between Miss N and NatWest being unfair to Miss N, 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 N's relationship with NatWest is therefore likely to be unfair if it allowed Miss N 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.

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

Before I go any further, as this essentially boils down to a complaint that Miss N 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 N if it applied this interest, fees and charges to Miss N'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 N unfairly.

Having looked through the account transaction data NatWest has sent, it's clear that Miss N has been using her overdraft since it was granted to her. I'm therefore satisfied that there can be no dispute that Miss N was using her overdraft over the period of time she's had it. Miss N's arguments appear to suggest that this in itself means that her complaint should be upheld. For example, I've seen what she's said about being allowed to use the overdraft over an extended period – even when she was what she's referred to as hardcore borrowing.

However, Miss N's overdraft was arranged under an open-ended agreement credit agreement. This means that Miss N 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 N 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 N, in this light. In other words, I've considered whether there were periods where NatWest continued charging Miss N 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 N's account statements throughout the period concerned, I can't see that NatWest ought reasonably to have realised that Miss N 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 N'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 N notified NatWest that she was struggling and that these charges were causing her difficulty. 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 N directly told NatWest that she couldn't afford to pay these charges, I've 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.

However, having looked at Miss N'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 also can't see anything in Miss N's account transactions which suggest that NatWest should have known that she was borrowing from payday or other high-cost lenders, which although not contained in the regulator's guidance, is generally accepted to be an indication that a borrower could be struggling too.

I've also looked at Miss N'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 N 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 N's account was in receipt of credits that were sufficient to clear the overdraft within a reasonable period of time. Indeed, I'm satisfied that Miss N's case isn't one where a borrower was marooned in their overdraft with no reasonable prospect of exiting it. The fact that Miss N was receiving regular credits into her account 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 N expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Miss N's account. Indeed, most of the transactions on Miss N's account appear to be made through card purchases.

I accept that Miss N 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 N was borrowing from unsustainable sources – such as payday type lenders – in order to pay for the charges, or meet other committed expenditure either.

Of course, I accept neither of these things in themselves (or when taken together) mean that Miss N wasn't experiencing difficulty. But I don't think that Miss N's account conduct and overdraft usage obviously show that she was. And bearing in mind I'm satisfied that it is more likely than not that Miss N 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 N had the funds to be able to reduce the amount that she used her overdraft. It's also clear that Miss N's account went into a significant credit balance in May 2020 and she could have chosen to remove the overdraft from her account if she wanted to do so at this stage.

Therefore, I don't think that Miss N was obviously locked into using her overdraft and paying the charges for doing so. In my view, there was a reasonable prospect of Miss N exiting her overdraft. And NatWest was reasonably entitled to believe that Miss N 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.

In reaching my conclusions, I've considered what Miss N has said that about NatWest not doing anything to help her reduce her overdraft usage. However, I've seen evidence that Miss N was sent a number of emails as she was identified as a repeat overdraft user. Having reviewed templates of these letters and emails, I think that Miss N ought to have realised that how much she was paying for using her overdraft. Indeed, Miss N's current account statements themselves would have highlighted this.

In any event, the additional emails suggest that overdraft borrowing can be expensive and Miss N should get into contact if she is struggling or wishes to discuss other ways of borrowing. Miss N arguments appear to suggest that this wasn't enough and that NatWest ought to have gone further.

It is fair to say that there is a further step in the regulations that a lender can in certain circumstances be expected to proceed to. This is set out in rule 5D.3.2R of the Financial Conduct Authority's Consumer Credit Sourcebook ("CONC"). However, CONC 5D.3.2 R (1) makes it clear that this section only applies to customers who have a pattern of repeat use *AND* there are also signs of the customer being in actual or potential difficulty.

As I've already explained, I've not been persuaded that Miss N contacted NatWest to explain that she was experiencing difficulty, or that she needed help in repaying her overdraft, prior to her complaint. I've also, in some detail, explained that I've not seen anything in Miss N's statements, indicating that there were any of the signs highlighted in CONC 1.3. So I'm satisfied that this isn't a case where there were signs of Miss N potentially, or actually being in financial difficulty. I don't agree that Miss N using the overdraft is in itself an indication of difficulty in this case.

As this is the case, I'm satisfied that the need for NatWest to take further steps wasn't triggered in Miss N's case. So while I appreciate that Miss N may disagree with this, I think that the emails NatWest sent were sufficient in this instance and I don't think that it failing to do more than this meant that it failed to treat Miss N fairly and reasonably.

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

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 3 October 2025.

Jeshen Narayanan
Ombudsman