

Complaint

Mr T has complained about the overdraft charges National Westminster Bank Public Limited Company (“NatWest”) applied to his current account. He’s effectively said that the overdraft was unaffordable and so he shouldn’t have been provided with it. Therefore, the charges applied to his account were unfair as he could not afford them.

Background

Mr T has had an overdraft on his current account with NatWest since October 2004. The initial limit was £300, it was first increased to £450 before it was finally increased to £1,450.00 at some point before January 2010.

In June 2025, Mr T complained saying that NatWest applied overdraft charges to his account despite him being unable to afford them. NatWest did not uphold Mr T’s complaint. It didn’t think that it had done anything wrong either when providing the overdraft or allowing Mr T to use his overdraft in the way that he did. Mr T remained dissatisfied at NatWest’s response and referred his complaint to our service. When Mr T referred her complaint to us, NatWest told us that it considered Mr T’s complaint was made too late.

One of our investigators reviewed what Mr T and NatWest had told us. He reached the conclusion that we could look at the entire period Mr T had his overdraft for. However, he wasn’t persuaded that NatWest had acted unfairly by allowing Mr T to use his overdraft in a way that was unsustainable or otherwise harmful. So the investigator didn’t recommend that Mr T’s complaint be upheld.

Mr T 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 Mr T’s complaint was made too late because he complained more than six years after some of the charges on the overdraft were applied, as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

Having carefully considered everything, I’ve decided not to uphold Mr T’s complaint. Given the reasons for this, I’m satisfied that whether Mr T’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 Mr T’s complaint as being one alleging that the lending relationship between Mr T and NatWest was unfair to Mr T as described in s140A of the Consumer Credit Act 1974 (“CCA”). I consider this to be the case as Mr T 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 ought to have seen he was experiencing difficulty caused ongoing hardship.

I'm therefore satisfied that Mr T's can therefore reasonably be interpreted as a complaint that the lending relationship between himself and NatWest was unfair to him. I acknowledge the possibility that NatWest may still disagree that we are able to look at the whole of Mr T'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 Mr T's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr T'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 T), 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 Mr T's complaint, I therefore need to think about whether NatWest's allowing Mr T to use his overdraft in the way that it did, resulted in the lending relationship between Mr T and NatWest being unfair to Mr T, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove any such unfairness.

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

NatWest's initial decisions to provide Mr T with an overdraft and then increase it limit to £450 and £1,450.00

We do have an explanation about how we handle complaints about unaffordable and irresponsible lending on our website. However, the vast majority of our website guidance covers regulated lending. So I think that the information on our website and our typical approach to lending complaints has only very limited, if any, relevance to Mr T's complaint about the decision to provide his overdraft and limit increases.

Mr T's overdraft application and limit increases all took place before January 2010. So these decisions to lend not only predated the current regulator's (the Financial Conduct Authority ("FCA")) rules and guidance which came in, in April 2014, they took place before the then

regulator of consumer credit the Office of Fair Trading (“OFT”), published its Irresponsible Lending Guidance (“ILG”) in March 2010.

Prior to the regulation of consumer credit, which was the case for the initial decision to lend and the first limit increase, while a number of lenders signed up to various voluntary codes, a lender wasn’t required to be regulated in order to provide credit. Indeed, irresponsible lending only became a nebulous concept when the 2006 revisions to the Consumer Credit Act 1974 came into force on 6 April 2007.

Even then, the main guidance regarding this wasn’t introduced until the OFT published its ILG in March 2010, which was after the final limit increase will have been provided. So it’s fair to say that all of the lending decisions Mr T is complaining about took place prior to there being any sort of clear regulatory requirements in place on NatWest.

That’s not to say that there weren’t any expectations or standards in relation to lending at the time it provided Mr T with his overdraft and his limit increases. The then British Bankers’ Association (“BBA”) had a Banking Code, which was in place at the time and represented good industry practice.

However, it would be fair to say that NatWest’s obligations and responsibilities were much more limited and they certainly were not the same as they are now. For example, the concepts of irresponsible lending, borrower focused assessments and proportionate checks were not part of the expectations or requirements at the time. Indeed, it’s fair to say that any checks were more concerned with a lender assessing the likelihood of it getting its money back rather than the impact of any repayments on the customer.

What a subscriber to the banking code – such as NatWest here - agreed to do at the time of the lending decisions, was assess whether it felt that a borrower would be able to repay any credit provided. I therefore need to consider Mr T’s complaint about the decision to provide this overdraft and the limit increases in relation to the expectations that were in place on a lender at this time.

I’ve kept this in mind in relation to assessing whether NatWest acted fairly and reasonably in lending to Mr T.

NatWest hasn’t been able to say much about the checks that it carried out at the time it accepted Mr T’s application or increased his overdraft limit. Given these applications took place a number of years ago, more than 20 years, I don’t think that this is unreasonable. Nonetheless, I understand that NatWest is likely to have carried out credit searches and I haven’t seen anything to indicate (and neither has it been argued) that Mr T had any significant adverse information - such as defaulted accounts or county court judgments - recorded against him at these respective times either.

Furthermore, NatWest clearly felt that Mr T could repay amounts of £300, £450 and £1,450.00 within a reasonable period of time. As I’ve explained, it’s fair to say the limited guidance and standards in place during this time, were more geared to a lender taking steps to ensure it would get its money back rather than requiring a lender to understand how a borrower would make their payments.

In these circumstances, I think it is unlikely that NatWest would have lent in circumstances where it didn’t consider that there was a reasonable chance of it being repaid any sums that it advanced. Given all of this, without anything to show that this clearly wasn’t the case, I’m not persuaded that it was unreasonable for NatWest to feel that Mr T could repay £300, £450 and £1,450.00 within a reasonable period of time.

As this is the case, I'm satisfied that it wasn't unfair for NatWest to offer Mr T an overdraft or increase the limit to £1,450.00 in the way that it did. Therefore, I'm satisfied that there was no unfairness created at these respective stages.

Did NatWest unfairly allow Mr T to continue using his overdraft in a way that was unsustainable or otherwise harmful for him?

Before I go any further, as this essentially boils down to a complaint that Mr T was unfairly charged as a result of being allowed to continue using his 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. This is important as I note that Mr T has referred to the interest rate on his overdraft and ultimately, how much a bank charges for its services is a commercial decision. This 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 Mr T if it applied this interest, fees and charges to Mr T'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 Mr T unfairly.

Having looked through the earliest statements that I've been provided with, it's clear that Mr T has been using his overdraft. I'm therefore satisfied that there can be no dispute that Mr T was using his overdraft over the period of time he's had it. Mr T's arguments appear to suggest that this in itself means that his complaint should be upheld. However, Mr T's overdraft was arranged. This means that he had an agreement to use his overdraft and he was entitled to use it. Therefore, Mr T using his overdraft in the period that he had it doesn't automatically mean that his 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.

I've therefore considered whether NatWest acted fairly and reasonably towards Mr T, in this light. In the first instance, I can't see that Mr T directly told NatWest that he couldn't afford to pay these charges, prior to his complaint. This is important because where a customer didn't get in contact and ask for assistance and where a customer was using their overdraft within the terms and conditions, there are limited circumstances where a lender could and would be expected to act.

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 Mr T's account activity ought to have alerted NatWest to the fact that he was struggling financially and so it needed to take unilateral corrective action. 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

(since April 2014) set out guidance on what it considers to be potential indicators of financial difficulty.

While this guidance came into force in April 2014, it effectively incorporated Section 9 of the British Bankers' Association's (of which NatWest was a member of) Lending Code, which had already been in place for a number of years (including the period between 2010 and 2014). So I'm satisfied that the principle of this guidance, at the very least, is relevant to the entire period I'm looking at.

This '*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 the statements provided, I've seen no indication that any of the potential signs of financial difficulty contained in the guidance, were obviously and persistently present in his circumstances during the period I've looked at. Furthermore, I can't see anything in Mr T's account transactions or statements which suggests that he was borrowing from payday or other lenders that could have caused concern, 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 Mr T's incomings and outgoings as well as his overdrawn balances and determined whether it was possible for him to have stopped using his overdraft, based on this. I think that if Mr T was locked into paying charges in circumstances where there was no reasonable prospect of him exiting his overdraft then his facility would have been unsustainable for him, even where the indicators of financial difficulties I've set out above weren't clearly present in his circumstances, when looking at the account transactions.

In reviewing this matter, I've noted that throughout the period of time I'm looking at, Mr T'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 Mr T's case isn't one where a borrower was permanently in their overdraft.

It is also clear that there were a few times where Mr T returned to having a significant credit balance. I've noted that Mr T has said he didn't know that he could remove his overdraft at these points. But even if this may be the case, I still need to consider that the facility had been cleared. Therefore, I can't reasonably conclude that Mr T was in position where he couldn't clear the balance, when he as a matter of fact did do so on more than one occasion.

Furthermore, while I'm not seeking to make retrospective value judgements over Mr T expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Mr T's account. Indeed, there was significant discretionary spend and Mr T also appears to have been transferring funds to and from other accounts of his at times.

I accept that Mr T did have other credit commitments at this time. But this in itself does not mean that he was reliant on credit to meet his essential expenditure. And it isn't immediately obvious to me that Mr T 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 Mr T wasn't experiencing difficulty. But I don't think that Mr T's account conduct and overdraft usage obviously show that he was. And bearing in mind I'm satisfied that it is more

likely than not that Mr T did not directly tell NatWest that he was experiencing financial difficulty, that's what I'd need to be persuaded of in order to uphold his complaint.

Looking from the outside, it looks like Mr T had the funds to be able to reduce the amount that he used his overdraft. However, he was choosing not to do so. In these circumstances, NatWest was reasonably entitled to conclude that Mr T was choosing to use his overdraft rather than it being the case that he had become reliant on it.

Therefore, I don't think that Mr T was obviously locked into using his overdraft and paying the charges for doing so. In my view, there was a reasonable prospect of Mr T exiting his overdraft. And NatWest was reasonably entitled to believe that Mr T was choosing to use his overdraft in the way that he was, rather than a case that his financial circumstances meant that he had no choice other than to do so.

Finally, I'm sorry to hear that Mr T has had to deal with the illness of a close family member. I do sympathise with what must undoubtedly have been an extremely difficult period of time. That said, I can't see anything to indicate that NatWest was aware of this or that it ought to have been aware such that it could have taken proactive action in relation to Mr T's financial position.

As this is the case, I don't think that it was unreasonable for NatWest to have added the charges that it did. I'm therefore not persuaded that NatWest created unfairness in its relationship with Mr T by allowing him to use his overdraft in the way that he did. I don't find NatWest treated Mr T unfairly in any other way either. In these circumstances, I don't find that the relationship between Mr T and NatWest was unfair to Mr T.

Overall and having considered everything, while I can understand Mr T's sentiments, appreciate why he is unhappy and sincerely sympathise with what has been extremely difficult time for him, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Mr T. 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 T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 16 March 2026.

Jeshen Narayanan
Ombudsman