DRN-3829378

Financial Ombudsman Service

The complaint

Mr P complains that Nationwide Building Society lent irresponsibly when providing him with three loans.

This complaint doesn't include other lending decisions made by Nationwide, at least one of which I gather Mr P's complained about to us separately.

What happened

In April 2013 Nationwide loaned Mr P £3,500 over 12 months. Based on the information it's provided, the interest rate on the loan was an annual percentage rate (APR) of 14.9%. The total charge for the credit was around £200, which meant the total amount repayable by Mr P for the £3,500 he was borrowing was around £3,700. The monthly repayments were £308.34. The information Nationwide recorded at the time of his application showed he had a net monthly income of £1,050.

In July 2013, Mr P applied for a second loan over 24 months, and which included consolidation of the first loan. Mr P borrowed £6,484 with an APR of 7.3%. The monthly repayments were £290.52, meaning he'd pay a total of around £6,972 – around £488 of which was interest. His income was recorded by Nationwide as unchanged from the previous application.

In September 2013, Mr P applied for a third loan over 36 months, and which included consolidation of the second loan. This time, Mr P borrowed around £14,258 with an APR of 9.8%. The monthly repayments were £455.98, meaning he needed to pay a total of around £16,415 – around £2,156 of which was interest. His income was recorded by Nationwide as £1,200.

In 2019, Mr P complained to Nationwide that it had lent irresponsibly to him and had made his existing debt problems worse.

Nationwide responded to say that it wasn't upholding Mr P's complaint. Nationwide said each loan application was reviewed against its lending criteria and information provided by credit reference agencies (CRAs) and accepted based on the information provided.

Unhappy with Nationwide's response about the loans, Mr P complained to us. Our investigator looked into the complaint and recommended that it should be upheld. The investigator thought that Nationwide hadn't carried out the checks it should have done prior to making the decisions. They felt that, if Nationwide had, it would have discovered that Mr P was in a cycle of debt and was in financial difficulty such that it wasn't appropriate to offer the lending to him. The investigator asked Nationwide to put things right for him by refunding all interest and charges he'd paid on the loans and reducing any amount outstanding by the amount of the refund. If that left a positive balance, the excess was to be returned to Mr P with interest at 8%.

Nationwide didn't respond substantively to the investigator's assessment, despite reminders and extensions being granted. So, the complaint was referred to me to review afresh.

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.

We've set out our approach to considering unaffordable and irresponsible lending complaints on our website – including the key relevant rules, guidance, good industry practice and law. And I've considered this in deciding Mr P's complaint.

Having done so, I've decided to uphold the complaint. I'll explain why.

There are several questions that I've thought about when deciding if Nationwide treated Mr P fairly and reasonably when it provided him with the loans. These include:

1) Did Nationwide complete reasonable and proportionate checks to satisfy itself that Mr P would be able to repay the loans in a sustainable way?
2) If not, what would reasonable and proportionate checks have shown at these times?
3) Ultimately, did Nationwide make fair lending decisions?
4) Did Nationwide act unfairly or unreasonably in some other way?

Did Nationwide complete reasonable and proportionate checks to satisfy itself that Mr P would be able to repay the loans in a sustainable way?

The rules that Nationwide had to follow required it to carry out checks that would enable it to reasonably assess whether Mr P could afford to repay the loans being offered. This is often referred to as an '*affordability assessment*'.

The rules don't set out what specific checks Nationwide needed to carry out, but they did set out that those checks needed to be proportionate to the circumstances of the application. I think what this meant in practice was that the scope and extent of Nationwide's checks needed to reflect the nature of the lending, bearing in mind things such as the amount of credit, the interest rate, the duration of the loan, the monthly and total amounts repayable, and any indications of customer vulnerability.

The checks Nationwide needed to carry out as part of its affordability assessment had to be '*borrower focussed*'. What I mean by this is that the checks needed to consider whether paying the loans back would cause Mr P any difficulties or have any adverse consequences for him. They would also need to take account of factors such as the amount of money being lent, the term of the loan and the monthly repayments, total charge for the credit and the interest rate being charged. This isn't an exhaustive list.

And, as a result of the above, I think reasonable and proportionate checks needed to be more thorough if Mr P was on a low income. This would reflect that it could be more difficult for him to meet the monthly repayments on such an income.

Nationwide would also need to be more thorough the higher the amounts he had to repay, as it would be more difficult to make higher repayments depending on his income.

With these principles in mind, I've thought about whether Nationwide completed reasonable and proportionate checks to satisfy itself that Mr P would be able to repay the loans in a sustainable way.

In summary then, the circumstances of the loan applications are as follows:

- Mr P applied for the first loan which had an APR of 14.9%.
- Mr P was recorded by Nationwide as having a net monthly income of £1,050 rising to £1,200 later in 2013.
- By the time of the third loan application, the amount of borrowing had risen from £3,500 to more than £14,000. The term of the loans had increased from 12 months initially to 36 months.

There are gaps in the information that's still available about the loans but especially regarding the first loan. Nationwide holds more information about the second and third loans. It seems Nationwide did request some information in relation to the loans. This included asking Mr P for details of his monthly income. Nationwide also obtained information from a CRA to gauge his expenditure and to assess how he was managing his existing credit.

The CRA checks revealed that Mr P wasn't in arrears or subject to any arrangements or county court judgments (CCJs). It indicated to Nationwide that he wasn't experiencing over-indebtedness in terms of total levels of unsecured debt.

But I think Mr P's level of disposable income when compared with the amount he'd have to pay for the loans ought to have given Nationwide cause for some concern in the circumstances. I say that because the repayments for the first loan represented nearly 70% of his estimated disposable income. That figure rose to around 75% for the second and third loans. That's a considerable proportion and left Mr P with little room for manoeuvre financially.

I'm also mindful that the second and third loans were for debt consolidation and the terms of the loans were increasing greatly in a short space of time. This meant Mr P would owe Nationwide more money and over a longer period.

So, there was at least some cause for concern that I think should have prompted Nationwide to look more closely at Mr P's financial situation before deciding whether to provide the loans. Nationwide doesn't appear to have carried out borrower focussed checks as I'd have expected it to, given the situation Mr P was in at the time of the borrowing. And, as a result, checks should have been carried out to ensure he'd be able to sustainably repay the loans.

What would reasonable and proportionate checks have shown at these times?

I gather Mr P was primarily using one bank account – held with Nationwide – when he applied for the loans. I believe it would have been reasonable and proportionate for Nationwide to have requested/reviewed copy statements of the account to help better determine how he was managing his finances before making its decisions.

On reviewing Mr P's account statements from 2013, I think sight of them would have brought to light clear indicators that he was struggling financially. For example, his statements from February 2013 onwards consistently show dealings with multiple payday lenders and payments to gambling firms. His account was regularly overdrawn throughout this period, and he incurred unauthorised overdraft fees and interest charges on several occasions. So, it seemed Mr P was struggling to manage his day-to-day finances even before he took out loans with Nationwide for ever increasing amounts.

Did Nationwide make fair lending decisions?

I think it ought to have been a concern to Nationwide that, based on the information provided to it, the loans left Mr P with so little remaining of his disposable monthly income. In the space of around five months, Mr P consolidated the initial loan twice which I think in itself was an indication that the borrowing had become, or was becoming, unsustainable.

In addition to the information Nationwide held, there's the information I believe Nationwide ought to have obtained in carrying out the relevant borrower focussed affordability checks. This information showed a reliance on payday loans and difficulty in Mr P managing to balance his income and expenditure on a day-to-day basis.

The information indicates to me that Mr P was struggling financially before April 2013 and continued to do so after that point. I also think based on the information Nationwide did have about Mr P that it should have concluded that it was unlikely he'd be able to sustainably afford to make the monthly payments for the new loans. And if it had carried out reasonable and proportionate checks, for example by reviewing his bank statements, then the information I've summarised above should have reinforced the conclusion it should have reached on the information it did have; that the loans were unlikely to be sustainably affordable for him.

So, based on the information Nationwide had and ought to have obtained about Mr P, I'm not satisfied that it could have reasonably concluded that he'd be able to sustainably afford to make the monthly payments for the loans.

For the reasons I've outlined above I think that, in the circumstances of Mr P's case, Nationwide should have realised it was unlikely he'd have been able to repay the loans, and that it wasn't appropriate to lend to him.

Did Nationwide act unfairly or unreasonably towards Mr P in some other way?

I've carefully thought about everything provided. Having done so, I've not seen anything to suggest that Nationwide acted unfairly or unreasonably towards Mr P in some other way.

Putting things right

I think it's fair and reasonable for Mr P to repay the principal amounts that he borrowed, because he had the benefit of that lending. But he's paid interest and charges on three loans that shouldn't have been provided to him. So, I think Mr P's lost out and that Nationwide should put things right for him. Nationwide should:

a) Remove all interest, fees and charges applied to the loans from the outset. Any payments made by Mr P should then be deducted from the new starting balance. If the payments Mr P's made total more than the amount he was originally lent, then any surplus should be treated as overpayments and refunded to him with 8% simple annual interest† calculated on any overpayments made, from the date they were paid by Mr P, to the date the complaint's settled.

b) If there's still an outstanding balance on the third loan, then Nationwide should agree an affordable repayment plan with Mr P, bearing in mind the need to treat him positively and sympathetically in those discussions, and take account of his current ability to repay the loan.

c) Remove any relevant adverse information recorded on Mr P's credit file as a result of the lending.

† HM Revenue & Customs requires Nationwide to take off tax from this interest. Nationwide must give Mr P a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons given, I've decided to uphold this complaint. I require Nationwide Building Society to put things right for Mr P as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 9 January 2023.

Nimish Patel
Ombudsman