

The complaint

Mrs H complains Nationwide Building Society (“Nationwide”) removed her overdraft and later defaulted her account without giving her notice.

What happened

Mrs H brought her complaint to us as she was unhappy with the response from Nationwide when she complained to them in March 2019. She told us she didn’t think the default notice was issued correctly. She said she wanted Nationwide to remove the default from her credit file as it had a massively detrimental effect on her life and could affect her in a professional capacity. She didn’t think her conduct could be criticised in any way as she’d ensured the overdraft was serviced and had given notification of her change of address.

In their Final Response Letter of 12 April 2019 Nationwide didn’t uphold the complaint. They told Mrs H as her account was in an unauthorised position they’d written to her at the address on their records and tried to call her but were unsuccessful. Nationwide said they’d also emailed each month asking her to review her statements online and, as the account remained in an unauthorised position, the default was applied. They apologised for sending the initial acknowledgement letter for her complaint to her old address and said this was due to a delay in the new address updating onto their systems. And they offered her £25 for this error.

Our investigator was satisfied Nationwide had sent the letters advising of the unarranged overdraft, the decision to remove it, the request for full repayment and the default notice to the correct address they had on record for Mrs H. She said she couldn’t see that Mrs H sent her letters by recorded delivery, so she found there was no evidence to support that Mrs H had sent or Nationwide had received the letters from her advising of a change of address. So, she didn’t think it was reasonable to hold Nationwide responsible for Mrs H’s address not having been updated. She also found Nationwide had acted fairly when exercising its right to remove the overdraft here. And she thought, as Nationwide hadn’t made an error, she wasn’t in a position to tell them to remove the default marker registration with the credit reference agencies. She thought the compensation paid for the old address being used for the complaint acknowledgement letter was reasonable.

Mrs H didn’t agree and has sent us a number of responses to the view. Initially she told us she didn’t think Nationwide had done enough to trace her when they’d begun to get undelivered post returned to them in November 2019 and she would get evidence from the postal service to support that she’d told Nationwide of the change of address. And on 22 October 2019 she told us that she’d found an email from another of her email accounts which informed Nationwide that she’d changed address. She later sent us her detailed comments on the investigator’s view, a signed document dated 28 May 2020 which she described as a Statutory Declaration, a further letter dated 16 June 2020 setting out the issue with the postal service and raising a new point about the steps taken by Nationwide to trace her concerns that the overdraft amount was made up of unlawful charges. She later forwarded a letter from the postal service dated 12 June 2020.

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.

Mrs H has made considerable submissions in bringing her complaint. And whilst I don't intend to respond in similar detail, I have read all her correspondence and taken it into account when making my decision. So if I don't mention any particular point or piece of evidence it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. I hope Mrs H doesn't take this as a discourtesy; it is just a reflection of the informal nature of our service. The purpose of my decision isn't to address every point raised, but to set out my conclusions and reasons for reaching them.

In this complaint I'm dealing just with the removal of the overdraft and the subsequent default of the account which Mrs H raised with us in 2019. Mrs H has voiced new concerns in her most recent letter relating to what she sees as unauthorised overdraft charges and Nationwide's failing to alert her of these by SMS. It's unclear to me if that matter is now resolved or a new complaint she wishes to bring. But either way it would be wrong of me to consider it here within this complaint.

I think Mrs H has herself summed up what's at the heart of this dispute. She recently told us she accepted she could've paid a little more attention to the running of the account but that she also fully expected to be notified of any issues on the account. I'd agree with that and, on the evidence before me, I think that's what Nationwide have done. The problem is the address to which that notification's been sent after October 2018. Mrs H told us she moved from her address in March 2018 to a temporary address and didn't notify Nationwide of the change until late October 2018. So, on the basis of her own evidence, there can be no issue about the letters Nationwide sent up to late October 2018.

Nationwide say their earliest record of receiving a new address was Mrs H's call to them on 11 March 2019. So there's a disagreement as to whether she notified Nationwide of her change of address in late October 2018 or on 11 March 2019. Ultimately it's Mrs H's responsibility to manage this account within the terms and conditions and to keep Nationwide informed of her current address and contact details. Based on all the information before me, I can't be satisfied Mrs H met those responsibilities and made Nationwide aware of her correct contact details before 11 March 2019.

Mrs H has pointed out this service should expect the same type of evidence from both parties in respect of the proof of posting of letters and I'd generally agree with that. She thinks the burden of proof of posting is higher for her than for Nationwide here but I don't think it's the case. Firstly I don't think it can be disputed Nationwide sent these letters. Nationwide's records not only show copies of the letters, records of them being generated and sent, but also show those letters being returned by the postal service as the addressee had gone away. That return could only happen if the letters had been sent. And that's something Mrs H appears to accept in her criticism of Nationwide for continuing to use her old address after they'd received returned undelivered mail. So the issue in dispute isn't whether Nationwide wrote to Mrs H but rather whether the address they wrote to her at from late October 2018 was correct. As it's Mrs H's responsibility to keep the society up to date with her details it's for her to provide evidence to support that she did this, in October 2018.

I appreciate Mrs H has gone to some trouble to gather information to show she sent the October 2018 letters. But I'm afraid, for a number of reasons, which I'll explain, the evidence she's sent doesn't satisfy me she notified Nationwide of the change of address before 11 March 2019.

Firstly Mrs H told us on 22 May 2020 the single tracking number she'd sent us was one "*I believe to match the letter I sent to (one of Nationwide's postcodes)...*". But that's not the same as *knowing* it was used. So it's difficult for me to place much weight on this evidence when she's not certain it was used. Also, there's no tracking number for the other letter she sent to Nationwide at an alternative address. And the tracking number Mrs H has supplied gives different details both in terms of the address and date to those Mrs H says should apply.

Mrs H has offered an explanation for the different tracking information – the postal service only hold tracking information under a number for 12 months and can recycle and reuse them. Although the letter from the postal service of 12 June 2020 doesn't specifically refer to this case I don't doubt that practice happens. But I can't be sure it happened in this case to the tracking number provided. Where facts have been in dispute, incomplete or inconclusive and I can't know exactly what's happened, I've got to decide on a balance of probabilities. And here, on balance, given Mrs H's lack of certainty about the tracking number, the different tracking details and inconsistencies about the method of notification, whether letters were tracked and obtaining proof of their postage and tracking - which I'll expand on below - I can't be satisfied Nationwide were notified of the change of address before 11 March 2019.

The information about how and when Mrs H notified Nationwide of her new address isn't consistent. In the call on 11 March 2019 Nationwide's system log records note Mrs H telling the call handler she'd been out of the country working and changes her phone number all the time as she visited different countries. And that she'd tried to change her address by *emailing them on 11 November 2018*. But in her initial letter of complaint to Nationwide and subsequent letter to this service on 10 July 2019, Mrs H refers to *letters written to the bank on 11 October 2018* - there's no mention of the *emails from 11 November 2018* or the use of a tracked postal service to send these letters.

When Mrs H wrote to Nationwide on 26 March 2019 she set out her concerns about the consequences the default could have on her professionally and her ability to practice. So I'm at a loss to understand – given those concerns along with her professional insight and experience - why she didn't secure the evidence held under the tracking number at that stage. Or secure it at any number of later points in the complaint – all still well within the 12 month window when the postal service say it was available – at which she would have been on notice that such evidence was central and vital to her case. Particularly as she told our investigator, on 20 August 2019, she was making a formal request to the postal service for information. But, despite that enquiry being within the 12 month window when the tracking information hadn't been recycled, Mrs H hasn't been able to provide us with this evidence.

I also find it surprising that Mrs H didn't mention she'd used a *tracked* letter to notify Nationwide when she spoke to both them and this service at any point before August 2019. And her recent signed statement of 28 May 2020 - which Mrs H describes as a Statutory Declaration – also makes no reference to use of a *tracked* service when sending the letters dated 11 October 2018. The earliest reference to the possible use of a *tracked* service is an observation from our investigator, in her view, that she couldn't see Mrs H had sent her October 2018 letters by recorded delivery. Only after that point - in a call with investigator on 14 August 2019 – is it noted that Mrs H says she'll contact the postal service. Mrs H told the investigator, as she'd sent letters to other organisations recorded delivery, she would ask the postal service if she can get any evidence to show this was the case for the Nationwide letters.

So, having carefully considered everything here, on balance, I can't be satisfied Mrs H notified Nationwide of her change of address before 11 March 2019.

From everything I've seen I'm satisfied Nationwide wrote to Mrs H at the correct address from their records on 2 August, 1 and 28 September, 25 October and 8 November 2018 to advise the account was over its authorised limit, 25 August 2019 withdrawing the overdraft facility and requesting full repayment of the overdraft and serving the default notice on 12 December 2018. And that they first received notification of Mrs H's new address when she called them on 11 March 2019. I know Mrs H thinks the amount of time given to repay the account in the default notice and covering letter dated 12 December 2018 is insufficient but, given my finding on the timing of the address notification, even if she's correct, I don't think that would make any difference to the overall outcome here.

I don't agree with Mrs H's assertion that Nationwide should have done more to trace her when they received her undelivered mail in November 2019 they're under no obligation to do that. On the contrary it's Mrs H's responsibility to keep Nationwide informed of her current details but, as I've already explained, I'm not persuaded she did this before 11 March 2019. And I don't think the recent information Mrs H received from Nationwide about how they *may track former members* of the society is relevant here given her failure - whilst she remained an *active account holding member* - to update her details in line with her responsibilities.

Nationwide's records show Mrs H opted out of paper statements and was registered for online banking, so she was sent monthly email notifications that her statement was ready to view. Mrs H told us she didn't have access to the online account facility during this time. Whilst I appreciate that meant she couldn't access her statements or check on the account I can't see she tried to remedy this at any stage so Nationwide wouldn't have known there was an issue. So, even on her own evidence, Mrs H ran this account from May 2018 until late October 2018 - without updating her contact details address with the society - via an online account and statements which she's told us she couldn't access.

Mrs H describes the account as not being active for 12 months before the complaint and having a small overdraft which she was servicing with monthly payments from another account. But I disagree with that description. From looking at the statements I can see although the regular payment in was made, the account was also in use by Mrs H during this period. There are live direct debits going out and recurring card transactions on the account along with spending online and instore. So the authorised overdraft was often exceeded.

I think it's clear from the account terms and conditions Nationwide are entitled to remove the overdraft and I think they've acted fairly in doing so. I appreciate Mrs H doesn't accept Nationwide made the correct commercial decision when they removed the overdraft. But I'm afraid that's not something she has any say over. It's for the society to make commercial decisions about who it offers banking and lending services to. They can decide they no longer wish to do business with individuals because they have the commercial freedom to decide who'd they like to contract with. And given the account activity I've seen on the statements and the lack of response to its letters I'm satisfied Nationwide exercised its commercial freedom legitimately when it decided to remove the overdraft account here.

I also think Nationwide acted in line with "The Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies" published by The Information Commissioner's Office ("ICO") in July 2016 - which is guidance intended to be the main source of advice for the public on the reporting of (amongst other things) defaults - on two basis. First the account had been in arrears for 3 or more months and also that the account was in arrears and Nationwide received an indication that Mrs H had left her address without notifying them.

So, overall, I can't reasonably say the action Nationwide have taken here in respect of the overdraft and account default is wrong, so I'm not going to uphold this complaint. And in respect of the mistake in sending the complaint acknowledgment letter to the old address I

think the compensation Nationwide have already paid is a reasonable response, so I don't require them to do anymore. I know Mrs H feels strongly about this and is likely to be disappointed with my decision. But my decision brings to an end what we – in trying to resolve her dispute with Nationwide informally – can do for her.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 6 August 2020.

Annabel O'Sullivan
Ombudsman