

The complaint

Mr A complains about the date on which Nationwide Building Society (Nationwide) registered a default marker on his credit file.

What happened

In July 2013, Mr A took out a £10,000 personal loan with Nationwide. The loan repayments were around £192 over 60 months.

In 2014 Mr A entered into a Debt Management Plan (DMP) arranged by a debt counselling charity. Under this DMP all of Mr A's creditors were contacted and it was agreed that he would make reduced monthly payments over the course of four years and two months. In November 2014, Nationwide was made aware of this DMP, but Mr A says that they only registered a default on his loan with them in December 2017. So, he says he questioned this with Nationwide, who agreed to backdate the default to November 2015. Mr A was still unhappy with this as he thought that they should've registered the default earlier. He feels that Nationwide should've registered the default about three months after he entered the DMP; just like he says some of his other creditors did, including Nationwide on some of his other accounts with them.

In February 2021 Nationwide wrote to Mr A. In this correspondence they said that when an account isn't in arrears at the time of entering a DMP, they set a review date of 12 months. They say, after this time passes, they review the individual's financial situation, and if there is no change or improvement, they then register a default. They say this ensures that if the individual's financial situation improves, a default notice isn't unnecessarily registered.

Mr A was unhappy with Nationwide response, as he says they knew from the start that his financial circumstances would not change, so he says it was unreasonable for them to wait 12 months before registering the default. Unhappy with their response, Mr A brought his complaint to this service.

Our investigator thought the complaint should be upheld. She was of the opinion that Nationwide should backdate the default to three months after the start of Mr A's DMP.

Nationwide disagreed with the investigator. So, the complaint has been passed to me to decide.

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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

I also want to acknowledge that I've summarised the events of the complaint. But I want to

assure Mr A and Nationwide that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time. Accordingly, I've considered the Information Commissioner's Office (ICO) guidelines that were relevant at the time Mr A entered into the DMP. ICO guidelines were created to ensure consistency among creditors, and, among other things, the guidelines set out when a default should be registered with credit reference agencies.

I've considered that Mr A has specifically requested that Nationwide back date the default to about three months after he entered the DMP. He says this would be fair as this is about the time most of his other accounts, which were also a part of the DMP, had registered defaults with credit reference agencies. So, I've considered whether this would be fair and reasonable considering his circumstances, and I've considered whether this would be in line with the aim of the ICO's guidelines.

I've also considered what Nationwide has told us. They have said that when an account isn't in arrears at the time of entering a DMP, they set a review of the plan for 12 months. They say after 12 months passes, they review the account and, if there is no change or improvement in the individual's financial situation, they then register a default. They say this ensures that, if the individual's financial situation improves, a default notice isn't unnecessarily registered. And they say they treat all members the same, so it wouldn't be reasonable to treat Mr A differently.

Nationwide had an obligation to present accurate information to the credit reference agencies. So in the early days, when they agreed to the alternative payment as presented in the DMP, I would've expected them to be reporting to the credit agency that the account was in arrangement to pay. Arrangements to pay are usually intended to be short-term, but if they are going to be longer than a few months, such as this one, I would've expected Nationwide to review the suitability of the arrangement at regular intervals – usually about three to six months. And during these reviews, I would've expected them to engage with Mr A to see if his financial situation has changed. Considering the circumstances of this complaint, I don't think it would be fair or reasonable to set a review for 12 months later as Nationwide has done. And, in most situations, it would be reasonable that when an account is in an arrangement to pay, a default is not registered unless the terms of the arrangement are broken. But considering that Nationwide defaulted this account, I've gone on to consider whether this was reasonable.

ICO guidelines say that when a consumer is at least three months behind with their payments, then a default may be registered. Mr A's loan fell into arrears prior to him entering into the DMP in November 2014. Under the DMP Mr A was making payments to Nationwide, but arrears were accruing, because of the difference between the contractual monthly payment and the reduced payment agreed under the DMP. So arguably Mr A was no longer meeting his contractual obligation under the account terms and conditions, therefore Nationwide wouldn't be reporting inaccurate information, if it reported to the credit reference agencies that Mr A's loan account had defaulted. So, considering the above, and given that Mr A asked for the account to be reported as default, in line with what other creditors under the DMP have done, I think it's reasonable Nationwide defaulted the loan account in question. But I've gone on to consider the date of when the default should've been fairly reported to the credit reference agencies.

I've already mentioned above that I think waiting 12 months in Mr A's circumstances to review his financial situation was not reasonable. I think Nationwide knew from the beginning of the DMP that, most likely, Mr A's financial situation wouldn't change any time soon. I say this because had they reviewed the suitability of Mr A's repayment arrangement three months after Mr A entered the DMP, they would've notice that not much has changed. Also they were aware that Mr A was in financial difficulties, his DMP was for a long term of four years and two months, and, considering he sought help form a debt counselling charity, I think most likely they would've been aware that his financial situation would not change after 12 months. I think three months after Mr A entered into the DMP, Nationwide would've realised that Mr A wasn't in a financial position to pay his outstanding arrears, and that the repayment plan was definitely going to be a long-term affair. So, considering all the circumstances, I think it would be fair and reasonable for them to register a default with the credit reference agencies at that time. It would also be in line with the guidance from the ICO, as at that time Mr A was at least three months behind with his payments.

In summary, I though carefully what is fair and reasonable taking all of Mr A's circumstances into consideration. And Mr A's request for the default to be registered three months after he entered the DMP is a fairer way to report his repayment history for his loan with Nationwide. So, considering all the circumstances of this complaint, I think recording the account as having defaulted three months after he entered into the DMP is fair and reasonable. Therefore, the date of the default should be recorded as 17 February 2015.

My final decision

My final decision is that I uphold this complaint. Nationwide Building Society should backdate the default to three months after the start of Mr A's DMP. So, the default on Mr A's loan account, at the credit reference agencies, should be registered as of 17 February 2015.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 21 October 2021.

Mike Kozbial
Ombudsman