

## Complaint

Miss K has complained about overdraft charges National Westminster Bank Plc (“NatWest”) added to her Select bank account. In essence, she’s said NatWest continued applying these charges when she was in financial difficulty and without any regard to her financial position.

## Background

Miss K complained to NatWest in May 2019. NatWest didn’t think it had done anything wrong because, in its view, all the overdraft fees and charges were applied in line with the terms and conditions of Miss K’s account. NatWest also said it provided Miss K with the contact number of its Financial Difficulties team and suggested that she made contact as it might have been able to help her. Miss K remained dissatisfied at this and referred her complaint to our service.

Miss K’s complaint was reviewed by two of our investigators. As this decision is based on the second investigator’s assessment not being accepted, I don’t propose to cover the first assessment here. And all reference made to the investigator and assessment from herein is made with reference to the second investigator and the second assessment.

Our investigator issued an assessment to NatWest in May 2020. In her assessment, our investigator:

- set out the key relevant rules, regulations, law and good industry practice applicable at the time;
- didn’t consider anything in relation to the charges added to Miss K’s account prior to May 2013 as Miss K accepted the first investigator’s assessment that she’d complained about this too late;
- confirmed that we could look at Miss K’s complaint as we weren’t considering the proportionality of NatWest’s charges but rather whether it had treated Miss K fairly and reasonably by allowing her to continue using her overdraft and charging her to do so, in circumstances where it shouldn’t have;
- found that NatWest ought reasonably to have realised that Miss K’s overdraft wasn’t being used as intended by October 2014 at the latest, as Miss K was using her overdraft to meet her day-to-day living rather than for emergency borrowing and had been doing so for some time. So NatWest should have stepped in, offered assistance and reviewed Miss K’s overdraft at this stage;
- found that if NatWest had proactively contacted Miss K at this stage, it would have seen she was struggling to make ends meet and was in no financial position to repay her overdraft within a reasonable period of time. So NatWest shouldn’t have allowed her to continue using her overdraft in the same way from October 2014 and adding interest and charges from this date.

NatWest didn’t accept our investigator’s assessment. It said that our investigator was retrospectively applying the regulator’s new overdraft rules which only came into force recently. As NatWest didn’t agree with our investigator’s assessment and proved unable to resolve matters informally the case was passed to an ombudsman as per our usual process.

Our investigator's assessment clearly – and in some detail – set out the key relevant rules, regulations, law and good industry practice relevant to Miss K's complaint. But as NatWest clearly hasn't accepted the basis of our investigator's assessment and has questioned her use and referral to certain rules and regulations, I think that it would be useful for me to start by setting out the regulatory standards in place during the period I'm looking at.

## **The regulatory framework**

### Regulation by the Office of Fair Trading (up to 31 March 2014)

In May 2013, NatWest held a standard licence from the Office of Fair Trading ("OFT"), which permitted it to carry out consumer credit activities.

Section 25(2) of the Consumer Credit Act 1974 set out the factors the OFT had to consider when deciding whether to grant a consumer credit licence to a lender. It said:

- (1) *In determining whether an applicant for a licence is a fit person for the purposes of this section the OFT shall have regard to any matters appearing to it to be relevant including (amongst other things)—*
- (a) *the applicant's skills, knowledge and experience in relation to consumer credit businesses, consumer hire businesses or ancillary credit businesses;*
  - (b) *such skills, knowledge and experience of other persons who the applicant proposes will participate in any business that would be carried on by him under the licence;*
  - (c) *practices and procedures that the applicant proposes to implement in connection with any such business;*
  - (d) *evidence of the kind mentioned in subsection (2A)*
- (2A) *That evidence is evidence tending to show that the applicant, or any of the applicant's employees, agents or associates (whether past or present) or, where the applicant is a body corporate, any person appearing to the OFT to be a controller of the body corporate or an associate of any such person, has—*
- (a) *committed any offence involving fraud or other dishonesty or violence;*
  - (b) *contravened any provision made by or under—*
    - (i) *this Act;*
    - (ii) *Part 16 of the Financial Services and Markets Act 2000 so far as it relates to the consumer credit jurisdiction under that Part;*
    - (iii) *any other enactment regulating the provision of credit to individuals or other transactions with individuals;*
  - (c) *contravened any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);*

*(d) practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business; or*

***(e) engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not) [my emphasis].***

Section 25(2B) set out a direct example of the type of practice referred to in Section 25(2A(e)) and said:

*For the purposes of subsection (2A)(e), the business practices which the OFT may consider to be deceitful or oppressive or otherwise unfair or improper include practices in the carrying on of a consumer credit business that appear to the OFT to involve irresponsible lending [my emphasis].*

In March 2010, the OFT sought to produce clear guidance on the test for irresponsible lending for the purposes of section 25(2B) of the Consumer Credit Act 1974. And so it issued its guidance on irresponsible lending (“ILG”).

So I consider the ILG to be of central importance in reaching a fair and reasonable outcome on Miss K’s complaint.

The foreword to the guidance set out its purpose and it said:

*The primary purpose in producing this guidance is to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (OFT) considers may constitute irresponsible lending practices for the purposes of section 25(2B) of the Consumer Credit Act 1974. It indicates types of deceitful or oppressive or otherwise unfair or improper business practices which, if engaged in by a consumer credit business, could call into consideration its fitness to hold a consumer credit licence.*

*Whilst this guidance represents the OFT’s view on irresponsible lending, it is not meant to represent an exhaustive list of behaviours and practices which might constitute irresponsible lending.*

Section two of the guidance sets out the general principles of fair business practice.

Section 2.1 says:

*In the OFT’s view there are a number of overarching principles of consumer protection and fair business practice which apply to all consumer credit lending.*

Section 2.2 of the guidance says:

*In general terms, creditors should:*

- *not use misleading or oppressive behaviour when advertising, selling, or seeking to enforce a credit agreement*

- *make a reasonable assessment of whether a borrower can afford to meet repayments in a sustainable manner*
- *explain the key features of the credit agreement to enable the borrower to make an informed choice*
- *monitor the borrower's repayment record during the course of the agreement, offering assistance where borrowers appear to be experiencing difficulty and treat borrowers fairly and with forbearance if they experience difficulties*

Section 2.3 lists other expectations of lenders. Amongst other things, it says:

*In addition to the above there should be:*

- *fair treatment of borrowers. Borrowers should not be targeted with credit products that are clearly unsuitable for them, subjected to high pressure selling, aggressive or oppressive behaviour or inappropriate coercion, or conduct which is deceitful, oppressive, unfair or improper, whether unlawful or not*

*Borrowers who may be particularly vulnerable by virtue of their current indebtedness, poor credit history, or by reason of age or health, or disability, or for any other reason, should, in particular, not be targeted or exploited.*

Section 4 of the guidance is concerned with the assessment of affordability that lenders were required to carry out before granting credit. I mention this for reference because as I'm not looking at NatWest's decisions to provide an overdraft in the first place or increase Miss K's overdraft limit, I'm not considering any lending decisions in this case.

Section 6 of the ILG sets out other "specific irresponsible lending practices" relating to lender behaviour once credit has been provided. Section 6.2 says it would be an unsatisfactory practice where a business is:

*Failing to monitor a borrower's repayment record*

Section 6.2 goes on to say:

*"The OFT considers that creditors should take appropriate action, including notifying the borrower of the potential risk of an escalating debt, and signposting the borrower to not-for-profit providers of free independent debt advice, when/if there are signs of apparent/possible repayment difficulties – for example, a borrower failing to make minimum required payments or making a number of consecutive small/minimum repayments or a borrower seeking to make repayments on a credit card account using another credit card. This is particularly important in the case of borrowers who it is known - or it is reasonably believed - may lack the mental capacity to make financial decisions about repayments at the time the repayments are due, especially under circumstances in which the borrower or his representatives have specifically requested that this should be done.*

*A symptom of some conditions such as bipolar disorder is that the borrower may engage in unusual spending patterns."*

*Regulation by the Financial Conduct Authority (from 1 April 2014)*

NatWest continued to provide Miss K with her overdraft after regulation of consumer credit activities had transferred from the OFT to the Financial Conduct Authority (“FCA”) on 1 April 2014. NatWest was already authorised by the FCA at this time so it was subject to the FCA’s rules in respect of credit related regulated activities from 1 April 2014.

- *the FCA Principles for Business (“PRIN”)*

The FCA’s Principles for Business set out the overarching requirements which all authorised firms are required to comply with.

PRIN 1.1.1G, says

*The Principles apply in whole or in part to every firm.*

The Principles themselves are set out in PRIN 2.1.1R. And the most relevant principle here is PRIN 2.1.1 R (6) which says:

*A firm must pay due regard to the interests of its customers and treat them fairly.*

- *the Consumer Credit sourcebook (“CONC”)*

This sets out the rules which apply to firms specifically when carrying out credit related regulated activities. CONC also replaced the requirements set out in Section 55B. Bearing in mind the complaint before me, I think the most relevant sections of CONC here are CONC 1 which sets out guidance in relation to financial difficulties; CONC 5 which sets out a firm’s obligations in relation to responsible lending; and CONC 6 which sets out a firm’s obligations after a consumer has entered into a regulated agreement.

CONC 1.3G provides guidance on financial difficulty. It says:

*“In CONC (unless otherwise stated in or in relation to a rule), the following matters, among others, of which a firm is aware or ought reasonably to be aware, may indicate that a customer is in financial difficulties:*

- (1) consecutively failing to meet minimum repayments in relation to a credit card or store card;*
- (2) adverse accurate entries on a credit file, which are not in dispute;*
- (3) outstanding county court judgments for non-payment of debt;*
- (4) inability to meet repayments out of disposable income or at all, for example, where there is evidence of non-payment of essential bills (such as, utility bills), the customer having to borrow further to repay existing debts, or the customer only being able to meet repayments of debts by the disposal of assets or security;*
- (5) consecutively failing to meet repayments when due;*
- (6) agreement to a debt management plan or other debt solution;*

*(7) evidence of discussions with a firm (including a not-for-profit debt advice body) with a view to entering into a debt management plan or other debt solution or to seeking debt counselling”*

CONC 5 sets out the rules and guidance in relation to ‘responsible lending’, CONC 6 sets out the rules and guidance in relation to Post contractual requirements; and finally CONC 7 sets out the rules and guidance in relation to Arrears, default and recovery (including repossessions).

It’s clear there is a high degree of alignment between the OFT’s Irresponsible Lending Guidance and the rules set out in CONC 5, CONC 6 and CONC 7. As is evident from the following extracts, the FCA’s CONC rules specifically note and refer back to sections of the OFT’s *Irresponsible Lending Guidance* on many occasions. For the same reasons that I didn’t set out the relevant passages of section 4 of the ILG, I don’t propose to set out the sections in CONC 5 which relate to responsible lending. Instead I’ll focus on what I consider to be the relevant sections of CONC 6 and CONC 7.

CONC 6.7.2 R states:

*“A firm must monitor a customer’s repayment record and take appropriate action where there are signs of actual or possible repayment difficulties.”*

**[Note: paragraph 6.2 of ILG]**

CONC 6.7.3 G states:

*The action referred to in CONC 6.7.2 R should generally include:*

*(1) notifying the customer of the risk of escalating debt, additional interest or charges and of potential financial difficulties; and*

**[Note: paragraph 6.16 of ILG]**

*(2) providing contact details for not-for-profit debt advice bodies.*

**[Note: paragraph 6.2 (box) of ILG]**

CONC also provides guidance to lenders about how to deal with consumers in arrears, this time making reference to the Office of Fair Trading’s Debt Collection Guidance (DCG).

CONC 7.3.2G states:

*When dealing with customers in default or in arrears difficulties a firm should pay due regard to its obligations under Principle 6 (Customers’ interests) to treat its customers fairly.*

**[Note: paragraphs 7.12 of ILG and 2.2 of DCG]**

CONC 7.3.4R states that:

*A firm must treat customers in default or in arrears difficulties with forbearance and due consideration.*

*[Note: paragraphs 7.3 and 7.4 of ILG and 2.2 of DCG]*

CONC 7.3.5G lists some examples of forbearance and due consideration and states:

*Examples of treating a customer with forbearance would include the firm doing one or more of the following, as may be relevant in the circumstances:*

- (1) considering suspending, reducing, waiving or cancelling any further interest or charges (for example, when a customer provides evidence of financial difficulties and is unable to meet repayments as they fall due or is only able to make token repayments, where in either case the level of debt would continue to rise if interest and charges continue to be applied);*

*[Note: paragraph 7.4 (box) of ILG]*

- (2) allowing deferment of payment of arrears:*

- (a) where immediate payment of arrears may increase the customer's repayments to an unsustainable level; or*

- (b) provided that doing so does not make the term for the repayments unreasonably excessive;*

- (3) accepting token payments for a reasonable period of time in order to allow a customer to recover from an unexpected income shock, from a customer who demonstrates that meeting the customer's existing debts would mean not being able to meet the customer's priority debts or other essential living expenses (such as in relation to a mortgage, rent, council tax, food bills and utility bills).*

## **Other relevant publications**

The ILG and CONC set out the regulatory framework that firms carrying out consumer credit activities have to adhere to. But they represent a minimum standard for firms. I'm also required to take into account any other guidance, standards, relevant codes of practice, and, where appropriate, what I consider to have been good industry practice.

NatWest was a subscriber to the Lending Standards Board's 'Lending Code' ("the code") and is a current subscriber to the 'Standards of Lending Practice' ("the standards"), which replaced the code in 2016.

Section 9 of the code relates to Financial difficulties. It starts by saying:

*"137. Subscribers should be sympathetic and positive when considering a customer's financial difficulties. Although there is an onus on customers to try to help themselves, the first step, when a subscriber becomes aware of a customer's financial difficulties, should be to try to contact the customer to discuss the matter. This applies to both personal and micro-enterprise customers.*

*138. Personal customers should be considered to be in financial difficulty when income is insufficient to cover reasonable living expenses and meet financial commitments as they become due. This may result from a change in lifestyle, often accompanied by a fall in disposable income and/or increased expenditure, such as:*

- *loss of employment;*
- *disability;*
- *serious illness;*
- *relationship breakdown;*
- *death of a partner;*
- *starting a lower paid job;*
- *parental/carer leave;*
- *starting full-time education; and*
- *imprisonment*

139. *Financial difficulties may become evident to a subscriber from one or more of the following events:*

- *Items repeatedly being returned unpaid due to lack of available funds;*
- *Failing to meet loan repayments or other commitments;*
- *Discontinuation of regular credits;*
- *Notification of some form of insolvency or court proceedings;*
- *Regular requests for increased borrowing or repeated rescheduling of debts;*
- *Making frequent cash withdrawals on a credit card at a non-promotional rate of interest; and*
- *Repeatedly exceeding a credit card or overdraft limit without agreement.”*

It then goes on to talk about Proactive contact and says:

*“141. If, during the course of a customer’s account operation, a subscriber becomes aware via their existing systems that the customer may be heading towards financial difficulties, the subscriber should contact the customer to outline their approach to financial difficulties and to encourage the customer to contact the subscriber if the customer is worried about their position. Subscribers should also provide signposts to sources of free, independent money advice.”*

In relation to the Standards, there is a section on ‘*Money Management*’ and paragraph 3 of this section says:

*“3. Firms should monitor customers’ credit card and overdraft limits to ensure that the customer is not exhibiting signs of financial stress and where relevant, offer appropriate support.”*

There is also a section on Financial Difficulty. And it says:

*“1. Firms should have triggers and processes in place to identify customers who may be in financial difficulty and should act promptly and efficiently to address the situation with the customer. [CONC 7]*

*2. Customers identified as being in financial difficulty should be provided with clear information setting out the support available to them and should not be subject to harassment or undue pressure when discussing their problems. [CONC 7]*



*3. Firms should demonstrate an empathetic approach to the customer's situation; listening to and acting upon information provided by the customer with a view to developing an affordable and appropriate solution.*

*4. If an offer of repayment is made via the common financial statement/standard financial statement, this should be used as the basis for pro-rata distribution amongst creditors covered by the plan. [CONC 7]*

*5. Firms should have appropriate policies and procedures in place to identify and support vulnerable customers where this impacts on their ability to pay. [See also consumer vulnerability]*

*6. Customers who are in financial difficulty will, where appropriate, be signposted to free, impartial debt advice. [CONC 7]*

*7. Firms should apply an appropriate level of forbearance, where, after having made contact with the customer, it is clear that this would be appropriate for their situation. [CONC 7]*

*8. Where a customer remains engaged with the Firm and maintains their repayment plan, they will not be subject to unnecessary contact.*

*9. Firms should consider freezing or reducing interest and charges when a customer is in financial difficulty. [CONC 7]"*

## **My Findings**

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

Bearing in mind Miss K's complaint and NatWest's response to our investigator's assessment, I think that there's one main question that I need to consider in order to fairly and reasonably determine Miss K's complaint. And depending on the answer to that question, there may be a series of sub-questions for me to consider too.

This main question is:

1. Did NatWest have an obligation to review Miss K's use of her overdraft facility?

Should the answer to this question be yes, I'd then need to consider a series of potential sub-questions. These would be:

- When should any review or reviews have taken place?
- Was Miss K experiencing financial difficulty?
- Does any and/or all of this mean that NatWest should refund any interest and charges added?

If I determine that NatWest didn't act fairly and reasonably towards Miss K and that she has lost out as a result, I will go on to consider what is fair compensation.

I've started by considering the main question.

Did NatWest have an obligation to review Miss K's use of her overdraft facility?

NatWest believes that it didn't have an obligation to review Miss K's use of her overdraft facility. It says the FCA's current rules aren't to be applied retrospectively – indeed it emphasised to our investigator this meant “*they apply going forward and do not apply to situations which occurred in the past*”. It added that its handling of the situation should be judged by the rules in place at the time and not those in force now.

I've thought about what NatWest has said. While it did refer our investigator to the definition of retrospective, which we are perfectly familiar with, it omitted to inform her which specific FCA rule it considered she applied erroneously. But given the dispute before me, I'm assuming that NatWest is referring to the regulator's rules regarding 'Overdraft repeat use' set out in section 5D of CONC and which have been in force since 18 December 2019.

I am aware of these rules and what they say. But like our investigator, I don't think that these rules only coming into force in December 2019 mean NatWest didn't have any obligations in relation to reviewing Miss K's facility prior to this. I say this because as I set out in the regulatory framework section of this decision Section 6.2 of the ILG and CONC 6.7.2R require a lender to monitor and take account of a borrower's repayment record and offer assistance in the event it appears they may be experiencing financial difficulty.

So I'm satisfied that while the regulator's rules at the time may not have referred to overdraft repeat use specifically, as Miss K's overdraft facility was a consumer credit agreement, NatWest was, in any event, required to monitor her repayment record for any apparent signs of financial difficulty.

Bearing all of this in mind, I'm satisfied that NatWest ought to have been monitoring and reviewing Miss K's use of her overdraft in the way that our investigator explained in her assessment.

When should NatWest's reviews have taken place?

As I've mentioned in the previous section, CONC 6.7.2 R requires a lender – such as NatWest here – to monitor a customer's repayment record. So I think it's perfectly fair and reasonable to expect NatWest to have monitored Miss K's repayment of her overdraft on an ongoing basis. And also offer assistance where it may have been apparent Miss K may have been experiencing difficulty.

NatWest has said that it normally agrees overdrafts without a review date, so a borrower can use their facility without having to worry. I'm not sure why having a review date would cause a borrower to worry about using their overdraft. But, in any event, NatWest's overdraft terms and conditions say that any overdraft is repayable on demand. They go on to say that repayment will only be demanded in circumstances where there is a valid reason for doing so. And an example of a valid reason is given as “*where we reasonably believe that you may have difficulty meeting your commitments*”. So it seems to me that NatWest's own terms and conditions suggest that the facility would be withdrawn in circumstances where Miss K wasn't in a position to afford it.

I'm also mindful that it has generally been accepted across the industry that overdrafts are high-interest products which were designed to cover short-term borrowing needs. This is a view shared by the FCA in Consultation Paper 18/42 *High-Cost Credit Review: Overdrafts consultation paper and policy statement* (“CP18/42”).

I accept that this was published sometime after the period I'm looking at. But I do think that it offers some insight on the current regulator's perspective on how overdrafts should have been used. So I do consider it to be of some relevance in this case.

Paragraph 3.35 of CP 18/42 states:

*“Overdrafts are intended for short-term or emergency borrowing, but some consumers use them repeatedly over a long period of time. This repeat overdraft use can harm consumers because it can be an expensive way to borrow, and they can build up problem debt over time.”*

Finally, it's worth noting that as overdrafts are repayable on demand and because of the way they were supposed to be used, most of NatWest's competitors, at least, committed to reviewing overdrafts on an annual basis. So while NatWest may have agreed an overdraft without a review date, I consider good industry practice meant that it ought to have checked that terms and conditions of the facility were being met (namely Miss K continued to be able to meet her commitments without difficulty) and that it was meeting its regulatory obligations to Miss K on an, at least, annual basis. Although for reasons I'll go on to explain, in the next section, I don't think this is too important in this case.

#### Was Miss K experiencing financial difficulty?

I've already explained that given Miss K accepted the first investigator's assessment on what we would be looking at in terms of her complaint, I've only considered whether NatWest's actions from May 2013 onwards were fair and reasonable. However, this decision should not be taken as any form of endorsement of the first investigator's position.

As NatWest had access to them, I consider it perfectly fair and reasonable to use Miss K's bank statements to form my view on whether NatWest treated Miss K fairly and reasonably from May 2013 onwards. I have therefore done so and set out what I think Miss K's statements ought reasonably to have demonstrated to NatWest.

Having reviewed Miss K's statements from May 2013, I can see she used her overdraft regularly. Miss K received an average salary of approximately £1,300 a month. I say average because the precise amount she received fluctuated each month due to the nature of her work. This was never enough to take Miss K into a credit balance at any stage. Miss K exceeded her overdraft limit on occasions and, in truth, I'm satisfied that this would have happened more often than it did had it not been for the payday loans she was taking out.

But from March 2014 onwards, Miss K's statements show that she began to exceed her overdraft limit on an almost monthly basis. In accordance with Section 9 of the Lending Code, this ought to have prompted NatWest to question whether Miss K may have been experiencing financial difficulty. I don't think it even required NatWest manually reviewing Miss K's statements to realise this, given it must have known this was happening for it to have been able to charge her unarranged overdraft fees for this.

Overall, I'm satisfied that by May 2014, Miss K's overdraft had become demonstrably unsustainable for her. The fact that she hadn't had a credit balance on her account for the year I've looked at coupled with the sheer number of payday loans she took and her regularly exceeding her overdraft persuades me there was no reasonable prospect of her repaying the facility on demand or within a reasonable period of time.

I accept that this might not have been immediately noticed by NatWest at the time. But I've also seen that in October 2014, over £100 in charges were added to Miss K's account before being refunded. As our investigator pointed out, there wasn't any explanation from NatWest as to why these charges were refunded. And I note NatWest chose to provide nothing further in relation to this in its response to the investigator's assessment either.

In any event, having carefully considered matters, I'm in agreement with our investigator that it's unlikely NatWest proactively and voluntarily agreed to refund these charges. And it seems to me that it's more likely than not this refund of charges was because Miss K got in contact about them.

So even if NatWest wasn't aware of the position in the year after May 2013, and I'm not necessarily persuaded this is fair and reasonable, I'm satisfied that it was aware Miss K may have been experiencing financial difficulty, given it was charging her for breaching her overdraft limit, by October 2014 at the very latest.

By this point NatWest was aware that Miss K had regularly breached her overdraft limit; was having payments for bills returned (another indication of potential financial difficulty as per CONC 1.3G); and Miss K had been in contact to query the over £100 of charges added to her overdraft. So notwithstanding whether NatWest ought to have carried any reviews and didn't do so, by this point, at the absolute latest, NatWest ought to have got in contact with Miss K to offer assistance.

What would more likely than not have happened had NatWest got in contact with Miss K in October 2014?

There has been a suggestion that NatWest returning the October 2014 fees was in itself an attempt to offer assistance. I agree that this was a fair and reasonable starting point and it would have at least provided Miss K with some breathing space. But given all the circumstances, I don't think this went far enough as the debt was unsustainable at this point and NatWest ought to have exercised forbearance as per its obligations under CONC 7.3.

I accept that even if NatWest had got in contact with Miss K in October 2014, it's possible she might well have said she wanted to continue using her overdraft – I know this is what happened when Miss K got in contact to ask for assistance in May 2019. But bearing in mind Miss K's clearly worsening position, I think that NatWest should have stepped in and taken action notwithstanding any potential objections. After all it ought reasonably to have realised that Miss K may have had difficulty meeting her commitments, which was the example given of a circumstance where it would take action in relation to an overdraft.

But instead of realising this and taking steps to help Miss K, as per its regulatory obligation to provide a customer in financial difficulty with assistance, NatWest unfairly and unreasonably instead continued added a significant amount of interest, fees charges to her balance. This meant Miss K paid NatWest high amounts of interest and charges for the privilege of allowing her to continue to hold what, in my view, had clearly become a demonstrably unsustainable debt. I don't think it's fair and reasonable to continue adding charges to an overdraft a customer clearly can't afford when they're experiencing financial difficulty, simply because a consumer may wish to continue having access to credit they can't afford.

Taking all of this into account, I find that NatWest didn't act fairly and reasonably towards Miss K. It continued to provide and charge Miss K for her overdraft facility when her account usage (and what she more likely than not said in October 2014) ought reasonably to have shown she was having difficulty meeting her commitments and her debt had become unsustainable in circumstances where she was experiencing financial difficulty.

So I find that NatWest didn't treat Miss K fairly and reasonably in relation to her overdraft from October 2014 onwards.

### **Conclusions**

Having carefully considered the key question and related sub-questions set out on pages nine and ten of this decision, I find that:

- NatWest *did* have an obligation to monitor Miss K's use of her overdraft facility;
- Any fair and reasonable monitoring of Miss K's overdraft facility would have resulted in NatWest being aware Miss K was in financial difficulty (and was having difficulty meeting her commitments) by October 2014 at the absolute latest. So NatWest ought to have exercised forbearance from this point onwards.

This means that overall I find NatWest didn't act fairly and reasonably towards Miss K in relation to her overdraft.

#### Did Miss K lose out because NatWest didn't act fairly and reasonably towards her?

NatWest added high amounts of interest, which it shouldn't have done, to a debt which was unsustainable when it ought reasonably to have realised that Miss K was in financial difficulty by October 2014 at the latest. So Miss K had to pay, and she's still being expected to pay interest and charges that shouldn't have been added to her balance.

In these circumstances, I find that Miss K lost out because NatWest didn't treat her fairly and reasonably.

#### **Fair compensation – what NatWest needs to do to put things right for Miss K**

Having carefully considered everything, I find that it would be fair and reasonable in all the circumstances of Miss K's complaint for NatWest to put things right in the following way:

- rework Miss K's current overdraft balance so that all the interest, fees and any other charges applied to it from November 2014 onwards are removed;

AND

- if an outstanding balance remains on the overdraft once these adjustments have been made NatWest should contact Miss K to arrange a suitable repayment plan for this. It can also backdate any negative information on Miss K's credit file to November 2014 should it consider it necessary to do so;

OR (if the effect of removing all interest fees and charges results in there no longer being an outstanding balance)

- any extra should be treated as overpayments and returned to Miss K. If no outstanding balance remains after all adjustments have been made, NatWest should remove all adverse information from Miss K's credit file.
- pay interest of 8% simple a year on any overpayments from the date they were made (if they were) to the date of settlement†;

† HM Revenue & Customs requires NatWest to take off tax from this interest. NatWest must give Miss K a certificate showing how much tax it's taken off if she asks for one.

### **My final decision**

For the reasons I've explained, I'm upholding Miss K's complaint. National Westminster Bank Plc should put things right in the way that I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 27 November 2020.

Jeshen Narayanan  
**ombudsman**