

The complaint

Mr R has complained that Nationwide Building Society ("Nationwide") acted irresponsibly by agreeing an overdraft and two loans for him over a short period of time.

What happened

Mr R applied and was approved for an overdraft of £2,500 on 22 May 2022. In the month prior to and following this, Nationwide agreed two loans of £10,000 each. Mr R complained to Nationwide that it acted irresponsibly by providing him with an overdraft and loans.

Nationwide didn't agree that it had lent irresponsibly. It says all applications were subject to credit reference checks and a detailed affordability assessment was carried out and came back fine.

Mr R was dis-satisfied with this and he referred his complaint to our service.

Mr R's complaint regarding his overdraft was considered by one of our adjudicators. They thought that Nationwide acted unfairly when it provided the overdraft in May 2022 because it would've been aware of Mr R's other borrowing commitments with it at the time and that there was evidence of gambling on his statements and thought Nationwide ought to have realised it was unlikely Mr R would be able to sustainably repay the extra lent within a reasonable period of time.

Nationwide disagreed. It says the loan wouldn't have shown up on Mr R's credit record when the overdraft was granted and that Mr R had a high level of credits coming into his account indicating that he had come into funds.

So the case was progressed for an ombudsman's 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.

Firstly, to be clear this decision only relates to Mr R's overdraft approved by Nationwide. And based on the evidence I've seen, I've decided to uphold Mr R's complaint that Nationwide acted irresponsibly in agreeing the overdraft lending.

Nationwide needed to make sure that it didn't lend irresponsibly. In practice, what this means is it needed to carry out proportionate checks to be able to understand whether Mr R would be able to repay what he was being lent before providing any credit to him. Our website sets out what we typically think about when deciding whether a lender's checks were proportionate.

And in this case, I'm in agreement with our adjudicator in that I don't think Nationwide acted fairly in providing Mr R with an overdraft given the borrowing Mr R already had with it and I

don't think its checks went far enough. I say this as I can see in the month before Mr R had his overdraft of £2,500 agreed, Mr R took out a loan with Nationwide of £10,000.

Nationwide says that Mr R's credit check came back fine and that the £10,000 loan taken out with it wouldn't have shown up on Mr R's credit record due to the short period of time between the loan and overdraft being granted. But Nationwide haven't provided me a copy with the credit reference check, so I can't see what it saw when assessing Mr R's overdraft application. But I don't think this matters, because I can see from Nationwide's internal records that the loan was present when Mr R applied for his overdraft - so it ought to have known at the very least about the outstanding loan Mr R already had with it.

Indeed, Nationwide's records show that around the same time as Mr R applied for his overdraft, he had two applications withdrawn for further loans of around £10,000 and £20,000. And the reason stated for this was because a customer has to wait 40 days after release of first loan funds to apply again. Yet Mr R was still able to apply for and be approved for further borrowing in the form of an overdraft.

Nationwide says in the lead up to Mr R's overdraft application he had credits coming into his account of £5,200 indicating he had come into funds and that the overdraft was affordable. But this doesn't mean Mr R has an increased salary or is expecting further credits like this or that these funds weren't earmarked for spending elsewhere.

And Mr R's statements also show a number of large cash withdrawals and transfers out of his account as well as around £4,100 spent on gambling. I think it could reasonably be concluded that this was what the additional overdraft funds were for and that Nationwide ought to have realised that on an annual income declared of around £20,000 that Mr R wasn't in a position to sustainably repay what he already owed within a reasonable period of time, let alone further lending. Nationwide's own literature suggests that overdrafts are for unforeseen emergency borrowing.

If Nationwide had properly considered the amount of debt Mr R already had with it and the information it had available to it from his statements, I think it is likely that Nationwide would've realised Mr R's circumstances were such that it was unlikely Mr R would have been able to sustainably repay the overdraft within a reasonable period of time.

So I think Nationwide acted unfairly by agreeing an overdraft for Mr R and this means that it should put things right.

I understand Mr R would like his overdraft debt written off. It might help if I explain here that when it is decided a business has done something wrong, we'd expect the business to put the consumer in the position they would be in if that wrong hadn't taken place. And in an ideal world, we'd tell a business to put a consumer in the position they'd now be in if they hadn't been given the credit they shouldn't have. But for complaints about funds which shouldn't have been provided this isn't straight forward as the funds were provided and, in most cases – such as here, have long since been spent.

So we look to try and find some other way to put things right. And where a business allows a consumer to use a credit facility which it should have realised was unsustainable, we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any further interest and charges on that credit. This means we'd normally expect a lender to refund the interest and charges added to any credit from the point the lender ought to have realised it was unsustainable. And if those interest and charges were paid also add 8% simple interest per year.

In this case, it's likely that Mr R will be left with an outstanding balance on his overdraft, once all adjustments have been made, and he's been 'refunded' all of the interest, fees and charges caused by his overdraft and he is unhappy with this. But what Mr R is left with to repay are the funds which he used and I think it's perfectly fair and reasonable to expect Mr R to repay these funds.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr R's complaint for Nationwide to put things right by:

- Reworking Mr R's current overdraft balance so that all interest, fees and charges applied to it from May 2022 are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Nationwide should contact Mr R to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr R's credit file, it should backdate this to May 2022.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr R along with 8% simple interest† on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then Nationwide should remove any adverse information from Mr R's credit file.

† HM Revenue & Customs requires Nationwide to take off tax from this interest. Nationwide must give Mr R a certificate showing how much tax it has taken off if they ask for one.

My final decision

For the reasons I've explained, uphold Mr R's complaint against Nationwide Building Society.

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

Caroline Davies
Ombudsman