

## Complaint

Mr G 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 G has had a current account with NatWest since April 2016. Mr G successfully applied for an overdraft on the account in May 2018. Mr G was granted an overdraft limit of £1,250.00 and this limit was never increased.

In November 2024, Mr G complained saying that NatWest applied overdraft charges to his account despite him being unable to afford them. NatWest did not uphold Mr G’s complaint. It didn’t think that it had done anything wrong either when providing the overdraft or allowing Mr G to use his overdraft in the way that he did. Mr G remained dissatisfied at NatWest’s response and referred his complaint to our service. When Mr G referred her complaint to us, NatWest told us that it considered Mr G’s complaint was made too late.

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

Mr G 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 G’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 G’s complaint. Given the reasons for this, I’m satisfied that whether Mr G’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 G’s complaint as being one alleging that the lending relationship between Mr G and NatWest was unfair to Mr G as described in s140A of the Consumer Credit Act 1974 (“CCA”). I consider this to be the case as Mr G 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 G'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 G'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 G's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr G'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 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. 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 G's complaint, I therefore need to think about whether NatWest's allowing Mr G to use his overdraft in the way that it did, resulted in the lending relationship between Mr G and NatWest being unfair to Mr G, 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 G's relationship with NatWest is therefore likely to be unfair if it allowed Mr G 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 decision to provide Mr G with an overdraft that had a limit of £1,250.00*

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 Mr G'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 Mr G would be able to repay what she was being lent before providing any credit to him.

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

Mr G'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 he'd repay what he 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. Nonetheless, I don't think that it's unfair to say that an overdraft limits of £1,250.00 won't have required especially large credits in order to clear the full amount that could have been owed within a reasonable period of time.

I understand that NatWest is likely to have carried out credit searches but given the length of time since Mr G's application it no longer has a record of what this showed. Given this application took place a number of years ago, I don't think that this is unreasonable. In any event, I haven't seen anything to indicate that Mr G had any significant adverse information - such as defaulted accounts or county court judgments - recorded against him at this time either.

Furthermore, NatWest has been able to provide us with copies of Mr G's current account statements. Having looked at copies of the earliest ones provided, taking into account the total amount of funds Mr G was receiving as well as his regular non-discretionary living costs, I can't see any obvious reason why Mr G shouldn't have been granted his overdraft.

As this is the case, I'm satisfied that it wasn't unfair for NatWest to offer Mr S an overdraft with a limit of £1,250.00 in May 2018 and therefore there was no unfairness created at this stage.

*Did NatWest unfairly allow Mr G 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 G 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 G 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 G if it applied this interest, fees and charges to Mr G'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 G unfairly.

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

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 G'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 G'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 G 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 G'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 G's case isn't one where a borrower was permanently in their overdraft. It is clear that there were times where Mr G returned to a credit balance. The fact that Mr G was receiving regular credits into his account is another reason why his overdraft doesn't appear to have been obviously unsustainable for him.

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

I accept that Mr G 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 G 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 G wasn't experiencing difficulty. But I don't think that Mr G'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 G 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 G 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 G 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 G was obviously locked into using his overdraft and paying the charges for doing so. In my view, there was a reasonable prospect of Mr G exiting his overdraft. And NatWest was reasonably entitled to believe that Mr G 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.

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

Overall and having considered everything, while I can understand Mr G's sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Mr G. 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 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 12 January 2026.

Jeshen Narayanan  
**Ombudsman**