

## **The complaint**

Mr W is unhappy with Nationwide Building Society for not making reasonable adjustments for his disabilities under Section 20 of the Equality Act 2010, in relation to his credit card and debit card.

## **What happened**

I issued my provisional findings to both parties setting out why I thought Mr W's complaint should be upheld and invited both parties to provide any further submissions in reply to my provisional decision.

The background to this complaint was set out in my provisional decision together with my provisional findings. The background and my provisional findings are copied below and now form part of this final decision.

### Background

*Mr W raised several concerns about his dealings with Nationwide including how their automated telephone system operated; their email verification process and how they interacted with the service he has on his telephone to block nuisance and unwanted callers. But mostly he was unhappy with how Nationwide was not able to make an adjustment for him by changing the colour for one of his cards so that he could tell them apart more easily.*

*Mr W has both a debit card and a credit card with Nationwide, and he initially complained that the silver colour of the credit card and the colour of the writing and numbers on it were too similar, so due to his visual impairment it was difficult for him to easily read the information on the card.*

*Nationwide responded to Mr W's concerns about their automated telephone service, and also about his concerns relating to the colour of the cards.*

*Nationwide explained they were aware that the colour of their silver card had been a problem for some of their customers and they had already made changes in response to this.*

*Nationwide said they'd worked with a charity for people with sight loss when reviewing the design of the cards. And although Mr W's credit card was not yet due to expire, Nationwide suggested he contact them to change it to the new design. The new design included added features such as raised dots to distinguish between a credit and debit card, as well as a notch at the end of the card. The cards were also different shades of blue, and had larger writing to describe the card product and telephone number.*

*Nationwide also highlighted other methods of communication to Mr W to engage with them so that he wouldn't have to provide his card number in the limited time on the automated system, which was something Mr W said he found difficult. Nationwide said he could use their specialist support team (which he has now done), and they let Mr W know that by holding on a call with their helpline it would take him past their automated system and he*

would be put through to someone regardless.

Mr W didn't accept Nationwide's findings so he brought his complaint to our service. Mr W confirmed to our service that he was mainly unhappy with the colour of his credit card. Mr W was unhappy with changing his credit card to another blue toned card as it would be too similar to his debit card. In his submissions Mr W mentioned that Nationwide had suggested he could have a black card (rather than a blue card) but he would need to close his account and open it again to qualify for this. And this wasn't something Mr W said he wanted to do at that time.

Our Investigator asked Nationwide whether it was possible to change Mr W's credit card to a black credit card. Nationwide responded and confirmed that they had no record of such an offer being made to Mr W, or that it was possible.

The Investigator reviewed the case and concluded Mr W's complaint should not be upheld as they thought Nationwide had done enough with the design of their new card. The investigator therefore said there was nothing further for Nationwide to do.

Mr W didn't accept the investigator's conclusions. In summary, he felt not enough consideration had been given to what would be considered a reasonable adjustment under the Equality Act 2010. And he questioned why providing a card with a different colour to blue was not possible given the other changes Nationwide had made to their cards - particularly noting that other institutions offered different colours. Mr W felt that offering a different colour card was a reasonable adjustment.

Mr W also didn't feel the raised dots on the card would be helpful to those people with both visual and sensory impairment (something Mr W also experienced due to reduced feeling in his hands), and he felt this also had not been considered.

In addition, Mr W said Nationwide's submissions had been accepted without question, and he queried whether as part of the investigation the charity Nationwide consulted with had been approached. Mr W suggested the charity may have simply been forced to accept Nationwide's position, and that Nationwide wished to use corporate colours for their cards.

As the Investigator was unable to reach a resolution, the matter has come to me to decide. Before reaching the provisional findings I have set out below, both Mr W and Nationwide were asked for further submissions in relation to this matter.

Mr W explained that when trying to use the existing silver card and blue card, in order to read the numbers he would have to use a magnifying glass, and for the silver card in particular he required additional light to help distinguish the numbers on the card – something Mr W said took him some time to do and which could be particularly stressful for him with limited time when using Nationwide's automated telephone system.

More recently Mr W was sent a new credit card after his existing one expired – so he now has two blue-toned cards. Mr W has said he has tried the new card, but he says the colour is 'imperceptible' with his other card. He also explained that while the numbers are clearer, on a daily basis the silver card was 'the lesser of two evils' and easier to deal with when in a shop. Most recently Mr W has mentioned that the wording 'Nationwide' printed on the background on the card, behind his card number, is 'shiny' compared to the 'eggshell finish' on the card and the shiny finish reflects the light making it harder for him to read the last 12 digits on the card number.

In relation to the raised dots on the new cards and the notch, Mr W has said he tried using these but due to the reduced feeling in his hands he found it difficult to locate the notch and

*feel the raised dots, so this did not help him.*

*Further questions were asked of Nationwide to better understand what steps had been taken to make reasonable adjustments for Mr W, and what was preventing Nationwide from being able to do more for Mr W's circumstances.*

*Nationwide explained they no longer offered another card colour, and were unable to do so even as an exception for Mr W due to how their manufacturing process works, but they did not provide any further detail around this. Nationwide reiterated they had invested much time in working with a relevant charity to develop a card which could be as suitable as it could for the majority of their members. But due to card scheme rules and their mass manufacturing arrangements they were unable to offer anything more bespoke.*

*Nationwide expressed sympathy towards Mr W's loss of feeling, and explained that based on their current manufacturing set up there weren't any alternative options they could provide in order to offer the bespoke card that Mr W was looking for.*

#### My provisional findings

*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've reached a different outcome to our Investigator, and I'll explain why.*

*I would say this has not been a straightforward case to decide, and while I have upheld Mr W's complaint, I suspect it will not be the resolution he was hoping for.*

*It may help if I start by explaining the role of this service. The Financial Ombudsman Service is an alternative dispute resolution service set up to resolve individual complaints based on what is fair and reasonable in the circumstances of each case. The Financial Ombudsman Service does not fine or punish businesses, or request that businesses change their processes or practices – that is for the regulator, the Financial Conduct Authority, to consider. So I will only consider here what has happened in the circumstances of Mr W's individual complaint.*

*When deciding what is a fair and reasonable resolution to a complaint, I am required to take into account any relevant law and regulations; regulators' rules, guidance and standards; codes of practice and (where appropriate) what is considered to have been good industry practice at the relevant time.*

*Mr W's complaint is that Nationwide have not made reasonable adjustments for him under the Equality Act 2010.*

*It's not for the Financial Ombudsman Service to judge whether Nationwide has breached the Equality Act 2010 – that is an issue for the courts. But, as I've explained, I can take into account any relevant law when deciding whether I think Nationwide has treated Mr W fairly and reasonably in the circumstances of this complaint.*

*The relevant law in this matter is the Equality Act 2010. Under the Equality Act 2010, businesses must take reasonable steps to remove barriers people face as a result of their disability so that, as far as possible, people with disabilities receive the same service as people who don't have a disability and are therefore not placed at a substantial disadvantage. This is known as the duty to make reasonable adjustments.*

*Having reviewed the submissions from both parties, the silver colour of the credit card Mr W first complained to Nationwide about presented a problem for other Nationwide customers.*

*Nationwide have already accepted that the silver-coloured card was unhelpful, so they reviewed the design of their cards.*

*Nationwide said they consulted with an appropriate charity during the design process of their new cards. They have explained the charity tried and tested the physical card and card designs, including raised dots to help identify a credit or debit card, and a notch on the card (which I have assumed is either to help identify the card as a banking card or to know which way the card should face when being used in a machine). Nationwide explained larger product names and telephone numbers were added to the cards to make them more visible, and while they acknowledged the blue colours were similar they offered the best contrast between the base colour of the card and any information on the cards. As part of the testing process Nationwide explained they had tried alternative colours, but the feedback from the charity was about the lack of contrast between the base colour of the card and the on-card text. Nationwide said the new 'dot and notch eco' cards also included the product name on the top-left hand corner to help differentiate them.*

*The anticipatory duty upon Nationwide to make reasonable adjustments for customers that may find it more difficult to access their services due to different kinds of disabilities is asking Nationwide to consider taking reasonable steps to overcome any such barriers. I can see how Nationwide have reached this first step to anticipate the needs of as many of their customers as possible. However, I think this doesn't exclude the need to give further consideration for those individuals who may require something different in place to help them reasonably access the same banking services and ensure they are not being substantially disadvantaged.*

*Mr W does not only manage his visual impairment on a day-to-day basis, but he has also shared that he has developed a reduced loss of feeling in his hands which makes it difficult for him to use some of the new card features that may help many other visually impaired people.*

*It seems to me that while Nationwide have taken steps to anticipate the wider needs of their customers, by including these new card features for visually impaired customers as standard features for all their members – and these no doubt help many individuals – it would appear, however, that there is no further flexibility available to help Mr W given his particular circumstances in order for him to reasonably access the same banking services.*

*I note Nationwide have explained to Mr W how he can contact them using services such as their specialist support team, but it seems – understandably – Mr W's main concern is how he is able to use his cards on a day-to-day basis. And given Mr W's individual circumstances it seems the features of the new cards fall short of being able to help him.*

*I can see Nationwide have said the issues raised in this case are being taken away for consideration, which I think is a reasonable thing to do.*

*However, having taken everything into account I note that this does not resolve Mr W's more immediate problem of using his cards on a daily basis. So I think it's fair to say Mr W's experience of using Nationwide's cards is more difficult for him when compared to other members. And that Mr W feels the silver credit card (something Nationwide has accepted numerous Nationwide customers were unhappy with) is the 'lesser of two evils' for him, suggests to me the new card design is very much not something Mr W finds easy to use now.*

*I acknowledge Mr W's individual circumstances are likely not something the charity Nationwide worked with for these new cards may have taken into account given the charity's focus would have been for visually impaired customers. But I'm also mindful that it is*

*ultimately Nationwide's decision on how they provide their services to their customers, and it is for them to meet their anticipatory duty when providing these services, and be able to make reasonable adjustments for individual customers when appropriate.*

*I understand Nationwide have said Mr W brought his concerns to this service while they believed there was still some level of engagement between them and Mr W, but I think in the circumstances perhaps more could have been done to work with Mr W to better understand his needs to explore whether a solution could be found that would be more suitable for his circumstances, rather than simply say there was nothing Nationwide could do.*

*The reasonable adjustment Mr W is seeking to manage both his visual impairment and the reduced loss of feeling in his hands is for Nationwide to offer him a different colour card, as he has said other banking institutions are able to offer this. Nationwide have not provided any detail around what would be required to change the colour of a card at this time, so it isn't clear to me how practicable it is at this time.*

*Taking everything into account, I do think this matter has caused Mr W much trouble, and I think more could have been done to engage with Mr W to find a reasonable solution. It appears Mr W feels he is now in a worse position than he was previously when using Nationwide's banking services.*

*As Mr W will continue to use his cards on a daily basis, and this will be more time-consuming and challenging for him than for most people, I think it fair to say that Nationwide pay Mr W £750 to recognise the impact this matter has had on him. I consider compensation of this amount is fair where the impact of what has happened has caused considerable distress, upset and worry and/ or significant inconvenience and disruption. And I think this reflects Mr W's experience in this matter.*

*I leave it to Mr W to decide how to take his banking relationship forward with Nationwide, noting that should Mr W move his banking away from Nationwide, this will have added to his inconvenience.*

#### Responses to my Provisional Decision

Mr W initially replied to accept my provisional decision recognising the limitations of this service's involvement. Mr W expressed a hope that Nationwide would also accept the provisional decision and going forward review their processes and procedures.

Nationwide replied to my provisional decision with several points which I've summarised below and will refer to in more detail later on where relevant. Nationwide said they:

- did not feel they had breached the Equality Act 2010.
- had tried to engage with Mr W, but he had not engaged with them.
- could not reasonably be expected to anticipate every disability.
- only needed to make 'reasonable' adjustments under the Equality Act 2010.
- did not feel the £750 award proposed was fair.

However, to try and help Mr W, Nationwide offered a workaround to produce Mr W's credit card on one of their Gold Card plastic credit cards which would emboss the card information in black. The gold-coloured card is used for a different product that Nationwide offer. Nationwide asked if Mr W would be happy to explore this and if so they would begin to make arrangements for doing this.

In light of Nationwide's response, our Investigator approached Mr W for further comments. I've summarised Mr W's additional comments below, and will again refer in more detail to them later on in my decision where appropriate. Mr W:

- accepted Nationwide's offer to change his credit card to the gold and black embossed card.
- said the issue of 'touch' only came into play when Nationwide identified the touch features on their credit card.
- said Nationwide's engagement with him had been poor and left him feeling that having a disability was not a priority.
- said given Nationwide had not considered issues surrounding touch it was his opinion Nationwide have a 'blind-spot' with regards to disabilities.
- the level of compensation proposed was fair and reasonable in the circumstances to recognise the ongoing distress the matter has been causing him.

### **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 additional submissions in reply to my provisional decision, for reasons I will explain later on, I think it fair to reduce the offer for the trouble and upset caused to £500. And I think, in the circumstances, Nationwide's offer of the workaround described above is reasonable in this case.

I have considered Nationwide's points about believing they have not breached the Equality Act 2010; that they could not reasonably be expected to anticipate every disability when setting their processes and procedures; and that they are only required to make 'reasonable' adjustments.

In their recent submissions Nationwide have explained the challenges in producing a bespoke coloured card for Mr W are such that it would mean to make the change would not be a reasonable adjustment.

They've set out that the card scheme operator rules are strict in terms of what can be printed – including the colour of the card. And that printing a 'one off' card is not straightforward as any order for cards would require a minimum of 1000 cards, at a cost. Nationwide have also explained that designing a new card that may be suitable for just one cardholder could also take around 6 months.

In the circumstances Nationwide do not view taking the above course of action as a reasonable adjustment, and they have referred to the Equality and Human Rights Commission which – in respect of reasonable adjustments – references that consideration be given to how effective the change will be in assisting disabled people in general or a particular customer, client, service user or member; whether it can be done; the cost; the organisation's resources and size.

Nationwide also noted that the Treasury Select Committee Report – *Consumers access to financial services* (May 2019) – recommended that the regulator (the Financial Conduct Authority) should mandate that all debit and credit cards have tactile markings as soon as possible, but there was no consideration to visually impaired customers who could not use the tactile markings.

Nationwide's view – based also on their findings that other banks have mostly provided

similar cards without anticipating that a customer may have other adjustment needs – is that they have not breached the anticipatory duty under the act.

As I noted in my provisional decision, as this service is not a court it is not for this service to determine whether the Equality Act 2010 has been breached, and it's not for this service to determine what would be considered a 'reasonable' adjustment under the act. I can only take into account the law, together with other regulatory rules, guidance and standards, codes of practice and good practice. And in doing so, decide, overall what I think is fair and reasonable in the circumstances of the individual case.

In the circumstances I think Nationwide took reasonable steps to engage a relevant charity and anticipate the likely needs of many of their customers by making the changes to their cards that they did.

However, I think it's reasonable to expect that where a customer has particular individual needs, the business engages with the customer to see what is reasonably possible to help them. I will return to this point later on.

Nationwide's proposed solution does not appear straightforward as it will require some system changes for Mr W's card details to be printed onto a card that is used for a different type of credit card to the one that Mr W holds. I understand that doing this will allow Mr W's account features to remain the same.

Nationwide have said this is not something they would normally do as there are challenges in adapting their internal system to accommodate what they are proposing to do for Mr W. It therefore seems to me that Nationwide is stepping outside of their usual processes on this occasion, and in the circumstances I think what they've proposed to do for Mr W is fair. I note that Mr W has already said this would be acceptable to him.

I've considered what Nationwide have said about the level of compensation proposed in my provisional decision and I've reflected once more on whether this is a fair sum to recognise the impact this matter has had on Mr W.

Mr W initially raised his concerns with Nationwide in June 2022, and Nationwide responded to Mr W with their final response letter (FRL) dated 28 July 2022. Nationwide said Mr W had not wished to engage with them on the phone, so they agreed to send the FRL instead inviting him to contact them about changing his silver card to the new blue design. Nationwide say that Mr W didn't contact them, but instead came to this service.

Mr W has said he called Nationwide's card services at 8.03am on 13 August 2022, but they told him nothing could be done and he also called the Specialist Support team later on the same day at 9.05am, where he also understood they could not provide him with what he was looking for. And so he brought the complaint to our service. Mr W said he found Nationwide unhelpful.

Our service asked Nationwide for any call recordings or records of conversations they had with Mr W, but nothing was provided. In the circumstances, it's therefore difficult for me to know what happened here, but I accept it is possible Mr W called Nationwide to try and engage with them as he has described.

I've revisited the file and it would appear more likely than not that Mr W's sensory challenges weren't raised directly with Nationwide, and were not brought to this service's attention until after our Investigator had issued their view – so it would be difficult for Nationwide to have considered whether they could have helped Mr W in relation to this condition. That said, Nationwide told this service – during the course of our investigation – that they could not

have offered anything that could help Mr W specifically in relation to his sensory needs and maintained that they could not provide a bespoke card.

As Nationwide are aware, Mr W has described how, day-to-day, using the cards Nationwide gave him has not been easy. I understand Nationwide feel they tried to engage with Mr W but he would not talk to them, but I'm also mindful Mr W's submissions have been consistent in his version of events in trying to engage with Nationwide. I'm also aware Nationwide said Mr W chose to come to our service, but he did so after Nationwide had given him his referral rights to do so – I therefore think it would be unfair to say Mr W was wrong in approaching our service at that time.

All that said, I am mindful that Nationwide has, since my provisional findings, been able to escalate the matter internally and provide an alternative solution to help Mr W. At the time of my provisional findings it was understood there were no options available to help Mr W with his day-to-day use of his cards, and I think it fair to say that knowing there was this impasse would have added to Mr W's distress. However, I think it only fair to recognise that the solution now offered by Nationwide is able, to an extent, mitigate that for Mr W. In the circumstances I therefore think it reasonable to reduce the award Nationwide should pay Mr W to £500.

### **Putting things right**

Nationwide should take the necessary steps to arrange the gold-coloured card they have offered for Mr W.

Nationwide should pay Mr W £500 to reflect the distress and inconvenience this matter has caused him.

### **My final decision**

For the reasons above, my final decision is that I uphold this complaint and Nationwide Building Society should put things right as I've described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 26 September 2023.

Kristina Mathews  
**Ombudsman**