

## The complaint

Mr E complains that Nationwide Building Society (Nationwide) irresponsibly lent to him when providing him with an overdraft facility and a loan.

## What happened

I set out the background to this complaint and my initial findings in my provisional decision on 30 January 2023 (below). In my provisional decision I explained why I was intending to uphold Mr E's complaint.

*Due to medical reasons, Mr E has not worked for several years, he held a Nationwide Flex account which the Department for Work and Pensions (DWP) paid his benefit payments into. In December 2015 Mr E had an overdraft facility of £4,050 which he wasn't using at the time.*

*The regular payments into the account were £82.30 per week Personal Independence Payment (PIP) and an Employment and Support Allowance (ESA) payment of £125.05 per week.*

*During the early part of 2016 Mr E began to use his overdraft facility and by May 2016 the limit on this had been increased to £5000, of which he had used £4950.*

*In June 2016, Mr E applied for a loan of £20,000 in the Nationwide branch he uses, this was declined as there was an end date to one of his benefit payments, meaning he would not meet the affordability criteria for the term of the loan. He later reapplied for the loan through the direct channel, and it was granted over a period of 84 months, with a monthly payment of £324.77. He was sent back to the branch to sign the loan documentation. The funds were deposited into his account on 11 June 2016. The majority of these funds were withdrawn from his account on 13 June 2016 by transfer.*

*Mr E quickly had problems making the monthly payments on the loan and by September 2016 his direct debits were being returned for insufficient funds. The loan eventually defaulted in August 2017.*

*Following various communications between Mr E and Nationwide it became clear Mr E could not afford the payments towards the debts. So, Nationwide offered to place a voluntary charge over his property for the balances of: Flex account -£5,018.83 and Loan account -£19,967.70. Mr E didn't want to do this and made a complaint to Nationwide saying they had lent to him irresponsibly, when it was clear he couldn't afford it and so wanted the debts written off. He also cited his mental health issues when requesting this. Nationwide responded saying they believed they had followed process when lending to him and it was not their policy to write off debts where the borrower had an unencumbered property. Mr E didn't think this was a fair response and so brought his complaint here.*

*Our investigator initially didn't comment on the Flex account but asked Nationwide to*

*remove any interest and fees that had been added to the loan account. He also asked them to remove any adverse data from Mr E's credit file. Nationwide agreed to this, but Mr E did not. Our investigator asked Nationwide for information regarding the overdraft on the Flex account, but they didn't respond. And so, in his second opinion the investigator asked for the same remedy for this account as the loan account, for all interest and charges to be refunded and for any adverse data to be removed from Mr E's credit file.*

*Neither party responded to the investigator following his second view and so the matter has been passed to me to decide.*

### ***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.*

*Having done so I'm currently intending to uphold Mr E's complaint, I'll explain why and in doing so I will deal with the accounts separately.*

*We've set out our general approach to complaints about unaffordable/irresponsible lending – including all the relevant rules, guidance, and good industry practice – on our website, which I will be following when considering each account.*

*Considering the relevant rules, guidance and good industry practice, I think the questions I need to consider in deciding what's fair and reasonable in the circumstances of Mr E's loan and Flex accounts are:*

- Did Nationwide complete reasonable and proportionate checks to satisfy themselves that Mr E would be able to make repayments to the accounts in a sustainable way?*
  - If so, did they make a fair lending decision?*
  - If not, would those checks have shown that Mr E would have been able to do so?*

### ***Loan account***

*The rules and regulations in place required Nationwide to carry out a reasonable and proportionate assessment of Mr E's ability to make the repayments under the loan agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".*

*It had to be "borrower focused" - so Nationwide had to think about whether repaying the loan would be sustainable. In practice this meant that Nationwide had to ensure that making the repayments on the loan wouldn't cause Mr E undue difficulty or significant adverse consequences. That means he should have been able to meet repayments out of normal income without having to borrow to meet the repayments, without failing to make any other payment he had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on his financial situation.*

*In other words, it wasn't enough for Nationwide to simply think about the likelihood of them getting their money back – they had to consider the impact of the loan repayments on Mr E. Checks also had to be "proportionate" to the specific*

*circumstances of the loan application.*

*In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount/cost of credit they are seeking. Even for the same customer a proportionate check could look different for different applications. I think that such a check ought generally to have been more thorough:*

- The lower a consumer's income (reflecting it could be more difficult to make any loan repayments to a given loan amount from a lower level income);*
- The higher the amount due to be repaid (reflecting it could be more difficult to meet a higher repayment from a particular level of income);*
- The longer the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and*
- The greater the number and frequency of loans, and the longer the period during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).*

*There may also be other factors which could influence how detailed a proportionate check should be for a given lending application - including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.*

*Were Nationwide's checks reasonable and proportionate?*

*I found Nationwide's response to Mr E's complaint and what they provided us to support their position to be disappointing. Nationwide provided little information about the checks it carried out before agreeing Mr E's loan. It seems to me from the lack of information provided and the fact the application wasn't done in person, that Nationwide relied on Mr E considering how much he wanted to borrow and what he could afford to repay. This appears to be a failure on Nationwide's part to recognise their regulatory obligation to assess whether the payments were affordable.*

*This is supported by a system note that it provided from one of the branches, which says: only a few days before the loan being granted, Mr E had applied for the loan in one of the branches, but this had been declined as Mr E didn't meet the affordability requirement. The note goes on to say that Mr E's income is made up of two types of benefit payment, one of which has an end date and would reduce his income to around £540 per month during the term of the loan. With the monthly repayments due to be £324.77, this would clearly be unaffordable.*

*I appreciate the note may not have been on the system at the time of his second application, but the first application would have been on the system and could have been reviewed. I have seen nothing to show that Nationwide investigated the affordability issue further before granting the loan. So, I don't think I can fairly say Nationwide have shown they carried out proportionate checks prior to providing Mr E with the loan. So, to understand for myself what Nationwide would more likely than not have discovered if they had completed reasonable and proportionate checks, I*

*examined Mr E's Nationwide Flex account bank statements and the contact notes and other internal system notes from Nationwide.*

*I can't be sure what Nationwide's checks showed at the time of the loan application but in the absence of anything else and as Nationwide had this information available, I believe it to be perfectly reasonable for me to rely on this to ascertain Mr E's financial position at the time of application.*

*The first statement I have is from 3 January 2016, at this time Mr E was not using his overdraft facility but did have an arranged overdraft limit of £4,050. I can see Mr E began using his overdraft facility in April 2016. I haven't been provided with a full statement for April just a snapshot of the account balance, so I can't see what the agreed overdraft limit was at that time, but by 30 May 2016 I can see that the limit had been increased to £5,000 and Mr E had utilised £4,950 of it.*

*Mr E seems to have no bills being paid from this account and the only income into it is from his benefit payments or transfers from another account – all of which seem to be withdrawn straight away either by cash or transfer out. It's clear this isn't Mr E's main account for his day-to-day transactions such as paying bills or buying his living essentials. So, I can't see that Nationwide knew or had seen a true reflection of his outgoings, as I would have expected them to have, in order to be able to assess his affordability for the loan.*

*There is a system note relating to Mr E previously being a victim of a scam in 2012. And in April when he began to use his overdraft facility it seems he was sending large sums of monies aboard. I think Nationwide should have been alive to the possibility that Mr E was getting himself into financial trouble here and could potentially not need the loan for home improvements as he had said he did.*

*Having considered all of the above, I'm satisfied that had reasonable and proportionate checks been carried out before the loan was approved, I think it would have been reasonably foreseeable that Mr E wouldn't be able to make his repayments in a sustainable manner. Additionally, I'm satisfied Nationwide had sufficient information available to them to have been able to see that further checks were needed before agreeing to the loan.*

### **Overdraft**

*Much the same as the loan account Nationwide needed to carry out a reasonable and proportionate assessment of Mr E's ability to afford the overdraft facility and the costs associated to it. The checks also had to be "borrower focused" - so Nationwide had to think about whether the increase in interest payments associated with using the overdraft was sustainable for Mr E.*

*As I've mentioned above, I can see from the statements provided Mr E initially had an agreed overdraft facility of £4,050, which he was not utilising. I can see this facility was still in place in March 2016 and can also see that he began to use the overdraft in April of the same year. It's not clear from the information provided by Nationwide, when or why they increased the limit to £5,000 but I can see this had been put in place by the May 2016 statement.*

*All of the information I've considered above in regard to the loan account was available to Nationwide at the time it increased Mr E's overdraft limit.*

*Having thought about our approach, outlined above, I can't fairly say that Nationwide*

*completed reasonable and proportionate checks, nor do I think they made a fair lending decision here. I say that because Mr E started to use his overdraft very quickly, without any build up, transferring large sums out of the account. While this on its own isn't an indicator that he couldn't afford to pay the overdraft back and maintain the account, the transfers of the money out of his account should have raised questions for Nationwide given Mr E's history of being a victim of scams and frauds on more than one occasion.*

*Had Nationwide completed reasonable and proportionate checks on Mr E before increasing the overdraft facility, I think it would have been reasonably foreseeable that Mr E would not be able to afford the interest or charges associated with the overdraft, nor would he be reasonably able to afford to pay back the money used.*

*If when considering an overdraft increase a business discovers the facility in place is no longer affordable, it has the option to withdraw or reduce this facility. I think in Mr E's case Nationwide should have done this. And as Mr E hadn't been using his overdraft facility prior to this there would have been no detriment to him in doing so at that time.*

### **Putting things right.**

*I've thought about how Nationwide should put this right. Where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practical – to put the consumer in the position they would be in now if that wrong hadn't taken place. In essence, in this case, this would mean Nationwide putting Mr E in the position he'd now be in if he hadn't been provided with the loan and the overdraft limit increase.*

*But when it comes to complaints about irresponsible lending this isn't straightforward. Mr E was given the loan in question, and he used the funds. So, I can't undo what's already been done. And it's simply not possible to put Mr E back in the position he would have been in if he hadn't been given the loan in the first place because Mr E doesn't have the £20,000 available to return to Nationwide for the agreement to be immediately unwound. Nor does he have another £5,000 to repay the overdraft facility on his Flex account.*

*As we explain on our website where we find, or a lender agrees, credit was provided irresponsibly, we would typically say it's fair and reasonable to expect the borrower to repay the funds they were lent but not any associated interest, fees or charges. But having given careful thought to the matter before me and the circumstances of this particular case, I don't think that such an award goes far enough here. And I think that's the case for two reasons.*

*Firstly, for all the reasons I have already explained in some detail above, Nationwide ought to have been aware there was a significant risk that Mr E was unlikely to be able to sustainably repay what he was being lent, let alone the associated interest. There's nothing to indicate his financial situation was going to get any better, moreover the evidence suggests it was likely to get worse. And Mr E's most recent spending habits should have been a red flag for Nationwide. However, Nationwide chose to lend in these circumstances despite the reasonably foreseeable prospect of the funds being transferred from the account and being no longer available to repay any debt as a result.*

*It's also my understanding that Mr E's financial situation will be unlikely to change in the foreseeable future, his doctor has provided evidence to show that he has a long-*

*term mental health condition making it difficult for him to remember and understand things. And he is on medication to help with this. Mr E hasn't been able to work for over 10 years and there is no indication this is going to change.*

*Mr E has explained to us the distress that has been caused to him over the last six years, being pursued by Nationwide for the two debts and worrying about how he can pay them while paying his essential bills and being able to live. I don't doubt that this has been an incredibly difficult time for him, dealing with this and his own mental health issues. He has told us that at times this has led him to feeling suicidal as he can't see a way out from the debt and feels he will be in debt for the rest of his life as he can't afford any monthly payment to bring the debt down.*

*Bearing in mind Mr E's current financial position, the amount of distress and inconvenience caused by Nationwide unfairly providing the loan and overdraft to Mr E in the circumstances they did, I don't think removing the interest fees and charges goes far enough. The circumstances of this case and in particular the financial hardship which is likely to be caused by requiring Mr E to pay funds he doesn't have and is unlikely to get, lead me to think that the fair and reasonable thing for Nationwide to do here, given all the circumstances, is write off the outstanding balance on both the loan account and the Flex account.*

*I've carefully considered this and had it not been for my direction to write off the outstanding balance, I would have told Nationwide to pay a not insubstantial amount of compensation for the distress and inconvenience their actions caused. However, as this will result in Mr E having repaid substantially less than the amount he was lent, I'm satisfied that this also encompasses fair compensation for any distress and inconvenience Nationwide's actions in relation to providing the loan and the overdraft caused to him. And so, I'm not making an additional award for distress and inconvenience.*

*I turn now to Mr E's credit file. He has told us the adverse information on his credit file is affecting him and his ability to have flexibility by obtaining credit. We would typically expect a lender to remove any adverse information from the borrowers credit file where a complaint is upheld for irresponsible lending. However, I don't think that doing this would be the fair and reasonable thing to do here given what I'm asking Nationwide to do in terms of the balances.*

*To explain, the basis for Mr E's complaint was and is that he is a vulnerable person who should never have been allowed to borrow from Nationwide. And Nationwide's decision to lend to him in 2016 has made things significantly worse for him both financially and mentally. I've accepted this is the case and this has played a large part in my intended decision to uphold Mr E's complaint.*

*In the circumstances, it seems to me removing adverse information from Mr E's credit file, increasing the chances of him being able to borrow further would be counter-productive and arguably not in his best interests, or those of any potential lender. So, I think it's fair and reasonable for Nationwide to reflect what I'm asking them to do in relation to the outstanding balance on both the loan account and Flex account and record them as written off on Mr E's credit file.*

### **My provisional decision**

*For the reasons set out above, I currently uphold this complaint and I require Nationwide Building Society to carry out the actions as set out under the 'Putting things right' section of this decision*

I invited both parties to let me have anything in response they thought was relevant.

Nationwide replied accepting my findings. They agreed to write off the overdraft facility they provided to Mr E. They also informed us they defaulted the loan in 2016 and already considered it written off. So as a result of my findings they would no longer be pursuing Mr E for the outstanding debt on either account.

Mr E also responded, in summary he said:

- He doesn't think the findings put him back in the position he was in before taking the loan and the overdraft. And it's not fair to him for his credit file not to be rectified, as this is preventing him from getting a new current account with other banks.
- He feels he should be compensated as Nationwide treated him like a number at a very low time in his life and never apologised.

### **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.

I've carefully considered Mr E's points and having done so I have to tell him they don't change things for me. I'll explain why.

Mr E has told us that he is struggling to open a current account with an alternative bank because of the effect the loan and the overdraft have had on his credit score. As mentioned above Nationwide have explained they defaulted the loan in 2016 and consider it written off. The records they provided to us show this to have happened in August 2017 but nevertheless as both dates are more than six years ago this will no longer be showing on Mr E's credit file.

But the Flex account with overdraft facility will be and although Mr E doesn't agree I think this is fair, as Nationwide has a duty to report factually accurate information to the credit reference agencies for the protection of both Mr E and other potential lenders.

I've taken on board that Mr E has told us he is struggling to obtain a current account at this time, but that doesn't mean he can't have an account at all. I say this because high street banks will provide customers with a basic account regardless of their credit history or credit score. And while this may not be the type of account Mr E wants, he will be able to use it for his everyday banking needs. However, I am also aware, because Mr E has told us, other providers have closed down accounts he has had with them. I have no way of knowing the reasons for the closures or if those banks are willing to work with Mr E again, but that is a separate issue for Mr E to deal with, and I can't hold Nationwide responsible for any difficulties he has with this.

As I explained in my provisional findings, our normal approach when we find a lender has lent irresponsibly is to ask them to remove all interest and charges from the account. But we don't ask them to write off the original debt as we think it's normally fair for the borrower, in this case Mr E, to pay the original lending back. But because of Mr E's circumstances I went much further asking Nationwide to write off the entire debt meaning Mr E doesn't have to repay any of the original amounts he borrowed. It's unclear what Mr E spent the money he borrowed on, but he did have the benefit of it and so in not having to pay it back he has been compensated to the value of the original lending. So, I don't think more compensation is due here as the amount of the original lending is much higher than any award I would have made for the distress and inconvenience the lending caused him.

I understand this may be disappointing to Mr E, as I know how strongly he feels about his credit score and not being compensated, but hopefully my explanation for why my decision remains the same is helpful to him.

### **Putting things right**

As Nationwide has confirmed it wrote off the loan account and defaulted it in 2016, no further action needs to be taken in respect of this account. But Nationwide should now write off the outstanding balance of the overdraft on Mr E's flex account and reflect this action on Mr E's credit file accordingly.

### **My final decision**

For the reasons set out above, I uphold this complaint and I require Nationwide Building Society to carry out the actions as set out under the 'Putting things right' section of this decision

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 5 April 2023.

Amber Mortimer  
**Ombudsman**