

Complaint

Mr N has complained that National Westminster Bank Plc (“NatWest”) unfairly continued allowing him to continue using an overdraft it shouldn’t have provided him with in the first place.

Background

One of our investigators looked at Mr N’s complaint and she thought that NatWest hadn’t acted unfairly in relation to Mr N’s overdraft. So she didn’t think that the complaint should be upheld.

Mr N disagreed with the investigator’s assessment and asked for an ombudsman’s review.

My provisional decision of 22 January 2024

I issued a provisional decision – on 22 January 2024 - setting out why I intended to partially uphold Mr N’s complaint. I won’t copy that decision in full, but I will instead provide a summary of my findings.

I started by explaining that both NatWest and our investigator had mainly focused on what happened when Mr N was initially provided with his overdraft. I agreed that Mr N’s overdraft did appear to have been affordable when it was initially provided – he did appear to have had sufficient funds to clear the balance within a reasonable period of time as he continually did so (at least in the early days).

However, as Mr N pointed out, he was also unhappy at NatWest’s failure to review his overdraft usage in the years after it provided the facility. So I also considered whether NatWest acted fairly and reasonably in respect of this matter.

I then explained that NatWest was familiar with all the rules, regulations and industry codes of practice we consider when looking at whether a bank treated a customer fairly and reasonably when applying overdraft charges.

And having carefully considered everything provided, I was minded to conclude that NatWest acted unfairly when it continued charging overdraft interest and associated fees from November 2018 onwards. I thought that this was the case because while Mr N might not have got in touch to confirm this, nonetheless by this point, it was evident Mr N’s overdraft had become demonstrably unsustainable for him.

A cursory look at his statements leading up to this period showed that Mr N had been hardcore borrowing for an extended period. I could also see payments to non-prime lenders increase and payments being made to third-party debt collectors.

So the transactions taking place on Mr N’s account indicated that there was little prospect of him being able to repay what he owed without undue difficulty or borrowing further. I also

said this because even after NatWest issued the consolidation loan it has referred to, Mr N quickly returned to being overdrawn.

In my view, NatWest ought to have seen from Mr N's overdraft usage that he wasn't using his overdraft for short-term emergencies and that he was instead using it over a much longer and unsustainable term.

I saw that NatWest was relying on having sent Mr N a number of letters telling him that he was using an overdraft in the way that he was expensive and that he should get in contact if he was experiencing difficulty. As I understood it, it then sent further letters and communications from 2020 onwards as a result of the regulator's repeat overdraft use rules. NatWest said that Mr N should have reached out if he was struggling.

I thought about what NatWest had said. And I noted what Mr N had said about not seeing the letters themselves. But, in any event, the mere fact that NatWest felt the need to send Mr N so many letters within such a period means that it recognised there was a problem with the way that Mr N was using his overdraft.

Indeed, I explained that if I took NatWest's argument to its logical conclusion, I saw it as being that it acted fairly and reasonably towards Mr N because it sent him letters as it had identified that his overdraft usage had become a problem. But because Mr N didn't respond to the letters it was reasonable to continue allowing him to use his overdraft in the same way, notwithstanding that it had identified his use of his overdraft as being problematic.

In my view, this ignored the fact that there comes a point where a lender cannot continue simply relying on a borrower not wanting to discuss the situation. After all there were many reasons why a consumer might not want to get into discussions about their finances even though they are in a situation where they're struggling, or they may even go further and say they can and will make payment when the reality is they can't.

While Mr N didn't contact NatWest, most likely because he didn't realise the impact failing to deal with the matter at hand was having, I didn't think it was reasonable for NatWest to conclude that his problematic overdraft usage would correct itself.

In any event, I was satisfied that NatWest should have stopped providing the overdraft on the same terms and treated Mr N with forbearance by November 2018, which well was ahead of when it started sending letters anyway. As NatWest didn't react to Mr N's account usage and have regard to his account activity, I was minded to conclude that it failed to act fairly and reasonably towards him.

Mr N ended up paying interest, fees and charges at a time when his overdraft was already unsustainable. So I was satisfied that Mr N lost out because of what NatWest did wrong and concluded by saying that I was intending to issue a final decision which directed it to put things right.

Responses to my provisional decision

Mr N confirmed that he accepted my provisional decision and didn't provide anything further to me to consider.

NatWest responded stating:

- Mr N's statements show lots of payments to an external account in his name, had these statements been reviewed to see what the funds were used for, or if indeed they were put into savings?

- It contacted Mr N regarding his overdraft usage to see if he needed help in reducing or removing his overdraft but he did not respond. Had he contacted NatWest, it could have set up a plan to reduce his limit.
- Mr N received a number of large credits which would have allowed him to remove his overdraft in its entirety. As such he made the choice not to repay his overdraft and therefore omitting the need to pay interest. With this in mind, is it fair that NatWest refund interest after such large credits when Mr N made the decision to use his overdraft again?

My findings

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

Having considered the comments provided in response to my provisional decision, I've not been persuaded to alter my conclusions and I'm still upholding Mr N's complaint.

NatWest has referred to payments being to other accounts. It appears to be suggesting that a forensic analysis of all of Mr N's bank accounts should now be carried out, in circumstances where it did not carry out any sort of review, in line with good industry practice, at the time, or since Mr N made his complaint.

I don't think that this is necessary as I'm required to decide what's more likely than not to have been the case. And I'm satisfied that I do not need to carry out a forensic analysis of Mr N's accounts, or anything akin to this in order to determine this complaint. I say this because in my provisional decision I said that in the period leading up to November 2018, I could see payments to non-prime lenders increase and payments being made to third-party debt collectors being made from Mr N's NatWest account as well.

I accept that it is possible that the funds Mr N transferred meant that he had a large sum of money in his other accounts. But I think that this is unlikely and less likely than not to be the case here, as I would question how and why Mr N would have been borrowing at such high rates of interest and had run into difficulty meeting prior commitments, if he did have the significant surplus funds sitting in other accounts. In these circumstances, I'm not persuaded it is necessary for me to request the statements for all of Mr N's accounts.

I also find it incredibly disappointing that NatWest has repeated its argument about sending letters without really providing anything new in relation to this. I've already explained why simply sending letters here wasn't enough. Indeed, most of the letters NatWest has referred to were sent after when I think it should have taken action.

I also fail to see any merit or logic in the argument that because NatWest received no response to a number of letters, which it sent because it had identified that Mr N's overdraft usage had become problematic, this, in itself, indicated that there was no problem and that Mr N was managing perfectly well. And this was despite the other factors which I set out in my provisional decision, which I'm satisfied that NatWest ought to have seen.

To be clear, there is a difference between sending numerous standard template letters, with no follow up, and providing help to an individual that is finding it difficult to clear what appears to be a problem debt. And in my view NatWest simply sending letters here and continuing to charge interest in the circumstances that it did was not fair and reasonable.

Finally, I've seen what NatWest has said about Mr N's credits. However, I covered this in my provisional decision. In particular that this happened in circumstances where there were signs that Mr N's finances were deteriorating. It's unclear whether NatWest's comments in relation to whether it is fair for Mr N to have his interest refunded, in circumstances where it considers that he chose not to reduce his overdraft were rhetorical.

However, for the sake of clarity and the avoidance of doubt, I do think that it is fair and reasonable for NatWest to now pay compensation because it failed to impose corrective action in relation to Mr N's overdraft usage.

So overall and having considered everything, I'm still partially upholding Mr N's complaint and I remain satisfied that NatWest needs to put things right.

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

Having thought about everything, I'm satisfied that it would be fair and reasonable in all the circumstances of Mr N's complaint for NatWest to put things right by:

- Reworking Mr N's current overdraft balance so that all interest, fees and charges applied to it from November 2018 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made NatWest should contact Mr N to arrange a suitable repayment plan, Mr N is encouraged to get in contact with and cooperate with NatWest to reach a suitable agreement for this. If it considers it appropriate to record negative information on Mr N's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in November 2018. NatWest can also reduce Mr N's overdraft limit by the amount of any refund if it considers it appropriate to do so, as long as doing so wouldn't leave him over his limit.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr N along with 8% simple interest† on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then NatWest should remove any adverse information from Mr N's credit file. NatWest can also reduce Mr N's overdraft limit by the amount of refund if it considers it appropriate to do so.

† HM Revenue & Customs requires NatWest to take off tax from this interest. NatWest must give Mr N a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons I've explained above and in my provisional decision of 22 January 2024, I'm upholding Mr N's complaint. National Westminster Bank Plc should put things right in the way I've directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 7 March 2024.

Jeshen Narayanan
Ombudsman