

The complaint

Miss S complains on behalf of the estate of the late Mrs S that National Westminster Bank Public Limited Company (NatWest) lent to Mrs S irresponsibly.

What happened

Mrs S took out a credit card with NatWest, in November 2001. The credit limit given to Mrs S was £2,000 and this increased to £5,100 by October 2004. The account defaulted in May 2005. It appears that a token payment arrangement was entered into from at least 2018.

I'm sorry to hear that in May 2024 Mrs S passed away. While sorting through her mother's affairs, Miss S said it became apparent that Mrs S had some financial difficulties, and she felt that NatWest had provided the credit card to Mrs S irresponsibly.

In March 2025, Miss S complained to NatWest saying it had treated Mrs S unfairly by lending to her irresponsibly. Miss S said she believes that Mrs S was already struggling financially at the time following a divorce and that the lending would have been unfair as a result. Miss S feels that if NatWest had completed proper checks, it would have known that Mrs S was struggling financially and couldn't afford the credit.

NatWest considered the complaint but didn't agree that it had acted unfairly when lending to Mrs S. It said it would have carried out an appropriate credit worthiness assessment to ensure the lending was affordable at the time. But given how long ago the lending decisions were made, it no longer had the details of the checks undertaken. In summary it didn't think it had made any errors.

Mrs S didn't accept NatWest's response, so she referred her complaint to our service. One of our investigators looked into it, but based on the evidence available, our investigator said she couldn't reasonably conclude that the lending was irresponsible, or the relationship was unfair.

Mrs S didn't accept what our investigator said, so she asked for a second opinion. As there was no agreement, the complaint has been passed to me for a decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

There are time limits for referring a complaint to the Financial Ombudsman Service, and NatWest thinks this complaint was referred to us too late. Our investigator explained why she didn't, as a starting point, think we could look at a complaint about the lending decisions that happened more than six years before the complaint was made. But she also explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in Section 140A of the Consumer Credit Act 1974 (s.140), and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

For the avoidance of doubt, I agree with our investigator that I have the power to look at the complaint on this basis. I think this complaint can reasonably be considered as being about an unfair relationship. I say this because Miss S says the lending was unaffordable, and this may have made the relationship unfair as Mrs S was already struggling financially at the time of the lending. I acknowledge NatWest still doesn't agree we can look at parts of this complaint, but given the outcome I have reached, I don't intend to comment on this further.

In deciding what is fair and reasonable I am required to take relevant law into account. Because this complaint can be reasonably interpreted as being about the fairness of Mrs S' relationship with NatWest, relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974.

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (NatWest) and the debtor (Mrs 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, including:

- 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.

S.140B 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, requiring a refund, or to do or not do any particular thing.

Given what this complaint is about, I need to consider whether NatWest' decision to lend to Mrs S, or its later action or inaction, created unfairness in the relationship between her and NatWest such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness. Mrs S' relationship with NatWest is therefore likely to be unfair if it didn't carry out proportionate affordability checks and doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.

I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did NatWest carry out reasonable and proportionate checks to satisfy itself that Mrs S was in a position to sustainably repay the credit?
- If not, what would reasonable and proportionate checks have shown at the time?
- Did NatWest make a fair lending decision?
- Did NatWest act unfairly or unreasonably towards Mrs S in some other way?

NatWest had to carry out reasonable and proportionate checks to satisfy itself that Mrs S would be able to repay the credit sustainably. It's not just about NatWest assessing the likelihood of Mrs S being able to repay the credit, but it had to consider the impact of the repayments on her.

There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the credit, the amount of the monthly repayments and the cost of the credit.

I've considered carefully whether NatWest has been able to provide this service with sufficient evidence that it carried out proportionate checks, and if not what the likely situation would have been if it had. Having done this, I've reached the following conclusion.

Given the passage of time, NatWest can no longer provide evidence to show what checks were completed at the time of the initial lending or the subsequent limit increases. So, I can't be satisfied the checks NatWest did before providing the credit were reasonable and proportionate.

Miss S has expressed concerns about NatWest's data retention policies. She said it was inappropriate for it to destroy the records about Mrs S' application for credit and the subsequent credit limit increases. I appreciate her frustrations here but given the time that's passed since the lending decisions this doesn't seem unreasonable. I understand that Miss S is unlikely to agree, but I feel it may be helpful to point out that it's not for this service to dictate how a business should manage the data it holds about customers. However, as a result of the lack of evidence from NatWest I have agreed that there's not enough evidence to conclude its checks it may have completed were proportionate in the circumstances.

Where we think a business hasn't completed the appropriate checks, to understand whether a lending decision was fair, we must reconstruct what those checks would likely have revealed if they had been completed. To do this we need to establish what Mrs S' financial situation at the time was in some detail. So, we asked Miss S to provide us with Mrs S' main bank account statements for the months prior to the lending and each credit limit increase.

Miss S has been unable to provide this information, which isn't unreasonable given the time that's passed. She has provided other information to show that Mrs S was in receipt of Job Seekers Allowance and was having difficulty paying council tax and legal aid bills. Whilst I don't doubt Mrs S had some difficulties, this information isn't enough for me to reconstruct what NatWest would likely have found had it completed proportionate checks at the time of the lending decisions. So, whilst I understand Miss S' frustration, I don't have enough evidence to fairly say that proportionate checks would, more likely than not, have revealed Mrs S was unlikely to be able to sustainably repay what she was being lent. So, I don't have enough here to say the lending decisions were unfair in this case.

I can see that the account was defaulted in 2005 and that from at least 2018 onwards Mrs S was in a token repayment plan which continued until 2024. Where a customer gets into financial difficulties it isn't unusual for a business to agree a repayment plan and these can go on for some time. And, given how little evidence now exists, I haven't seen enough to persuade me that NatWest acted unfairly in this case.

I'm sorry to disappoint Miss S, but overall, based on the available evidence, I'm not satisfied that NatWest has acted unfairly. It's not clear enough to me that NatWest created unfairness in its relationship with Mrs S by lending to her irresponsibly or that NatWest treated Mrs S unfairly in another way either based on what I've seen.

My final decision

My final decision is that I don't uphold this complaint about National Westminster Bank Public Limited Company for the reasons I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs S to accept or reject my decision before 11 March 2026.

Charlotte Roberts
Ombudsman