

The complaint

Mr and Mrs B has complained that National Westminster Bank Plc (“NatWest”) acted unfairly by continuing to apply charges to their accounts when they were in financial difficulty. They say the overdraft charges applied pushed them into further debt.

What happened

Mr and Mrs B complained to NatWest about the overdraft charges NatWest applied to their accounts ending 7180 and 8969. NatWest said all the overdraft fees charged to Mr and Mrs B’s accounts were applied in line with the terms and conditions of the account. But as a gesture of goodwill it refunded overdraft charges and fees on both accounts from May 2022 amounting to £212.52.

Mr and Mrs B were dis-satisfied with this and brought their complaint to this service. One of our adjudicators looked into Mr and Mrs B’s concerns and thought that account ending 7180 hadn’t shown signs of financial difficulty and was overall being managed well.

But they thought that account ending 8969 hadn’t been able to see or maintain a credit balance for an extended period of time and thought that NatWest should’ve realised that Mr and Mrs B were in financial difficulty and refunded the overdraft charges applied to the account from August 2017.

NatWest hasn’t responded and so Mr and Mrs B’s complaint has been progressed for an ombudsman’s decision.

What I’ve decided – and why

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

Part of Mr and Mrs B’s complaint is about the proportionality of the charges applied to their accounts with NatWest for the use of its overdraft facility. They would like these charges refunded with interest. But before I go any further, I want to be clear in saying that I haven’t considered whether the various amounts NatWest charged over the years were fair and reasonable, or proportionate in comparison to the costs of the service provided.

Ultimately, how much a bank charges for services is a commercial decision. And it isn’t something for me to get involved with. That said, while I’m not looking at NatWest’s various charging structures per se, it won’t have acted fairly and reasonably towards Mr and Mrs B if it applied any interest, fees and charges to Mr and Mrs B’s accounts in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr and Mrs B were experiencing financial difficulty.

So I’ve considered whether there were instances where NatWest didn’t treat Mr and Mrs B fairly and reasonably.

Account ending 7180

Having carefully reviewed the statements for this account I don't think that NatWest did treat Mr and Mrs B unfairly or unreasonably in applying overdraft charges here. I say this because having a detailed look at Mr and Mrs B's statements they present a somewhat chaotic picture and I don't think it can be said from the statements alone that it was clear Mr and Mrs B were in financial difficulty prior to them getting in touch with it, rather than a mismanagement of their financial affairs.

Although Mr and Mrs B used their overdraft the account received a regular healthy salary into it and was able to see a credit balance most months. I can also see there were regular and sometimes large cash transfers in and out. In April 2017 there was a transfer in of around £140k). Although I can see some of this went to pay credit card's, I can also see that a significant proportion went to other accounts.

So although it is clear Mr and Mrs B were using the overdraft on this account, given the transactions on the statements, I don't think there is enough on them which ought to have alerted NatWest to any potential financial difficulty.

Mr and Mrs B have also told us that Mrs B suffered a medical incident in June 2018 which led to ongoing health problems which meant their salary was reduced as she couldn't work. I sympathise with Mrs B, but I haven't seen any evidence that NatWest was made aware of this when it happened. And the account in question was still receiving the same incoming credits for the period in question.

So, in these circumstances I can't say NatWest ought to have known Mr and Mrs B were struggling financially or that it did anything wrong and I don't think that it was unreasonable for NatWest to proceed with adding the interest, fees and charges it did in light of how Mr and Mrs B's account ending 7180 was being used.

Account ending 8969

But I'm in agreement with our adjudicator in that I think NatWest acted unfairly when it continued charging overdraft interest and associated fees from August 2017. By this point, it ought to have been clear that Mr and Mrs B were in no position to sustainably repay what they owed within a reasonable period of time on this account.

By this point, NatWest ought to have realised that Mr and Mrs B's use of their overdraft was unsustainable. Mr and Mrs B's statements show that they were consistently overdrawn and near the top of their limit and although at times there were credits in that paid down the overdraft often the same amounts would go out and Mr and Mrs B would once again be near the top of their overdraft limit. Although at times Mr and Mrs B did make transfers into the account, they were not regular and overall the overdraft was not reducing and was being funded from the overdraft facility on their other account.

I accept that Mr and Mrs B don't appear to be using the account as their main account and the vast majority of the transactions on Mr and Mrs B's account were discretionary, non-committed transactions. But this doesn't mean that NatWest should continue to allow the use of what should be short term lending to continue for an extended period of time. NatWest ought to have realised that Mr and Mrs B were at a significant risk of being unable to repay what they owed.

So I think NatWest should have stopped providing the overdraft on the same terms and treated Mr and Mrs B with forbearance rather than charge even more interest, fees and charges on the overdraft facility for account ending 8969.

Mr and Mrs B ended up paying additional interest, fees and charges on their overdraft and this ended up exacerbating difficulties they already had in trying to clear it. So I think that NatWest didn't treat Mr and Mrs B fairly and they lost out because of what NatWest did wrong. And this means that it should put things right.

Putting things right

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

- Reworking Mr and Mrs B's current overdraft balance on account ending 8969 so that all interest, fees and charges applied to it from August 2017 are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made NatWest should contact Mr and Mrs B to arrange a suitable repayment plan, Mr and Mrs B are encouraged to get in contact with and cooperate with NatWest to reach a suitable agreement. If it considers it appropriate to record negative information on Mr and Mrs B's credit file, NatWest should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in August 2017. NatWest can also reduce overdraft limit by the amount of refund if it considers it appropriate to do so, as long as doing so wouldn't leave Mr and Mrs B over their limit.
- 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 and Mrs B 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 and Mrs B's credit file.

† HM Revenue & Customs requires NatWest to take off tax from this interest. NatWest must give Mr and Mrs B a certificate showing how much tax it has taken off if they ask for one.

My final decision

For the reasons I've explained, I'm upholding Mr and Mrs B complaint against National Westminster Bank Plc in relation to account ending 8969.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 2 August 2023.

Caroline Davies
Ombudsman