

## **The complaint**

Mr W complains Nationwide Building Society acted unfairly when it defaulted his accounts.

## **What happened**

Mr W had two current accounts with Nationwide – a Flex account and a FlexDirect account. He says he'd been the victim of various phishing scams and there were transactions using his card which he didn't recognise. He says he walked away from the accounts in January 2015 because of what had happened.

In June 2016, Mr W says Nationwide applied a default to his account. He says the balance in the account was made up solely of charges and he says the Information Commissioner's Office (ICO) has told him that Nationwide can't apply a default in these circumstances.

Mr W says he applied for a Debt Relief Order in February 2019. So, he says Nationwide shouldn't have sold his account to a third party. He says he's been caused considerable inconvenience because of what happened. He can't get a contract phone or any form of credit. Mr W also says that Nationwide should've taken certain conditions, including conditions affecting his mental health, into account under the Equality Act. He complained to Nationwide.

Nationwide investigated his complaint. It didn't uphold his complaint. It said he hadn't told it he'd applied for a Debt Relief Order until after it had sold the accounts. But it said it would pull his Flex account back from its external agents so that it could now be closed in line with the Debt Relief Order. It had only received notification of the Debt Relief Order on 9 December 2020.

Nationwide said that it had sold the FlexDirect account in October 2018, which was before Mr W had applied for the Debt Relief Order. It said it had defaulted this account in September 2016 because he hadn't made any payments to it after February 2016.

Mr W wasn't satisfied. He referred his complaint to our service. Our investigator looked into his complaint. She thought Nationwide hadn't done anything wrong when it had defaulted his accounts. She said Mr W hadn't paid any money into his FlexDirect account for five months prior to it being defaulted and he hadn't paid any money into his Flex account for three months before it was defaulted.

Our investigator said the ICO guidance indicated that accounts could be defaulted within a period of three to six months after payments into the account were stopped. She said she'd checked the balances in the accounts, and she was satisfied these were not made up only of fees and charges. She noted that Nationwide had now received a copy of the Debt Relief Order and arranged for the Flex Account to be closed in line with that Order.

The FlexDirect account was sold prior to the date when Mr W said he'd applied for the Debt Relief Order. So, Nationwide didn't have to take any action regarding that.

Our investigator said Nationwide hadn't been made aware of the issues with Mr W's health. Nationwide said that even if it had been aware of these issues its response to his complaint wouldn't have been different. It said, if he'd made it aware of his issues, it may have been able to refer him to its Specialist Support Team. But it couldn't say what would've happened if he had been referred. So, there was no change to what our investigator had said.

Mr W didn't agree. So, the complaint was passed to me to decide. I issued a provisional decision in which I said:

***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.*

*I can see there were two accounts here. I'll comment on the operation of each of these accounts separately, in the first instance and then I'll comment on why I've provisionally decided that this complaint should be upheld:*

***The Flex Account***

*The account was opened in or around April 2015. Mr W arranged for his social security benefits to be paid directly into the account. The account appears to have been operated mainly in credit until around August 2015. There is evidence of significant numbers of gambling transactions on the account from shortly after the date when it was opened.*

*Mr W appears to have disputed a large number of transactions on his account. The transactions disputed all appear to relate to gambling sites. Nationwide hasn't been able to provide details about this. But, I can see credits to the account with the narrative "transfer from sundries." Nationwide says this means there was a credit to the account which was either a goodwill gesture or a refund for disputed transactions. There are credits of this nature in October, November and December 2015.*

*The last transactions Mr W carried out on this account were in January and February of 2016. There were numerous payments made from the account on 27 January 2016 and 16 February 2016. The narrative on the statement is "Visa Purchases." I asked Nationwide to clarify what this meant. It told me that these were purchases made using Mr W's card. It wasn't able to provide any further details, due to the time that had elapsed.*

*I've noted that before these transactions were debited to the account the account had a small debit balance of just over £70.*

*Nationwide issued a notice of default on 22 January 2016. It says it spoke to Mr W by telephone around this time. He told it he didn't intend to repay the balance outstanding and that was why it proceeded to default the account. It was after this that the card was used to carry out the Visa purchases I've referred to. The transactions that were carried out using the card, after the notice of default was issued, brought the balance to over £800. It's not clear why Nationwide permitted the purchases to be made after a notice of default had been issued. It hasn't been able to provide any details about that.*

*Nationwide defaulted the account in March 2016 and sold it in September 2019. At the date when it sold the account, the Debt Relief Order, which was dated February 2019 had been made. Nationwide has now been made aware of the Debt Relief Order and has agreed to bring this account back under its management so that it can comply with its obligations under the Order.*

#### *The FlexDirect Account*

*This account was opened in or about December 2015. Nationwide hasn't been able to provide any information about the circumstances surrounding the opening of this account or why Mr W requested it.*

*Mr W appears to have redirected his benefit payments so that they started to be paid into the FlexDirect Account from shortly after the date when it was opened. By February 2016 the account started to have an overdrawn balance from time to time and there's evidence of returned direct debit payments.*

*There is also evidence of significant numbers of gambling transactions on this account. And, it appears Mr W raised disputes about these transactions. Nationwide hasn't been able to provide details about this. But, I can see credits to the account with the narrative "transfer from sundries." Nationwide says this means there was a credit to the account which was either a goodwill gesture or a refund for disputed transactions. There are credits of this nature in February and March 2016.*

*I can see that the last credit to this account, made by Mr W, was in February 2016. June 2016 appears to have been the last time Mr W used his card to make payments. By that stage the account had been overdrawn for around three months.*

*Nationwide's records show that Mr W reported his card as lost in February 2016 and a replacement card was issued to him at that time.*

*Nationwide says it defaulted the account in September 2016. It says it sent Mr W a notice of default before doing this. Debt collection agents were appointed and the account was sold in October 2018. At that date the Debt Relief Order had not been made. Mr W has provided a copy of the Debt Relief Order. It is dated February 2019 – which was after the account had already been sold.*

#### *The Equality Act*

*Mr W says that Nationwide hasn't treated him in line with its obligations under the Equality Act. He's told us about various conditions which affect his day to day activities. He's mentioned learning difficulties, anxiety, autism and an eating disorder. Mr W says he didn't tell Nationwide about these conditions. He thought it should've known about these matters since he believed all companies worked together.*

*I'm very sorry to learn about Mr W's circumstances and the various conditions he's told us about.*

*It's not our role to say whether a business has acted unlawfully or breached its obligations under the Equality Act 2010 – that's a matter for the courts. Our role is to decide what's fair and reasonable taking into account all the*

*circumstances. In order to decide that, we have to consider a number of things - including relevant law and what we consider to have been good industry practice at the time.*

*I've thought about what Mr W has told us in terms of how the conditions he's told us about affected the operation of his accounts with Nationwide.*

*Mr W told us he has learning difficulties. He says that because of this he didn't know he needed to inform Nationwide when he changed his address. He says he moved home after he'd opened his accounts with Nationwide and so he hasn't received correspondence from it informing him about the state of his accounts. He also says he didn't know he needed to tell Nationwide about any of the conditions which affected his day to day activities. He thought that it should've known about these matters since he believed all companies worked together.*

*In these circumstances, when thinking about how this complaint should be resolved, one of the things I've thought about is whether Nationwide ought reasonably to have been aware of Mr W's conditions and whether it would be fair and reasonable to have required it to have treated him differently as a result.*

*Why I think Nationwide hasn't acted fairly and reasonably*

*Having looked at the history of both accounts, I've provisionally decided that Nationwide hasn't done everything it could've done here to treat Mr W fairly and reasonably. I say this for mainly the following reasons:*

*- The volume of disputed transactions on the Flex Account*

*Nationwide appears to have initially refunded these disputed transactions in October 2015. There were further refunds applied to the account in November and December 2015. The disputed transactions all appear to have related to gambling payments.*

*I think that the fact Mr W raised a dispute about so many payments would've provided Nationwide with an opportunity to look in more detail at the operation of the account and the gambling transactions in particular. If it had done that I think it would have been on enquiry about whether this type of account, which permitted Mr W to go into unarranged overdraft, was suitable for him.*

*It doesn't appear to have done that or to have engaged with Mr W to talk to him about his circumstances or whether he needed any support. If it had done that I think it would've become aware of some of the issues that Mr W has told us about.*

*Instead, I can see that the account continued to be overdrawn and a notice of default was issued in January 2016. That appears to have been shortly after Nationwide says its Collections team had a conversation with Mr W in which he told them that he had no intention of repaying the debt that he owed.*

*So, whilst I am satisfied, on balance that Mr W was aware he owed Nationwide money, there's no evidence Nationwide talked to him about his personal circumstances or the various conditions he's told us about. I would've expected it to have done that given the history of the account.*

*- The notice of default on the Flex Account*

*As mentioned above a notice of default was issued in January 2016. Mr W had already told Nationwide he had no intention of repaying that debt. So, I wouldn't have expected Nationwide to have continued to allow Mr W to be able to use the account or to increase his unarranged overdraft. But, that didn't happen.*

*Even after the conversation with the Collections department, Nationwide permitted Mr W to use the card on his account to carry out further transactions in January and February. This increased the overdrawn balance from just over £70 to over £800.*

*I'm satisfied, on balance, that it wasn't fair or reasonable for Nationwide to have permitted this increase in the overdrawn position, given the information it had obtained from Mr W.*

***- The opening and operation of the FlexDirect Account***

*Nationwide opened a new FlexDirect account for Mr W in December 2015. There's no information about the circumstances that led to this new account being opened or what enquiries Nationwide carried out at the time. But, having thought about it, I think Nationwide would've had enough information in December 2015 to have been put on enquiry about whether the FlexDirect account was suitable for Mr W.*

*From around 2014, Nationwide, along with several other banks, entered into a voluntary agreement to offer basic bank accounts to its customers.*

*Nationwide had information about how Mr W had operated his Flex account. He was in receipt of benefits and as mentioned above there was evidence of significant numbers of gambling transactions on the account and returned direct debit payments. So, in these circumstances, I think it would've been fair and reasonable for Nationwide to have considered whether a basic bank account, which wouldn't have permitted Mr W to go into unarranged overdraft, would've been more suitable for him. It didn't do that. Instead it appears to have opened the new FlexDirect account without raising any issues.*

*Even after it issued the notice of default on the Flex Account, Nationwide didn't appear to consider whether it also needed to take action on the FlexDirect account. Mr W was able to continue using the FlexDirect account until at least June 2016. And Nationwide didn't intervene when Mr W started to dispute transactions on the FlexDirect Account. This was the same pattern of activity as had been present on the Flex Account. Nationwide didn't appear to question that. Instead it simply processed several refunds for the disputed transactions.*

*Mr W reported his card lost at the end of February 2016. Nationwide issued him with a replacement card and he was able to go on using his account and to go further into overdraft. Again, Nationwide didn't appear to look at the overall position regarding either the Flex account (which was in default) or the pattern of activity on the FlexDirect account.*

*Having looked at the sequence of events on both of the accounts, I'm satisfied, on balance, Nationwide missed several opportunities to intervene. If it had intervened I don't think Mr W would've found himself in the position that he did.*

***What I've provisionally decided needs to be done to put things right***

*In order to put things right, I currently think Nationwide needs to put Mr W back in the position he would've been in if there'd been appropriate engagement with him when it should first reasonably have become aware of the issues he was experiencing.*

#### *The Flex Account*

*Nationwide started to refund the disputed gambling transactions in October 2015. So, I think that was the first point when it could reasonably have been expected to have intervened here.*

*Nationwide has brought this account back under its own management after it received the Debt Relief Order.*

*I've provisionally decided that Nationwide should refund any overdraft charges or interest applied to the Flex Account after 1 October 2015. If there is an amount outstanding after those amounts are refunded, Nationwide should write that amount off. If there is a credit balance after those refunds are applied to the account Nationwide should pay that amount to Mr W together with 8% simple interest from the 1 October 2015 until the date of settlement.*

*I've thought about whether it would be fair or reasonable to require Nationwide to remove the default which it filed about this account.*

*Mr W says the balance in this account was made up solely of charges and he's told us the ICO has told him that Nationwide shouldn't have filed a default in these circumstances. But, having looked at the history of this account, I'm satisfied that the balance was not just made up of fees. I can see that part of the overdrawn balance was made up of payments made using Mr W's card. For example, there were undisputed card transactions in January and February 2016 from this account.*

*Having considered everything, I've provisionally decided I won't require Nationwide to remove the default recorded at credit reference agencies for this account. It is the case that Mr W knew that he owed Nationwide money and he was told during the conversation in January 2016 that a default would be filed if he didn't repay that debt. I'm also mindful that the default was recorded in March 2016 – so it will remain on Mr W's credit file until March 2022. In these circumstances, I don't think it would be fair or reasonable to require Nationwide to remove the default.*

#### *The FlexDirect Account*

*In my findings, I've said that the first point I think Nationwide could've taken different action here was towards the end of 2015 when it started to refund the disputed gambling transactions to the Flex Account. If it had done that I don't think it would've opened the FlexDirect Account in January 2016. It may have opened a basic bank account for Mr W at that time – but he wouldn't have been able to overdraw that account and there wouldn't have been any fees or interest charged.*

*When the Debt Relief Order was made, the FlexDirect account had already been sold. Nationwide says that means it's not responsible for having to comply with the Order. But, I don't think that leads to a fair outcome here. So, I think it needs to bring the FlexDirect Account back under its*

*management. It then needs to refund all fees and interest applied to the account from the date when it was opened.*

*If, after the refunds are applied, there is still a balance outstanding Nationwide should write off that amount.*

*If there is a credit balance Nationwide should refund that amount to Mr W together with 8% interest from the date the account was opened until the date of settlement. And, in this circumstance, it should also remove any adverse information recorded with credit reference agencies about this account.*

#### ***Distress and Inconvenience***

*Mr W has been inconvenienced as a result of what happened here. He's been able to increase his overall indebtedness and that has contributed to the circumstances which meant he had to apply for a Debt Relief Order.*

*Mr W's also had to progress his complaint to our service. In these circumstances, I think Nationwide should pay Mr W £150 by way of compensation for distress and inconvenience.*

#### ***My provisional decision***

*For the reasons given above my provisional decision is that I intend to uphold this complaint about Nationwide Building Society.*

*I intend to require Nationwide Building Society to take the following action:*

##### ***The Flex Account***

- Refund any interest or charges applied to the Flex Account after 1 October 2015;*
- If there is a debit balance after the interest or charges have been refunded, Nationwide Building Society should write off that debit balance;*
- If there is a credit balance after the interest and charges have been refunded, Nationwide Building Society should refund this amount to Mr W together with 8%\* simple interest from 1 October 2015 to the date of settlement.*

##### ***The Flex Direct Account***

- Refund any interest or charges applied to this account from the date it was opened;*
- If there is a debit balance after the interest or charges have been refunded, Nationwide Building Society should write off this amount;*
- If there is a credit balance after the interest and charges have been refunded, Nationwide Building Society should refund this amount to Mr W together with 8%\* simple interest from the date the FlexDirect account was opened to the date of settlement.*
- Remove any adverse information it has recorded with credit reference agencies about this account*

- *Nationwide Building Society should pay Mr W £150 by way of compensation for the inconvenience he's experienced as a result of what happened here.*

\* If Nationwide Building Society considers that it's required by HM Revenue & Customs to take off income tax from any interest due to Mr W it should tell him how much it's taken off. It should also give Mr W a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Mr W accepted my provisional decision.

Nationwide said it was prepared to take the actions set out in my provisional decision.

So, I now have to make a final 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.

Having considered the responses to my provisional decision, I've no reason to change my view about how this complaint should be resolved.

### **My final decision**

For the reasons given above I uphold this complaint about Nationwide Building Society.

I now require Nationwide Building Society to take the following actions:

1. The Flex Account
  - Refund any interest or charges applied to the Flex Account after 1 October 2015;
  - If there is a debit balance after the interest or charges have been refunded, Nationwide Building Society should write off that debit balance;
  - If there is a credit balance after the interest and charges have been refunded, Nationwide Building Society should refund this amount to Mr W together with 8%\* simple interest from 1 October 2015 to the date of settlement.
2. The Flex Direct Account
  - Refund any interest or charges applied to this account from the date it was opened;
  - If there is a debit balance after the interest or charges have been refunded, Nationwide Building Society should write off this amount;
  - If there is a credit balance after the interest and charges have been refunded, Nationwide Building Society should refund this amount to Mr W together with 8%\* simple interest from the date the FlexDirect account was opened to the date of settlement;
  - Remove any adverse information it has recorded with credit reference agencies about this account.
3. Nationwide Building Society should pay Mr W £150 by way of compensation for the inconvenience he's experienced as a result of what happened here.

*\* If Nationwide Building Society considers that it's required by HM Revenue & Customs to take off income tax from any interest due to Mr W it should tell him how much it's taken off. It should also give Mr W a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 29 April 2022.

Irene Martin  
**Ombudsman**