

The complaint

Mrs C is complaining about National Westminster Bank Plc. She says it lent to her irresponsibly by granting an overdraft on her current account and allowing the facility to remain in place when she couldn't afford it.

What happened

In November 2015, Mrs C was granted an overdraft with a limit of £300. This facility remained in place with the same limit until she moved her account to another bank in 2020. At that time, NatWest required repayment of the overdrawn balance and I understand this debt was passed to a debt collection agency and an arrangement is in place for this to be repaid.

After the complaint was referred to me, I issued my provisional decision setting out why I believed it should be partly upheld. My findings are attached in full at the end of this decision.

Mrs C told us she had nothing to add. NatWest noted that I said I can consider the merits of the complaint for the six years from September 2017 but then said it should refund interest and charges from December 2016. It said it accepted the provisional decision otherwise.

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.

Having done so, my findings haven't changed from those I set out previously.

With regard to the time limits set out in DISP 2.8.2, the six-year part of the rule dictates that I can automatically consider anything that happened within the six years before Mrs C complained. I then applied the three-year part of the rule to determine whether she complained within three years of when she should have realised she had reason to.

For the reasons I set out in my provisional decision, I think Mrs C did complain within three years of the date she should have realised she had cause. Under the rules, that means I can consider events dating back beyond six years to the date of the original overdraft application.

Putting things right

The principal aim of any award I make must be to return Mrs C to the position she'd now be in if NatWest had removed the overdraft facility in November 2016. But that's not entirely possible here as the lending provided can't be undone.

Because I don't think NatWest should have continued lending to Mrs C after November 2016, I don't think it's fair for her to pay interest or charges on the amount borrowed after this date. But she has had use of the money that was lent, so I think it's fair she repays the amount borrowed (without the addition of interest or charges).

To put things right, NatWest should now take the following steps:

- Rework the account to remove all interest, fees and charges that have been applied since 1 December 2016.
- If the reworking results in a credit balance, this should be paid to Mrs C with the addition of simple interest at 8% per year from the date of each overpayment to the date of settlement.

HM Revenue & Customs (HMRC) requires NatWest to deduct tax from any interest. It must provide Mrs C with a certificate showing how much tax has been deducted if she asks for one. If NatWest intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- Or, if after the reworking there's still an outstanding balance, NatWest should arrange an affordable payment plan with Mrs C for the shortfall.
- Remove any adverse information recorded on Mrs C's credit file after 1 December 2016 relating to this overdraft, once any outstanding balance has been repaid.

If NatWest no longer owns the debt, it should liaise with whoever does to ensure any payments Mrs C has made since moving her account are factored into the calculation of the compensation that's due or the balance that remains outstanding.

I'm satisfied this represents a fair and reasonable settlement to this complaint.

My final decision

For the reasons I've explained, I'm partly upholding Mrs C's complaint. Subject to her acceptance, National Westminster Bank Plc should now put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 14 May 2024.

Extract from provisional decision

What I've provisionally 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.

Having done so, I've reached different conclusions to the investigator and I currently believe this complaint should be partly upheld. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

Jurisdiction

The rules I must apply are set out in the Dispute Resolution (DISP) rules, which form part of the Handbook published by the industry regulator, the Financial Conduct Authority (FCA). DISP 2.8.2 says that, where the business doesn't agree, I can't look at a complaint made more than six years after the event(s) being complained about, or if later, more than three

years after the complainant knew, or should reasonably have known, they had reason to complain.

The events being complained about in this case are the decisions made by NatWest to grant Mrs C an overdraft and to keep this facility open for her to use until she moved her account in 2020.

Mrs C complained to NatWest in September 2023, which means I'm automatically able to consider a complaint about NatWest's actions in the six preceding years (from September 2017). Whether I can consider a complaint about earlier actions, including the initial decision to grant the overdraft, depends on when I believe Mrs C should reasonably have become aware she had reason to complain.

It's important to understand that the date Mrs C actually became aware she had cause to complain isn't necessarily the same as when she should reasonably have realised. To conclude Mrs C should have realised she had reason to complain, I'd need to be satisfied she should have known that:

- there was a problem, in this case the credit was unaffordable;
- the unaffordable credit had caused a loss;
- another party's actions (or failure to act) may have caused the loss; and
- that the other party was NatWest.

I think it should have become apparent to Mrs C that the overdraft was unaffordable when she switched accounts in 2020 and wasn't able to repay the debt. But I don't think it should necessarily have been apparent that it might have always been unaffordable and that NatWest was at fault for this situation. Mrs C has told us she has an unhealthy relationship with money and I don't think it would have been unreasonable at this stage for her to have thought her problems were a result of her own actions rather than those of anyone else.

Taking everything into account, I've not seen sufficient evidence to conclude Mrs C should have realised she had reason to complain about the decision to offer her an overdraft facility more than three years before she did. So I'm currently satisfied I can consider a complaint about the initial decision to grant it and everything that's happened since.

Merits

An overdraft is a form of running credit that's repayable on demand. This means a bank can ask its customer to repay the full balance at any time. Overdrafts can be an expensive form of credit and are for short-term emergency borrowing needs. They're not intended to be an appropriate means of long-term borrowing. As an overdraft is a form of lending, banks are required to ensure they don't lend irresponsibly.

Before offering Mrs C an overdraft facility in 2015, NatWest was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, the key questions I need to consider are:

- Did NatWest complete reasonable and proportionate checks to establish that Mrs C would be able to repay the credit in a sustainable way?
- If so, was the decision to lend fair and reasonable?
- If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?

Unfortunately, NatWest no longer holds some of the information it says it considered when Mrs C applied for the overdraft. But it has provided evidence to show it carried out a credit check and an affordability assessment. I've not seen anything in this information that suggests a comparatively small overdraft limit of £300 would prove unaffordable and I'm satisfied the initial decision to offer this facility was reasonable.

But NatWest's responsibility to ensure the lending was affordable went beyond simply carrying out appropriate checks at the outset. At the time the overdraft was granted, section 6.7.2 of the FCA's Consumer Credit Sourcebook (CONC) said:

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

This means NatWest had a responsibility to monitor and review the overdraft facility to ensure it remained affordable and that the debt could be repaid within a reasonable period of time.

CONC doesn't prescribe a specific timeframe when reviews should be carried out. But most lenders terms and conditions state an overdraft facility will be reviewed annually and I think this is a reasonable approach that I consider to be good industry practice. On that basis, I think NatWest should have first reviewed the overdraft facility one year after it was offered, in November 2016.

As there was no set repayment period, the starting point for this review should have been the conduct of Mrs C's account. NatWest should have sought to establish whether there were any signs of financial difficulty and whether the credit was affordable and should continue to be offered. Indicators of financial difficulty can be many and varied, but more recent guidance from the FCA sets out a number of factors that lenders should be aware of and look to act upon. While this guidance hadn't been issued by 2016, I think it's a reasonable reflection of the sorts of issues NatWest should have been looking out for.

We've asked NatWest about its ongoing affordability assessments and it says these weren't carried out as the facility was affordable, which was demonstrated by the account statements showing Mrs C was regularly in credit. In the absence of any evidence that demonstrates how NatWest concluded the overdraft remained affordable, I've considered the account statements, particularly focussing on September, October and November 2016, to reach my own conclusions. I've noted the following key points:

- Since the overdraft was agreed in November 2015, Mrs C had used the facility every month and was often near the limit. The statements show a fairly constant pattern of the balance returning to a positive amount immediately after she was paid and then returning to an overdrawn state shortly after. Throughout this period Mrs C was charged interest and arranged overdraft fees.*
- Mrs C exceeded the limit on a number of occasions and was charged additional unarranged overdraft fees of £30 and £12 in September and October 2016 respectively.*

The fact the statements show Mrs C was relying on her overdraft each month and often exceeded the limit shows she wasn't managing the facility well and wasn't using it for emergency short-term borrowing as intended. Recent guidance from the FCA says a customer who becomes or remains overdrawn every month over a 12 month period is likely to be at risk of financial difficulty and I think that was the case here. Mrs C wasn't managing

her account well at this time and I think NatWest should have taken the initiative and removed the overdraft facility at that time.

While not relevant to my decision about what should have happened in November 2016, a review of later statements shows the pattern I've described above continued right up until 2020 when Mrs C moved her account. So even if I were to conclude Nat West shouldn't have removed the facility in 2016, the case for doing so only became stronger the longer this pattern continued.

Taking everything into account, it's my view Nat West should have identified the overdraft wasn't affordable in November 2016 and removed it at this point. It's for this reason that I'm currently proposing to partially uphold Mrs C's complaint.

James Biles
Ombudsman