

Complaint

Mr W has complained about the overdraft facility on his National Westminster Bank Plc ("NatWest") Select Platinum (initially Advantage Gold) packaged bank account. In essence, he's unhappy with the charges applied to his overdraft and believes they've exacerbated his financial difficulties. He's also said NatWest mis-sold him his packaged account.

Background to the complaint and my provisional decision

Mr W made a series of complaint to NatWest in 2017 and 2018. NatWest didn't think it had anything wrong either in relation to charging the overdraft fees or in relation to the sale of the packaged account.

I issued a provisional decision on Mr W's complaint on 9 March 2020. In my provisional decision, a copy of which is attached and forms part of this final decision, I explained why I was minded to uphold Mr W's complaint that NatWest didn't treat him fairly and reasonably when it continued adding interest, fees and charges to his overdraft after he said he lost his job in June 2014. But I didn't find that NatWest mis-sold the packaged account to Mr W.

I also provided NatWest with a couple of options in relation to how to put things right for Mr W. I invited both parties to make any further comments they wished to make by 23 March 2020, before I reached a final decision. Following this, NatWest didn't respond to my provisional decision or ask for any additional time to do so.

Mr W responded to say he agreed with my provisional decision. But he also made a couple of further points regarding the frequency of his statements, NatWest's treatment of him in 2017 and its failure to switch him to a free account, as well NatWest's referral to the Lending Standards Board's Lending Code. He also said that NatWest migrated his account from an Advantage Gold one to a Select Platinum one without telling him in 2015.

My findings

I've considered all the available evidence and arguments, including the response to my provisional decision, to decide what's fair and reasonable in the circumstances of this complaint.

Mr W has made a few points about events that occurred in 2015, 2017 and 2018. But it may help for me to explain that I've already directed NatWest to refund all the interest, fees and charges (including the packaged account ones) it added from June 2014 onwards. So Mr W will be refunded the fees he was charged during the periods referred to. As this is the case, I don't think that any further findings I may make in relation to these matters will make any difference to my final decision on this case. So while I appreciate Mr W's strength of feeling on these matters, I offer no comment in relation to them in this final decision.

Finally for the sake of completeness and the avoidance of doubt, I'd also like to confirm that the payments Mr W made to his account from June 2014 onwards should be included in his reworked account balance.

Having carefully considered everything provided, I've seen no reason to alter the conclusions that I reached in my provisional decision. As this is the case, I still find that Mr W's complaint about the fees applied to his overdraft from June 2014 onwards should be upheld and that NatWest should put things right.

Fair compensation – what NatWest needs to do to put things right for Mr W.

Having carefully considered everything, and in the absence of any further arguments in response to my provisional decision, I think that it would be fair and reasonable in all the circumstances of Mr W's complaint for NatWest to put things right in the following way:

- rework Mr W's current overdraft balance so that all the interest, packaged account fees and any other charges applied to it from June 2014 onwards are removed;

AND

- if an outstanding balance remains on the overdraft once these adjustments have been made NatWest should contact Mr W to arrange a suitable repayment plan for this. It can also backdate a default on Mr W's credit file to June 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 Mr W. If no outstanding balance remains after all adjustments have been made then NatWest should remove all adverse information from Mr W'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 Mr W a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons set out above and in my provisional decision of 9 March 2020, I'm upholding Mr W's complaint. National Westminster Bank Plc should put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr M to accept or reject my decision before 26 April 2020.

Jeshen Narayanan
ombudsman

COPY OF PROVISIONAL DECISION

Background

Mr W made a series of complaints to NatWest in 2017 and 2018. NatWest didn't think it had anything wrong either in relation to charging the overdraft fees or in relation to the sale of the packaged account.

Our adjudicators then went on to look at Mr W's concerns. And they thought that NatWest hadn't done anything wrong either in relation to charging the overdraft fees that it did or when selling the Advantage Gold account in the first place. So none of our adjudicators thought that Mr W's complaint should be upheld. Mr W disagreed with our adjudicators' findings and asked for his complaint to be reviewed by an ombudsman.

My Findings

In my view, that are two matters that I need to consider in order to provisionally decide this case. These are:

1. Did NatWest treat Mr W fairly and reasonably when applying interest, fees and charges to his account?
2. Did NatWest mis-sell the Advantage Gold packaged bank account to Mr W?

If I find that NatWest didn't act fairly and reasonably towards Mr W, in relation to either, or both, of these matters and that he has lost out as a result, I will go on to consider what is fair compensation.

I'll start by looking at Mr W's concerns about the interest, fees and charges added to his overdraft.

Did NatWest treat Mr W fairly and reasonably when applying the overdraft fees to his account?

Mr W has said NatWest failed to take account of the severe change in his financial circumstances, him losing his job in 2014, and continued to take charges on his account when it should have realised that his account wasn't suitable. In his words, he's said *"I was in financial hardship through the loss of my job and the actions of NatWest meant I was in a 'spiral of charges' as the charges kept mounting and the overdraft and charges kept costing me more in charges"*.

Mr W's comments lead me to think that his complaint is that NatWest ought fairly and reasonably to have suspended the interest and charges on his account once he lost his job. And I haven't seen anything to suggest that he is unhappy with NatWest's decision to provide him with an overdraft in the first place.

So I've not looked into NatWest's initial decision to provide Mr W with the overdraft itself and whether any limit increases were fair and reasonable in the circumstances. I've simply considered whether NatWest treated Mr W fairly and reasonably when he says his circumstances changed for the worse in 2014.

At this point, I think that it would be helpful for me to start by setting out the regulatory framework and good industry practice applicable during the period I'm considering.

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

At the start of 2014, 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 Mr W'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 Mr W'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 Mr W with his overdraft after regulation of consumer credit activities had transferred from the OFT to the Financial Conduct Authority (“FCA”) on 1 April 2014. NatWest was authorised by the FCA at this time so it was subject to the FCA’s rules in respect of consumer credit 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. 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]"

Ordinarily in cases involving financial difficulty, I'd generally start by considering whether the lender was aware, or it ought reasonably to have been aware, that the borrower was experiencing difficulties. But I don't need to consider this matter in this case as it isn't in dispute that NatWest was aware that Mr W's circumstances had changed.

I say this because the contact notes NatWest itself has provided clearly show that its credit card team received a call from Mr W advising that he wouldn't be able to make his payments. The notes record that Mr W had 0 free income but that his mother would be helping him cover his debt. And it looks like a repayment plan was agreed shortly afterwards.

So it seems to me that NatWest (at least in terms of its credit card department) was aware that Mr W had lost his job and that he had no disposable income. And by working out that Mr W had no disposable income, I think that NatWest ought to have realised that his circumstances fell squarely within paragraphs 138 and 139 of the code.

Equally I don't consider it fair and reasonable for NatWest to argue that its personal banking team wasn't aware of this. As this is the case, I'm satisfied that NatWest was aware that Mr W was experiencing financial difficulty and this means that I need to consider whether it NatWest responded to these difficulties in a fair and reasonable manner.

As I've mentioned in the regulatory framework and good industry practice section of this decision, NatWest had (and still has) a regulatory as well as good industry practice obligation to exercise forbearance in relation to a debt owed by a customer experiencing financial difficulty.

I'm also mindful that while NatWest's own literature is silent on this matter, it is generally accepted, in the industry, that overdraft facilities are only supposed to be used for occasional or emergency borrowing. 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 FCA's perspective on the use of overdrafts. 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."

In these circumstances, not only do I think that NatWest ought fairly and reasonably to have exercised forbearance, I also think that ought to have had in mind that the overdraft facility was only really intended to help out with short-term borrowing needs.

I've reviewed Mr W's account transaction history to see how NatWest responded to finding out that Mr W had lost his job. And in truth, I think it's fair to say that NatWest didn't really react at all to what it had been told, or how Mr W's account was being managed.

Mr W's account transactions show that NatWest simply continued adding interest and charging packaged account fees to his balance. This is despite the fact that the only credits going into the account were small credits to cover the interest, fees and charges being added in an attempt to avoid going over the limit. Equally there seems to have been no thought at all given to the fact that Mr W's overdrawn balance wasn't reducing in any sort of meaningful way. Indeed Mr W's balance doesn't really reduce from around £1,800.00 until March 2017 approaching 3 years after he contacted NatWest to explain that he's lost his job.

Bearing in mind Mr W's clearly worsening position, I think that NatWest should have taken action. But instead of realising this and taking steps to help Mr W, as per its regulatory obligation to provide a customer in financial difficulty with assistance, NatWest unfairly and unreasonably added a significant amount of interest, fees and packaged account charges to his balance.

This meant that Mr W paid NatWest high amounts of interest and charges for the privilege of allowing him to continue to hold what, in my view, due to his notified change of circumstances, had clearly become a wholly unsustainable debt. And while I, to some extent, accept that a customer may be responsible for ensuring that they have sufficient funds in their account to meet their payments, I don't think that this means that it's fair and reasonable to continue adding charges to an account that a customer clearly can't afford because they're experiencing financial difficulty.

Taking all of this into account, I find that NatWest didn't act fairly and reasonably towards Mr W when it continued to provide and charge Mr W for his overdraft and facility when he'd told it as well as his account usage ought reasonably to have shown that his debt had become unsustainable because he was experiencing financial difficulty.

So I'm intending to find that NatWest didn't treat Mr W fairly and reasonably in relation to his overdraft from June 2014 onwards.

Was the Advantage Gold packaged bank account mis-sold to Mr W by NatWest?

As Mr W has mentioned it, I've also considered whether the Advantage Gold account was mis-sold to him in 1997. I don't think that it was and I'd like to explain why I think that this is the case.

Firstly, Mr W was switched to the fee-paying Advantage Gold account from a free one that he's held for a number of years. So I think that he would have known that NatWest did free accounts (as he had one already) and that he didn't have to have the packaged one if he didn't want to. In these circumstances, I think it's more likely than not that Mr W chose to take the Advantage Gold account after being offered a choice.

Mr W says that he was misled into thinking that he'd receive unbeatable offers. But I've seen information to suggest that he took a loan with NatWest around the time he was sold his packaged account. And bearing in mind preferential loan rates was a benefit of the account, I think it's more likely than not that he took the account for this benefit and received it.

Mr W would also have paid less for his overdraft as a result of having the Advantage Gold account too. So overall I think that Mr W did receive the benefit that he signed up for. I accept that Mr W might, with the benefit of hindsight, now believe that he didn't benefit from the account as much as he'd initially hoped to.

I say this while especially mindful of the fact that he doesn't appear to have used the additional benefits that went on to be added to the Advantage Gold package. But I think that Mr W knew that he didn't have to have the packaged account and that he more likely than not knew that he could switch back to a free account if that's what he wanted. So I find that NatWest didn't mis-sell the account to Mr W in the first place and as a result I'm satisfied that it doesn't have to refund any of the packaged account fees charged prior to June 2014.

Conclusions

Having carefully considered the questions set out on page one of this provisional decision, I'm intending to issue a final decision which finds that NatWest:

- knew that Mr W was in financial difficulty; he wasn't using his borrowing facilities for their intended short-term purpose; and that his overdraft balance wasn't reducing. So NatWest ought reasonably to have stepped in and offered assistance to Mr W. NatWest didn't do this and instead continued adding high levels of interest, fees and charges to Mr W's account.
- didn't mis-sell the Advantage Gold packaged bank account to Mr W in 1997.

All of the above leaves me intending to find that NatWest didn't act fairly and reasonably towards Mr W in relation to his overdraft.

Did Mr W lose out because NatWest didn't act fairly and reasonably towards him?

Bearing in mind NatWest's regulatory obligation to treat a customer struggling to repay credit with forbearance, I don't think it was fair and reasonable for NatWest to continue adding the interest, fees and charges that it did to Mr W's overdraft from June 2014. In my view, NatWest ought fairly and reasonably to have arranged an affordable repayment plan to allow him gradually and affordably repay what he owed.

In these circumstances, I think that Mr W lost out because he's had to pay interest and charges that shouldn't have been added to his account balance. So I'm intending to find that Mr W lost out because NatWest didn't treat him fairly and reasonably.

Fair compensation – what I'm intending to tell NatWest to do to put things right for Mr W.

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

- rework Mr W's current overdraft balance so that all the interest, packaged account fees and any other charges applied to it from June 2014 onwards are removed;

AND

- if an outstanding balance remains on the overdraft once these adjustments have been made NatWest should contact Mr W to arrange a suitable repayment plan for this. It can also backdate a default on Mr W's credit file to June 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 Mr W. If no outstanding balance remains after all adjustments have been made then NatWest should remove all adverse information from Mr W'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 Mr W a certificate showing how much tax it's taken off if he asks for one.

My provisional decision

For the reasons I've explained, I'm minded to partially uphold Mr W's complaint and direct National Westminster Bank Plc to put things right in the way that I've set out above.

So unless the comments and evidence I get by 23 March 2020 change my mind, that's what I'll tell NatWest to do in my final decision.

Jeshen Narayanan
ombudsman