

The complaint

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

What happened

The late Mr F took out a credit card with NatWest in November 2003. The credit limit given to him was £1,650. This increased to £2,100 in October 2004 and then decreased to £1,970 in March 2009. The card remained open until Mr F sadly passed away in May 2022.

I'm sorry to hear of Mr F's passing and I don't doubt what a difficult time this must have been. Mr F has said that when his father became ill in early 2022, he became involved in his father's affairs. He said it was at this point that it became apparent that his father had some financial difficulties. Having reviewed the late Mr F's affairs he felt that NatWest had provided the credit card to him irresponsibly.

Mr F complained to NatWest saying it had treated his father unfairly by lending to him irresponsibly. He said he believed the late Mr F was already struggling financially at the time and had no income. Mr F feels that if NatWest had completed proper checks, it would have known that his father was vulnerable and struggling financially, so it should have been apparent that he couldn't afford the credit. Mr F says his father became stuck in a cycle of debt. Had NatWest taken this into proper consideration it would have seen the late Mr F was struggling to manage the account. Given all of this Mr F has asked that the debt be written off as his father had no reasonable way of paying back the credit in his lifetime.

NatWest considered the complaint but didn't agree it had acted unfairly. Given the passage of time, it no longer held the information about the checks it did at the point of the lending. But it reviewed the information it did have about how the account had been managed. It found that Mr F had broadly managed the account well, making over payments in most months. It also said when it did identify persistent debt on the account it offered the appropriate support.

Mr F didn't accept NatWest's response, so he referred the 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.

Mr F didn't accept what our investigator said, so he 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 Mr F says the lending was unaffordable, and this may have made the relationship unfair as Mr F says his father was already struggling financially at the time of the lending. I acknowledge NatWest still doesn't agree we can look at 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 Mr F'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 (Mr F), 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's decision to lend to Mr F, or its later action or inaction, created unfairness in the relationship between him 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. Mr F'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 Mr F 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 Mr F in some other way?

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

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.

Given the passage of time NatWest hasn't been able to provide this service with evidence to show what checks were completed at the time of the lending. This isn't unreasonable given the lending decisions took place in 2003 and 2004. But this means I can't be satisfied the checks NatWest did before providing the credit were reasonable and proportionate.

Where a business is unable to demonstrate that it completed proportionate checks, we must look to reconstruct what the appropriate checks would likely have shown if they had been completed. To understand what Mr F's financial position was at the time of the lending we asked the representative to provide us with copies of Mr F's main bank account statements for the months prior to the lending decisions, along with any credit file information from the time that was available.

Mr F has provided a copy of a credit file that goes back to 2017. But he's been unable to provide copy bank statements, which again isn't unreasonable given the time that's passed. He has provided other documents, including tax information for the relevant period. I've carefully considered this evidence, but it isn't enough for me to fully reconstruct what NatWest would likely have found had it completed proportionate checks at the time of the lending.

I say this because, whilst the credit file does demonstrate that the late Mr F had three other credit accounts open at the time he took out the NatWest credit card, it doesn't indicate what the credit limits were at the time of the lending or how these accounts were being managed. So, there isn't enough evidence for me to conclude, that from the credit report information available to it, NatWest should have known the lending would be unaffordable.

Mr F has provided evidence from HMRC that his father had no taxable income during 2003 and 2004. I understand he feels this is evidence that Mr F had no income during this period, but I don't agree. It's evidence that however Mr F was receiving income, it wasn't taxable, rather than being evidence that he was receiving no income. Without evidence of what the late Mr F's actual income and expenditure were for this period, I don't have enough evidence to fairly say NatWest should have known the lending was unfair.

Given the lack of available evidence Mr F has suggested we rely on nationally recognised statistical data to understand what the late Mr F's expenditure would have been. I can understand why he has suggested this, but I don't agree that it would be a fair way to establish the late Mr F's circumstances at the time of the lending. I say this because I have nothing to suggest it would have been reasonable for NatWest to rely on this data. The regulations at the time didn't require Mr F to provide, or NatWest to obtain, a detailed breakdown of his expenditure. I think on balance had NatWest decided it needed to understand Mr F's expenditure it would likely have asked him about this and used the information contained within his credit file. In addition, understanding expenditure is only useful when we have a clear picture of income, and in this case, we have no evidence to show what Mr F's income was.

I understand how strongly Mr F feels about this. But based on the evidence available, I don't have enough to fairly say that had NatWest completed proportionate checks, it would have

found Mr F was unlikely to be able to sustainably repay what he was being lent. So, I don't have enough here to reasonably say the lending decisions were unfair.

I can see that the account was run well in the years prior to Mr F passing away with only one late payment and generally, Mr F was able to make overpayments to the account. It wasn't until 2022 that it became apparent he had paid more in interest than toward reducing the capital over the previous 18 months. On identifying this NatWest did what this service would expect by writing to Mr F to offer support and possible solutions. Unfortunately, by this time Mr F's health had deteriorated and he sadly passed away later that year. I can see that once NatWest was made aware of Mr F's ill health it placed the account on hold and passed it to a specialist team which is reasonable.

I appreciate Mr F doesn't think NatWest did enough to support his father. But from what I've seen, there were no obvious indications prior to 2022 that the late Mr F was struggling to maintain the account. When it did become apparent that there might be an issue, NatWest did what was required of it by identifying the persistent debt and offering support. So, I haven't seen enough here to persuade me that NatWest acted unfairly in this case.

I'm sorry to disappoint Mr F 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 Mr F by lending to him irresponsibly or that NatWest treated Mr F unfairly in another way 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 Mr F to accept or reject my decision before 8 May 2026.

Charlotte Roberts
Ombudsman