DRN-3354551

## The complaint

Miss M is unhappy that Nationwide Building Society didn't do enough to check that she could afford the repayments on a number of loans she took out with them.

Miss M is represented, but for ease I will refer only to Miss M throughout.

## What happened

Miss M has applied for and been granted four personal loans with Nationwide since July 2013, as follows:

| Loan number | Date | Amount borrowed | Term | APR | Monthly repayment |
|---|---|---|---|---|---|
| 1 | July 2013 | £3,500.00 | 60 months | 9.4% | £72.68 |
| 2 | December 2014 | £5,773.49 | 72 months | 18.1% | £127.64 |
| 3 | February 2018 | £10,944.53 | 84 months | 3.4% | £146.34 |
| 4 | January 2019 | £15,775.41 | 72 months | 4.2% | £247.68 |

Loans two to four were 'top-ups' to previous loans. So for example, when Miss M took out loan number two, she received £3,000 additional capital, but was borrowing £5,773.49 as the additional amount was used to repay loan one. Nationwide's records indicate that loans one and two were for debt consolidation and loans three and four for home improvement.

In December 2019, Miss M complained to Nationwide that it hadn't properly checked that she could afford loans it had granted. She said that Nationwide should've realised that her only income was benefits and that it was very unlikely she would be able to afford the loans. She also said that she suffered from a particular disorder that meant she had little regard for the consequences of her actions. And that Nationwide didn't do enough to identify and then appropriately deal with her vulnerability.

Nationwide didn't uphold the complaint. It said that when it agreed the loans, it was based on its lending criteria and a review of affordability, which was demonstrated at the time. It also said that it accepts a number of benefit payments as income, for the purpose of assessing loan applications.

Miss M remained unhappy. She requested all of the personal data that Nationwide held about her in relation to the lending and the complaint.

Miss M subsequently referred her concerns to this Service. She said the fact that her income was made up entirely of benefits ought to have been seen as a 'warning flag' and that Nationwide could reasonably have been expected to have identified her vulnerability, as required under the Equality Act 2010 (EA).

She said that when carrying out affordability checks, Nationwide had only checked her income and nothing else. And that this had been inadequate. She also said that Nationwide hadn't responded appropriately to the Data Subject Access Request (DSAR).

Miss M's concerns about Nationwide's handling of her DSAR would be better directed to the Information Commissioner's Office (ICO), so I won't be making a finding on this.

An investigator her looked into things and issued a view in July 2021. She said, in summary, that:

- Given the size and length of each of the loans and other relevant factors, she didn't think Nationwide had carried out reasonable and proportionate affordability checks on any of the loans.

- As no bank statements in the lead up to loan one were available, she couldn't say for certain that if Nationwide had looked at these, it would have realised the loan wouldn't be affordable for Miss M. She therefore didn't uphold this loan.

- For loans two to four, bank and credit card statements in the lead up to each loan were available. Based on these, she thought that Miss M had enough disposable income available to meet the loan repayments in a sustainable manner.

- It was fair for Nationwide to take into account Miss M's benefits income, since this was received for her everyday expenses and to replace income she may otherwise have received.

- She couldn't see that Miss M had made Nationwide aware of her vulnerability. And so she didn't think Nationwide had lent irresponsibly.

Miss M disagreed with the outcome. She questioned why the investigator thought that Nationwide hadn't breached the EA and whether Nationwide had taken any steps to understand the nature of her disability – given that the benefits she was receiving included a PIP (Personal Independence Payment).

She also drew the investigator's attention to the "Money Advice Liaison Group 12 Step Guide". And said that Nationwide ought to have been following this and questioned whether there was any evidence that it did.

The investigator considered these points, but it didn't change her mind about the outcome. She said, in summary, that:

- She agreed Nationwide was aware that Miss M had been in receipt of PIP, but didn't think it was reasonable to expect Nationwide to ask details about a customer's disability in the context of making the lending decisions.

- She would've expected Nationwide to make any reasonable adjustments had Miss M disclosed the nature of her disability to it. However, Miss M hadn't disclosed this.

- Prior to the fourth loan being granted, there were higher levels of retail spending on Miss M's credit card. Alongside quite a few refunds. Had Nationwide questioned this spending, she didn't think it likely that Miss M would've disclosed the nature of her disability (which can cause compulsive spending) – as she hadn't disclosed it before then and wanted the loan in question to be granted.

- Overall, she didn't think that Nationwide had acted unfairly when making its lending decisions.

As the matter remained unresolved, the case was passed to me to decide.

After reviewing the file, I asked the investigator to clarify with Miss M how she had been able to make substantial credit card repayments, sometimes clearing the balance, in the lead up to the loan applications - when her total expenditure was significantly exceeding her income. And how she had been able to keep up with her loan repayments, given that her expenditure was exceeding her income.

This was against a backdrop of Miss M's bank statements showing some significant transfers in from other accounts and Miss M having made reference to keeping up with the loan repayments, by exhausting her savings.

Miss M said that for much of this time she was experiencing a serious episode of her disorder and had very little recall of events during this time. But she said that:

- Her credit card has been at its maximum for a long time and she has only been paying the minimum amount each month.

- Her savings were exhausted some time ago.

- Her parents have been providing financial support and this is how she has managed to maintain loan payments and balance her budget.

I issued a provisional decision in February 2022 upholding the complaint. Below is an extract from my provisional decision.

> *The regulatory framework*
>
> *Miss M applied for loan one in July 2013, so the Office of Fair Trading Irresponsible Lending Guide (OFT ILG) applied at the time. For loans two to four, the Consumer Credit sourcebook regulations apply. The following CONC regulations are particularly relevant in this case:*
>
> *5.2.1R*
>
> *(1) Before making a regulated credit agreement the firm must undertake an assessment of the creditworthiness of the customer.*
>
> *(2) A firm carrying out the assessment required in (1) must consider:*
>
> *(b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement….*
>
> *5.2.3G*
>
> *The extent and scope of the creditworthiness assessment…. in a given case, should be dependent upon and proportionate to factors which may include one or more of the following:*
>
> *(1) The type of credit;*

*(2) The amount of the credit*

*(3) The cost of the credit;*

*(4) The financial position of the customer at the time of seeking the credit;*

*(5) The customer's credit history, including any indications that the customer is experiencing or has experienced financial difficulties*

*(6) The customer's existing financial commitments including any repayments due in respect of other credit agreements, consumer hire agreements, regulated mortgage contracts, payments for rent, council tax, electricity, gas, telecommunications, water and other major outgoings known to the firm;*

*(7) Any future financial commitments of the customer;*

*(8) Any future changes in circumstances which could reasonably be expected to have a significant financial adverse impact on the customer;….*

*5.2.4G*

*(2) A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation.*

*(3) A firm should consider the types and sources of information to use in its creditworthiness assessment…. which may, depending on the circumstances, include some or all of the following:*

*(a) Its record of previous dealings*

*(b) Evidence of income*

*(c) Evidence of expenditure*

*(d) A credit score*

*(e) A credit reference agency report*

*(f) Information provided by the customer*

*5.3.1G*

*(2) The creditworthiness assessment….should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.*

*(6) For the purposes of CONC "sustainable" means the repayments under the regulated credit agreement can be made by the customer:*

*a) Without undue difficulty, in particular*

*(i) The customer should be able to make repayments on time, while meeting other reasonable commitments; and*

*(ii) Without having to borrow to meet the repayments;*

*So, in essence, Nationwide needed to check Miss M's creditworthiness (focused on affordability) and the checks it carried out needed to be proportionate given the relevant factors.*

*Loan one*

*Although this loan was granted under the OFT guidance, the principles are very similar. So, I've first thought about whether the affordability checks Nationwide carried out where reasonable and proportionate. Nationwide says that before granting the loan, it verified Miss M's income and then carried out an income and expenditure assessment.*

*For expenditure, it says it increased the figure Miss M had declared for rent (from £50 to £100) and calculated household expenditure (HE) of £490. It's not clear how it did the HE calculation, but given that when providing us with information it only gave an overall figure (£490), I think perhaps it derived this by applying some kind of average figure (if this is incorrect, Nationwide can clarify this).*

*Nationwide says it also would've carried out a credit bureau check. And that there would have been no evidence of any CCJs, bankruptcy or payday loans.*

*I agree with the investigator that this doesn't represent a reasonable and proportionate check. I say that because Miss M was borrowing a reasonably large amount of money over quite a long period of time. Given that her income was very modest and unlikely to significantly increase, I think Nationwide ought to have gone further than it seems to have done, to verify Miss M's expenditure, in order to check that she would be able to sustainably meet the loan repayments over the term of the loan.*

*However, due to the passage of time, neither Miss M nor Nationwide are able to provide any bank statements in the lead up to loan one being granted, to show what additional checks are likely to have found. As such, I can't reasonably conclude that had Nationwide carried out additional checks, it would have established that Miss M wasn't able to sustainably meet the loan repayments.*

*Loan two*

*I've again thought about whether the affordability checks Nationwide carried out where reasonable and proportionate.*

*Nationwide has said that the checks it carried out for loan two were very similar to those carried out for loan one. It has said that HE was calculated using ONS statistics.*

*Again, I don't think that the checks carried out by Nationwide were reasonable and proportionate. I say this because Miss M was increasing the amount she was* *borrowing and repaying over a longer term. Her income had also decreased. In the circumstances, I don't think that Nationwide using an ONS average figure for expenditure can reasonably be considered to have gone far enough in checking that Miss M would be able to sustainably meet the loan repayments.*

*In terms of getting a better understanding of Miss M's financial situation, in particular in relation to her income and outgoings, Nationwide could've done this in a number of ways. As Nationwide didn't take these steps, I can't know what the checks would've revealed. However, I've seen a number of Miss M's bank and credit card statements in the lead up to the loan application.*

*In the absence of anything else from Nationwide showing what proportionate checks would have shown, I think it's fair, reasonable and proportionate to place considerable weight on this as an indication of what Miss M's financial circumstances were likely to have been. And what Nationwide would've likely uncovered if it had completed proportionate checks. In this case of course, Miss M's current account and credit card were both held with Nationwide. So this information was readily available to Nationwide.*

*After looking at the statements, the investigator concluded that proportionate checks would've shown that the loan was affordable, on the basis that after deducting essential expenditure from income, the loan repayments were affordable. This may well be true, however the bank and credit card statements show that Miss M's total expenditure in the three months leading up to the loan application, was significantly more than her income.*

*Her average monthly expenditure was around £1,270 against an average income of approximately £750. This is a significant and substantial difference. Miss M's non-essential expenditure meant that her total expenditure was significantly exceeding her income in such a way that it would've cast serious doubt on her ability to sustainably meet the loan repayments.*

*Had Nationwide considered this information (which again, was readily available to it), I don't think it would reasonably have concluded that Miss M would be able to sustainably meet the loan repayments. So, I think that Nationwide's decision to grant Miss M the loan, was unfair.*

*Loan three*

*I've again thought about whether the affordability checks Nationwide carried out were reasonable and proportionate.*

*Nationwide has said that the checks it carried out for loan three were very similar to those carried out for loans one and two. It has again said that HE was calculated using ONS statistics.*

*Again, I don't think that the checks carried out by Nationwide were reasonable and proportionate. I say this because Miss M was again increasing the amount she was borrowing and repaying over an even longer term – now some seven years. Her income had increased, but was still a very modest figure. In the circumstances, I don't think that Nationwide using an ONS average figure for expenditure can reasonably be considered to have gone far enough in checking that Miss M would be able to sustainably meet the loan repayments.*

*Again, I've seen a number of Miss M's bank and credit card statements in the lead up to the loan application. These show that in the three months leading up to the loan application, Miss M's average monthly expenditure was around £1,700 against an average income of approximately £1,015.*

*This again represented a significant and substantial difference. I again think that Miss M's non-essential expenditure meant that her total expenditure was significantly exceeding her income in such a way that it would've cast serious doubt on her ability to sustainably meet the loan repayments.*

*Had Nationwide considered this information, I don't think it would reasonably have concluded that Miss M would be able to sustainably meet the loan repayments. So, I think that Nationwide's decision to grant Miss M the loan, was unfair.*

*Loan four*

*I've again thought about whether the affordability checks Nationwide carried out were reasonable and proportionate.*

*Nationwide has said that the checks it carried out for loan four were similar to those carried out for the previous loans, except that on this occasion, income wasn't verified.*

*Again, I don't think that the checks carried out by Nationwide were reasonable and proportionate. I say this because Miss M was again increasing the amount she was borrowing and repaying over a significant term. Her income had increased slightly, but was still a very modest figure. In the circumstances, I don't think that Nationwide using an ONS average figure for expenditure can reasonably be considered to have gone far enough in checking that Miss M would be able to sustainably meet the loan repayments.*

*Again, I've seen a number of Miss M's bank and credit card statements in the lead up to the loan application. These show that in the three months leading up to the loan application, Miss M's average monthly expenditure was around £2,400 against an average income of approximately £1,145.*

*This represented an even more significant and substantial difference. I again think that Miss M's non-essential expenditure meant that her total expenditure was significantly exceeding her income in such a way that it would've cast serious doubt on her ability to sustainably meet the loan repayments.*

*Had Nationwide considered this information, I don't think it would reasonably have concluded that Miss M would be able to sustainably meet the loan repayments. So, I think that Nationwide's decision to grant Miss M this loan, was also unfair.*

*In respect of all of the loans, it's not clear from what Miss M has said, the extent to which she was able to meet her loan repayments by relying on savings versus getting financial support from her parents. But in so far as it seems that her parents were providing at least some financial support to enable her to meet the loan repayments and that Miss M wasn't managing to do this entirely from her own savings, I think this means that the lending was unsustainable.*

*Did Nationwide do enough to recognise Miss M's vulnerability?*

*Miss M has said that Nationwide didn't do enough to identify and then appropriately respond to her vulnerability. Nationwide says that Miss M didn't let it know about her vulnerability and so it wasn't something that it could take into account in any lending decisions.*

*There is no evidence to suggest that Miss M did notify Nationwide of her vulnerability. I've considered the Money Advice Liaison Group guidance that Miss M has referred to. Having done so, I haven't seen anything in the relationship between Miss M and Nationwide that I consider Nationwide ought to have picked up on and investigated. I agree with the investigator that Miss M being in receipt of a PIP wouldn't reasonably have required Nationwide to explore the nature of Miss M's disability.*

*So, I can't say Nationwide needed to do anything more in this regard.*

I set out that Nationwide should put things right by refunding all interest and charges and removing these from any outstanding balance. And if this resulted in the balance being cleared, refunding any surplus plus 8% simple interest. As well as removing any adverse information from Miss M's credit file, as a result of the interest and charges.

Miss M didn't have any further comments to make.

Nationwide disagreed, in summary as follows:

- It believed its creditworthiness assessment was compliant with the regulations at the time in respect of each of the applications and proportionate given the relevant factors, which it set out.
- It set out the steps it has taken in general when considering personal loan applications and changes to the general approach over time.
- It confirmed the sources of information it took into account when considering Miss M's applications.
- Its assessment considered non-discretionary expenditure within the modelled Household Expenditure amount – based on ONS data. "*Ultimately the loan was deemed affordable taking into account non-discretionary costs and expenditure that would be normally expected in a typical lifestyle".*
- In its opinion, to request more granular expenditure items from a personal loan application would be disproportionate for an unsecured credit application and out of line with the rest of the industry.
- The impact of requiring a manual review of statements for Miss M's applications would ultimately be increased price to consumers (based on higher costs) and potentially withdrawing from sectors in the market.
- A consumer spending more than their income is not necessarily a warning flag and is often a temporary position given access to savings and other sources such as parental income.
- Nationwide's affordability assessment will assume that non-essential expenditure is flexible and that if a customer has a new non-discretionary commitment to meet, that will lead to re-budgeting and an adjustment in non-essential spend if necessary (so in essence, Miss M could have lessened her non-discretionary expenditure after the loans were granted).
- If Nationwide took a more cautious approach to lending (in terms of buffers for discretionary spend), it wouldn't be able to meet the borrowing needs of lots more of its customers

**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 do, I still uphold this complaint. I'll explain why.

It isn't necessary for me to repeat the detail of the obligations placed on Nationwide when making lending decision, this was covered in my provisional findings which can be found earlier in this decision and forms part of this decision.

But the essence of it is that, before granting each of the loans, Nationwide needed to carry our reasonable and proportionate checks to satisfy itself that Miss M could sustainably meet the proposed loan repayments. And then make fair lending decisions, based on what it knew or found out.

There are two primary components to creditworthiness: affordability and credit risk. It was Nationwide's prerogative to manage the latter in line with its own lending criteria when deciding to lend to Miss M. But the same can't be said of the former. So, while Nationwide wasn't prevented from assessing its own risk as a lender, it had to reasonably assess the risk to Miss M of the borrowing.

This case turns on whether the checks Nationwide carried out were reasonable and proportionate, given the relevant factors. And specifically here, it comes down to whether Nationwide's use of ONS average figures in its assessment of Miss M's expenditure, was reasonable and proportionate.

And I still find that it wasn't. Each of the loans represented a significant undertaking for Miss M, given the amount she was borrowing, the duration of the loans, that her income was modest, made up entirely of benefits and unlikely to significantly increase.

As national averages are often based on the finances of the average individual/household, it isn't clear whether Miss M was comparable to the reference group Nationwide chose to use.

Bearing all of this in mind, I still think that Nationwide ought to have gone further than it did to check that each of the loans would be affordable for Miss M.

I remain of the view that for each of Miss M's loans, reasonable and proportionate checks would've involved taking a closer look at Miss M's actual expenditure, to check that the loan repayments would be sustainable.

As set out in my provisional findings, Nationwide could've done this in a number of ways. As Nationwide didn't take these steps, I can't know what the checks would've revealed.

Neither Nationwide nor Miss M have been able to provide bank statements in the lead up to loan one. That being the case, I still can't reasonably conclude that had Nationwide carried out reasonable and proportionate checks, it would likely have established that Miss M wasn't able to sustainably meet the loan repayments.

However, I've seen a number of Miss M's bank and credit card statements in the lead up to the applications for loans two to four.

In the absence of anything else from Nationwide showing what proportionate checks would have shown, I still think it's fair, reasonable and proportionate to place considerable weight on this as an indication of what Miss M's financial circumstances were likely to have been.

And what Nationwide would've likely uncovered if it had completed proportionate checks. As Miss M's current account and credit card were both held with Nationwide, this information was readily available to Nationwide.

Per the detail contained in my provisional assessment (set out earlier in this decision), the bank and credit card statements show that Miss M's total expenditure in the three months leading up to each application, was significantly more than her income.

I still consider that, had Nationwide been aware of this (as I believe it likely would have been if it had carried out reasonable and proportionate checks), it would reasonably have considered that the repayments for loans two to four would likely be unsustainable.

I have considered what Nationwide has said, in essence, that when a consumer takes on additional non-discretionary expenditure in the form of a loan repayment, they can then reduce their discretionary expenditure accordingly.

In a situation where, prior to a loan being granted, typical discretionary expenditure takes total expenditure slightly beyond total income, I think it is conceivable that a borrower could meet loan repayments without the need to rely on others or further borrowing, by cutting back on their discretionary expenditure. Although, it is questionable whether such cutbacks would be sustainable over a period of time.

However, here I think that the extent to which Miss M's total expenditure was exceeding her income in the lead up to loans two to four, means that it would not reasonably have been considered realistic for her to be able to sustainably reduce her expenditure in such a way that the loan repayments would be sustainable over the terms of each loan.

Nationwide has also said that a consumer spending more than their income is not necessarily a warning flag and is often a temporary position given access to savings and other sources such as parental income.

I would first point out that Miss M's total expenditure consistently exceeded her income in the lead up to loans two to four, so the evidence suggests Miss M's deficit of income to expenditure wasn't in any way temporary.

But also, the essence of what CONC says about sustainable repayments is that they should be affordable to the borrower without the need for them to rely on outside sources. Miss M says she was able to make the loan repayments through a combination of using her savings and relying on her parents. I have no reason to think this is untrue. And that being the case, while relying on her savings doesn't (according to CONC) necessarily mean the loan repayments were unsustainable, needing to rely on her parents, does.

I've thought about the other points Nationwide has made about the nature of their approach to assessing creditworthiness. And the implications of my provisional findings on things like cost (for Nationwide) and its ability to offer lending to its customers.

To be clear, it's not for me to comment on Nationwide's general approach to creditworthiness assessments (past and present). My role is to decide what's fair and reasonable on the facts of this specific case.

And having done that, for the reasons given, I find that Nationwide didn't act fairly when it provided Miss M with loans two to four. And that it needs to put this right in the way I've described below.

## Putting things right

When I find that a business has done something wrong, I'd normally direct it – as far as it's reasonably practicable – to put the complainant in the position they *would be in now* if the mistakes it made hadn't happened.

In this case, that would mean putting Miss M in the position she would now be in if she hadn't been given the loans in question.

However, this isn't straightforward when the complaint is about unaffordable lending. Miss M *was* given the loans and she had use of the money. And, in these circumstances, I can't undo what's already been done. So, it isn't possible to put Miss M back in the position she would be in if she hadn't been given the loans in the first place.

I don't think it appropriate for Nationwide to benefit from an unfair lending decision.

Bearing this in mind, Nationwide Building Society needs to do the following:

1. Refund all the interest and charges Miss M has paid to date on loans two to four.

2. If the borrowing is still in place, reduce any outstanding capital balance by the amount calculated at step 1.

3. If, after Step 2, any outstanding capital balance remains, ensure that it isn't subject to any historic or future interest and/or charges. And arrange an affordable repayment plan with Miss M. But if Step 2 leads to a positive balance, the amount in question should be given back to Miss M and 8% simple interest should be added to the surplus†.

4. Remove any adverse information recorded on Miss M's credit file in relation to loans two to four, as a result of the interest and charges.

† HM Revenue & Customs requires the business to take off tax from this interest. The business must give the consumer a certificate showing how much tax it's taken off if they ask for one.

## My final decision

My final decision is that I uphold Miss M's complaint against Nationwide Building Society and I direct it to do what I've said above under 'putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 4 April 2022.

Ben Brewer
**Ombudsman**