

Complaint

Mr H has complained that Nationwide Building Society (“Nationwide”) irresponsibly provided him with an overdraft which it continued applying charges on even when he was in financial difficulty.

Background

Nationwide initially provided Mr H with an overdraft that had a limit of £50 in December 2019. Over the course of the following three months the limit on the overdraft was increased until it reached £2,000.00 in March 2020.

In April 2023, Mr H complained that Nationwide irresponsibly provided him with his overdraft and that this caused him financial difficulty.

One of our adjudicators looked at Mr H’s complaint and thought that Nationwide hadn’t done anything wrong when initially providing Mr H with his overdraft or increasing the limit. However, she also thought that Nationwide should have realised that Mr H’s overdraft had become demonstrably unsustainable for him by March 2021 and that it needed to refund all the interest, fees and charges added to the account from this point onwards.

Nationwide disagreed with the adjudicator’s view and so the complaint was passed to an ombudsman for review.

My provisional decision of 20 September 2023

I issued a provisional decision – on 20 September 2023 - setting out why I was intending to partially uphold Mr H’s complaint.

In summary, I thought that Mr H’s complaint should be partially upheld because:

- I was satisfied that Nationwide hadn’t acted unfairly when initially providing Mr H’s overdraft or increasing the limit to £500.
- However, the checks carried out before the limit was subsequently increased (over £500) weren’t reasonable and proportionate and the information provided suggested that Mr H wasn’t in a position to be able to sustainably repay £2,000.00 within a reasonable period of time. So Nationwide didn’t act fairly and reasonably towards Mr H when increasing his overdraft limit.
- Nationwide ought reasonably to have realised that Mr H’s overdraft had become demonstrably unsustainable for him by March 2021 and therefore should not have continued offering the facility on the same terms. Nationwide continuing to offer the overdraft to Mr H in this way, was another reason why it failed to act fairly and reasonably towards Mr H.

I then set out a method of putting things right which I considered addressed Nationwide's shortcomings and Mr H's resulting loss.

Responses to my provisional decision

Mr H confirmed that he accepted my provisional decision and didn't provide anything further to me to consider.

Nationwide disagreed with my provisional decision stating:

- It is neither reasonable nor proportionate to undertake the type of review I suggested needed to be carried out before Mr H's overdraft limit was increased to £2,000.00. There is no regulation that asks lenders to complete this type of review and therefore what I stated in my provisional decision, in respect of what Nationwide ought to have done before lending to Mr H, was in direct contradiction to the Consumer Credit Sourcebook ("CONC"), specifically CONC 5.2A.
- Its lending policy is compliant with CONC both now and at the time it lent to Mr H.
- Where account conduct was taken into account lenders would have different views of this. And new overdraft lending on new current accounts wouldn't be able to be scrutinised in the same way because lenders wouldn't have the transaction history to consider the account conduct.
- My provisional decision ultimately suggested that Nationwide should have, with hindsight, gone above and beyond the regulatory requirements.
- I failed to recognise the industry wide agreement not to remove overdraft facilities during the unprecedented situation of the pandemic and that the regulator supported this approach.
- Taking the sort of steps I set out in my provisional decision would have resulted in similar measures having to be taken for other customers in a similar situation. And this would have come at a huge financial cost, which would have been in addition to the costs that lenders had already incurred due to regulator instructed payment holidays on loans and mortgages. Such steps would not have been realistic to implement.
- Had Mr H reached out and agreed a payment plan all future interest and charges would have been suppressed. The steps proposed in my provisional decision would nonsensically provide customers with the incentive not to engage with it.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've considered Nationwide's response to my provisional decision. But having done so, as well as considering everything else provided from the outset, I've not been persuaded to depart from the conclusions I reached in my provisional decision and I'm still partially upholding Mr H's complaint. I'll explain why in a little more detail.

We've set out our general approach to complaints about unaffordable/irresponsible lending -

including the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Mr H's complaint.

Nationwide needed to make sure that it didn't lend irresponsibly. In practice, what this means is Nationwide needed to carry out proportionate checks to be able to understand whether Mr H 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. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

Nationwide's initial decision to provide Mr H with an overdraft and then increase the limit

Nationwide has said that its lending policy was (at the time it lent to Mr H) and remains compliant with CONC. In my provisional decision, I wrote that Nationwide hadn't really said anything at all about the checks it carried out before its initial decision to provide Mr H with an overdraft and then increase the limit and that it hadn't even properly explained when exactly Mr H's overdraft limit increases actually took place.

And despite continuing to reiterate its lending criteria is compliant with CONC, Nationwide still hasn't properly explained what it did to establish that Mr H's overdraft and subsequent limit increases were affordable for him. Indeed, Nationwide appears to believe that I will accept it as fact that it did what is what required to if it keeps on insisting that it did.

While Nationwide might wish for a blow-by-blow account of why its checks prior to lending to Mr H weren't reasonable and proportionate, without it telling me exactly what checks were carried out, I simply cannot provide such an account. To be clear, my finding here is that as Nationwide is either unable or unwilling to explain what it did to determine that Mr H's overdraft and subsequent limit increases were affordable for him, despite having been provided with plenty of opportunity to do so, I'm not prepared to accept that Nationwide did carry out reasonable and proportionate checks before making any of these lending decisions.

For the avoidance of doubt, this means that Nationwide hasn't provided sufficient evidence and information to satisfy me that it did undertake a creditworthiness assessment and had proper regard to the outcome of that assessment in respect of affordability risk, both when entering into a regulated credit agreement with Mr H and when significantly increasing his credit limit.

As this is the case, I'll now proceed to consider what I think reasonable and proportionate checks are likely to have shown.

The £50 and £500 overdraft limits

Mr H's overdraft was an open-ended (running account) agreement (in other words, while Nationwide was required to periodically review the facility, there was no fixed end date) where there was an expectation that he'd repay what he borrowed plus the interest due within a reasonable period of time. CONC didn't set out what a reasonable period of time

was. So I think it's important to note that a reasonable period of time will always be dependent on the circumstances of the individual case.

It's fair to say that overdraft limits of £50 and £500 required relatively small payments in order to clear the full amount owed within a reasonable period of time. Furthermore, I've seen that Mr H was earning enough to clear these amounts should he borrow them, relatively quickly. And the risk of limits of £50 and £500 proving to be unsustainable for Mr H (and therefore the risk of harm of Mr H getting into financial difficulty) given what he earned at the time, was relatively low.

So while I can't say that Nationwide carried out reasonable and proportionate checks before providing Mr H with his overdraft and then increasing his limit to £500, I nonetheless think that carrying out such checks are unlikely to have shown Nationwide that Mr H didn't have the funds to make the low payments required to clear such amounts within a reasonable period of time.

As this is the case, I'm not upholding Mr H's complaint about initially being provided with an overdraft or his first limit increase.

The limit increase to £2,000.00

There can be no dispute that the limit increase to £2,000.00 was a significant increase. So, as per CONC 5.2A.4R (3), Nationwide was required to undertake a creditworthiness assessment and have proper regard to the outcome of that assessment in respect of the risk of Mr H being able to repay £2,000.00 and all of the interest accrued within a reasonable period of time. As I've repeatedly pointed out, Nationwide hasn't properly explained what it did to understand that Mr H would be able to repay £2,000.00 within a reasonable period of time.

In any event, whatever it did, in my view, Nationwide appears to have placed limited weight on Mr H's account conduct in the period leading up to the overdraft limit increase of £2,000.00. Nationwide states that that my suggestion that this was a matter it ought to have taken into account when deciding whether to lend is in direct contradiction to CONC and specifically CONC 5.2A. Considering CONC 5.2A has 37 sections and a number of subsections within this, Nationwide seems to be using the term specifically rather loosely.

But, in any event, while I'm considering whether Nationwide acted fairly and reasonably towards Mr H, rather than carrying out a compliance check, I nonetheless don't believe that my analysis directly contradicts CONC. Indeed, CONC 5.2A.7R states:

A firm must base its creditworthiness assessment on sufficient information:

(1) of which it is aware at the time the creditworthiness assessment is carried out;

...

the information must enable the firm to carry out a reasonable creditworthiness assessment.

Given Mr H's account conduct was information Nationwide will have been aware of (it may have chosen not to use this but it will have been aware of this) at the time, I don't see how expecting this to play a part in Nationwide's assessment is in direct contradiction to CONC 5.2A. On the contrary, I would say that this is entirely consistent with CONC 5.2A.7R.

Nationwide says not all lenders will have access to transaction history in order to scrutinise account conduct in the way that I suggested that it should have been scrutinised in Mr H's

case. And this would likely result in lenders reaching different outcomes. This might well happen, particularly as a firm will typically only be aware of the customer's current account conduct in relation to any current accounts held with the firm.

But given CONC 5.2A.20R states that the extent and scope of a creditworthiness assessment should be dependent on and proportionate to the individual circumstances of each case, a one size fits all approach utilised by the entire industry is very unlikely to result in compliance with this provision in every case.

Given Mr H's limit was being increased to an amount which was significantly more than his monthly salary and Nationwide had information relating to the account conduct available, I'm satisfied that it is fair and reasonable to expect Nationwide to have taken this into account in this instance.

I particularly consider this to be the case, as although Nationwide hasn't confirmed this, some of the information provided appears to suggest that it relied on the total amount of funds coming into the account, rather than Mr H's actual income, when assessing his ability to repay his overdraft. It's also worth noting that Nationwide didn't suggest otherwise in its response to my provisional decision.

And as I explained in my provisional decision, I'm concerned that Mr H's account statements showed a number of transactions which ought to have called into question his ability to sustainably repay twice his monthly salary, on demand and in any event within a reasonable period of time. I remain satisfied that it was not fair and reasonable for Nationwide to on the one hand rely on the credits as consisting of income without also considering the debits. Particularly as Nationwide appears to have concluded that Mr H *would* be able to repay £2,000.00 within a reasonable period of time despite his actual monthly income being significantly less than this.

In these circumstances, and in the continued absence of anything from Nationwide which demonstrates what it considered Mr H's monthly income to be and how it validated this, I remain satisfied Nationwide ought reasonably to have concluded that there was a significant risk that Mr H might not have been able to repay what he owed without borrowing further or experiencing financial difficulty.

Nationwide has said that the level of checks suggested in my provisional decision extends beyond the regulations. It's not entirely clear which regulations it believes this extends beyond, given it also argues that this sort of check directly contradicts CONC. Nonetheless, for the reasons I've already explained, I'm satisfied that my conclusions on what Nationwide ought to have taken into account when determining whether Mr H could sustainably repay an overdraft limit of £2,000.00, in order to have acted fairly and reasonably, does not go beyond the regulations that were in place at the time. In fact, I consider it is entirely consistent with Nationwide's responsible lending obligations as outlined in CONC 5.2A.

As Nationwide increased Mr H's overdraft limit to an amount which significantly exceeded his monthly income, without any other obvious indication that he had the funds to repay this in a sustainable manner, I don't think that Nationwide treated Mr H fairly and reasonably when it increased his overdraft limit to £2,000.00 in March 2020.

Mr H paid additional interest and charges on credit he shouldn't have been provided with in the first place. So I think that he lost out because of what Nationwide did wrong and this finding is relevant to the first part of how I'm intending to direct Nationwide to put things right for Mr H in the *'Fair compensation – what Nationwide needs to do to put things right for Mr H'* section of this final decision.

The position from March 2021 onwards

In addition to carrying out an assessment of affordability before providing Mr H with an overdraft and any limit increases, Nationwide was also required to continue reviewing Mr H's account usage to see whether any limit remained sustainable for him going forwards.

Nationwide ought to be familiar with all the rules, regulations and good industry practice we consider when looking at whether a bank treated a customer fairly and reasonably when applying overdraft charges. So I don't consider it necessary to set all of this out here.

Having carefully considered everything provided, I think Nationwide acted unfairly when it continued charging overdraft interest and associated fees on Mr H's entire balance (including the £500 portion it was reasonable to provide in the first place) from March 2021. By this point, Mr H's account hadn't seen a credit balance in the year since his limit had been increased.

Mr H's statements show that he was taking on additional borrowing elsewhere including with one high-cost lender too. So the activity on Mr H's account didn't suggest he was in any sort of position to repay what he already owed without undue difficulty or borrowing further either. And, in these circumstances, I think that by March 2021, at the absolute latest, Nationwide should have stopped providing the overdraft on the same terms and treated Mr H with forbearance rather than adding even more interest, fees and charges on the overdraft.

Nationwide says that both our adjudicator's conclusions and my provisional decision on this matter fail to acknowledge that the overdraft usage referred to occurred during the pandemic and so it was limited in what it was able to do, because of an industry wide agreement regarding overdrafts and regulatory guidance not to remove overdraft lending from existing borrowers.

It also says that Mr H was identified as being a repeat use overdraft customer in December 2020 and was sent letters in December 2020, April 2022 and April 2023 directing him to consider his overdraft usage. But action wasn't taken because there was an agreement that overdrafts wouldn't be removed.

In response to my provisional decision, Nationwide has asked me to acknowledge that there was an industry-wide agreement not to remove overdraft facilities even in situations where the facility was set to expire, or as part of its risk appetite, it would look to revoke the facility. And it wants this final decision to acknowledge that the regulator supported this and every UK lender was implementing this practice during the pandemic.

I don't know if the banking industry took the decision not to remove or reduce overdrafts under any circumstances during the course of the pandemic. Indeed, my experience of deciding overdraft complaints about events from this period lead me to think that there wasn't an absolute prohibition on this.

Furthermore, I do find Nationwide's argument that it was merely doing what other banks/lenders were doing to be somewhat ironic. Nonetheless, regardless of what the industry position might have been, I do think that Nationwide is only telling half the story when it comes to the regulator's requirements and guidance at the time. Nationwide hasn't specifically stated what in particular it feels demonstrated the FCA's support of its (and the industry's) position.

However, the FCA's Overdrafts and coronavirus: additional guidance for firms¹ ("the additional guidance") published in September 2020 does set out some idea of the FCA's thinking around the time my provisional decision concluded that Nationwide ought reasonably to have acted in relation to Mr H.

Section 2.8 of this guidance states:

2.8. A firm should not reduce the credit limit or suspend or remove the overdraft facility of a customer receiving help under this guidance if that reduction, suspension or removal would cause financial hardship to the customer.

It's unclear whether Mr H received any help under the coronavirus guidance. Nonetheless section 6 of the guidance does cover repeat use strategies. And Section 6.6 states:

6.6. In line with paragraph 2.8 above, firms should not reduce or withdraw the overdraft facility where it would cause financial hardship to the customer.

Having considered the additional guidance, I don't think that there was an absolute prohibition on reducing or removing overdrafts in the way that Nationwide suggested. More importantly, I haven't seen anything at all to suggest that Nationwide took any steps to assess what if any financial hardship would be caused to Mr H should his overdraft have been reduced or removed.

So it isn't immediately clear to me how Nationwide continuing to allow Mr H to use his overdraft in the way that he was, rather than taking corrective action, was in his best interests or with a view to preventing him from experiencing financial hardship.

For the sake of completeness, I'd also point out that even if I were to accept that Nationwide couldn't or shouldn't have reduced or removed Mr H's overdraft because of the pandemic, I do find Nationwide's argument that it couldn't take any action at all to be fallacious. I firstly say this because even if it genuinely believed that it wasn't able to remove Mr H's overdraft during the pandemic, this didn't mean that it had to continue applying interest, fees and charges in the same way. Nationwide almost presents it as fact that it had a binary choice between removing Mr H's overdraft or continuing to charge him in the same way.

However, section 5.6 of the additional guidance stated:

5.6 When providing support to customers experiencing difficulties with their finances as a result of circumstances related to coronavirus, whether under this guidance or in accordance with the repeat use rules in CONC 5D, firms should provide forbearance that is appropriate to the individual circumstances of the customer, including doing one or more of the following where appropriate:

- reducing or waiving interest*
- transferring the overdraft debt to an alternative credit product on more favourable terms ('refinancing')*
- agreeing a programme of staged reductions in the overdraft limit (and balance), ('agreeing a repayment plan')*

And at section 5.10 the additional guidance stated:

¹ <https://www.fca.org.uk/publication/finalised-guidance/finalised-guidance-overdrafts-coronavirus-additional-guidance-firms.pdf>

5.10. Firms should not take a 'one size fits all' approach and a firm offering a single solution to all customers is unlikely to be consistent with this guidance, or CONC 5D. Firms should not repeatedly pursue one forbearance option, when it is more appropriate to consider alternative options.

Additionally, Nationwide's position ignores that there isn't anything within CONC (and specifically CONC 7, which the regulator's temporary guidance made clear remained in force) that requires a lender to default an account, or remove a facility, before assisting a customer who is struggling financially. This is a position that lenders such as Nationwide have chosen to adopt. If Nationwide was concerned about acting contrary to the industry agreed position not to remove overdrafts, it could have taken some of the other actions suggested in section 5.6 of the additional guidance - such as providing the facility interest free for an extended period – and left his overdraft in place.

Nationwide says that Mr H won't have been the only customer affected this way. And it is logical to assume that my provisional decision suggests that interest should have been frozen for all overdraft customers in Mr H's position and this would have come at huge financial cost. However, my role is limited to deciding whether Nationwide acted fairly and reasonably towards Mr H given the particular circumstances here. I cannot and do not make any suggestion on what Nationwide should do for other customers.

Nationwide's advancement of, what I consider to be, a straw man argument here betrays a fundamental misunderstanding of the concept of proportionality and the need for a tailored solution. As set out in section 5.10 of the additional guidance a one size fits all approach (for all customers) is unlikely to have been consistent with the guidance. So it doesn't automatically follow that all customers should have had interest, fees and charges suspended on their overdrafts just because that's what I think should have happened here - given the particular circumstances of Mr H's case.

In this case, Nationwide's response to its identification of Mr H's problem - namely that his overdraft usage had become demonstrably unsustainable (as I explained in my provisional decision Nationwide's own records appear to indicate the facility was earmarked for removal in April 2022) was to continue with its usual process and send further letters and emails.

Indeed, if I take Nationwide's argument to its logical conclusion here, I see it as being that it acted fairly and reasonably towards Mr H because it sent him letters as it had identified that his overdraft usage had become a problem. And because Mr H didn't respond to the letters it was reasonable to continue allowing Mr H to use his overdraft in the same way. In my view, this ignores the fact that there comes a point where a lender cannot continue simply relying on a borrower not responding to letters or not wanting to discuss the situation.

After all there are many reasons why a consumer might not want to get into discussions about their finances even though they're in a situation where they're struggling, or they may even go further and say they can and will make payment when the reality is they can't. While Mr H didn't contact Nationwide, most likely because he didn't realise the impact failing to deal with the matter at hand was having, I don't think it was reasonable for Nationwide to conclude that he'd be able to clear the persistent debt he was in.

Particularly as Nationwide's actions (and Mr H's continued usage of overdraft in the same way) were never likely to remedy the situation. Pointing Mr H towards self-help and money guidance simply wasn't working. Whether or not Nationwide followed the same process for other customers during this period (even in the face of similar results), is neither here nor there, particularly as I'm not familiar with the circumstances of those other customers.

My proposed direction, of Nationwide refunding all of the interest, fees and charges added to Mr H's overdraft, was (and remains) based on the particular circumstances of Mr H's complaint. In other words, I was (and still am) looking towards a fair and reasonable way of putting things right, sometime after action should have been taken, as a result of Nationwide's actions causing Mr H to pay high amounts of interest and charges (relative to the amount he owed) for the privilege of being allowed to continue holding, what Mr H's actions and Nationwide's earmarking of Mr H's overdraft for removal suggested, was a debt that had become unsustainable.

So as far as I'm concerned Nationwide's actions in allowing Mr H to continue using his overdraft and incurring further charges, when everything it had was suggesting he would struggle to be able to, worsened Mr H's problem rather than helped him. These are my findings given the circumstances in this case and I'm satisfied that this means that Nationwide needs to put things right for Mr H.

Overall and having considered Nationwide's further arguments, I remain satisfied that it failed to act fairly and reasonably towards Mr H by not taking corrective action in relation to his overdraft when it ought to have realised he was struggling to repay what had become a problem debt by March 2021 at the latest.

It follows that I'm still upholding Mr H's complaint on this basis and I'm satisfied that my direction to Nationwide on how it should put things right for Mr H should also reflect this. This finding is relevant to the second part of how I'm directing Nationwide to put things right for Mr H in the '*Fair compensation – what Nationwide needs to do to put things right for Mr H*' section of this final decision.

Fair compensation – what Nationwide needs to do to put things right for Mr H

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

- Reworking Mr H's current overdraft balance so that:
 - a) interest, fees and charges are only charged on the first £500 of any overdrawn balance from March 2020 to March 2021. Any interest, fees and charges applied to balances over £500 between March 2020 to March 2021 should be removed. This is to reflect the fact that Mr H's overdraft limit should not have been increased from £500 to £2,000.00 in March 2021.
 - b) all interest, fees and charges added to the overdraft from March 2021 onwards are removed. This is to reflect the fact that Nationwide ought to have realised that the overdraft had become demonstrably unsustainable for Mr H by this stage at the latest and he should have been offered forbearance.

AND

- If an outstanding balance remains on the overdraft once adjustments a and b (set out above) have been made Nationwide should contact Mr H to arrange a suitable repayment plan Mr H is encouraged to get in contact with and cooperate with Nationwide to reach a suitable agreement for this. If it considers it appropriate to record negative information on Mr H's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in March 2021. Nationwide can also reduce Mr H's

overdraft limit by the amount of any refund if it considers it appropriate to do so, as long as doing so wouldn't leave him over his limit.

OR

- If the effect of carrying out the above adjustments results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr H 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 H's credit file. Nationwide can also reduce Mr H's overdraft limit by the amount of the refund if it considers it appropriate to do so.

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

My final decision

For the reasons I've explained above and in my provisional decision of 20 September 2023, I'm upholding Mr H's complaint. Nationwide Building Society should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 27 November 2023.

Jeshen Narayanan
Ombudsman