

Complaint

Mr B has complained that Nationwide Building Society (trading as “Nationwide”) irresponsibly provided him with a credit card.

Background

Mr B was provided with a credit card, which had a credit limit of £5,500.00 in November 2014. The credit limit on the account was never increased.

One of our investigators reviewed what Mr B and Nationwide had told us. And he thought that Nationwide ought to have realised that it shouldn't have provided Mr B with a credit card which had a credit limit to £5,500.00.

Nationwide disagreed with the investigator's view. So the case was passed to an ombudsman for review.

My findings

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

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Mr B's complaint.

Having carefully considered everything provided, I'm upholding Mr B's complaint. I'll explain why in a bit more detail.

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 B could afford to repay before providing Mr B with his credit card.

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.

I've kept this in mind when determining whether the checks Nationwide carried out were reasonable and proportionate.

Mr B was provided with a credit card which had a limit of £5,500.00. As this was a revolving credit facility, Nationwide was required to understand whether Mr B could repay around £5,500.00 within a reasonable period of time.

From the information provided, I understand that Mr B was asked to provide a declaration of his income. But I've not seen anything to indicate that this income was verified or even cross-checked at this stage. Nationwide appears to be indicating that it carried out a credit check, although it hasn't provided the output of what this showed about Mr B's circumstances. Given that this check took place almost a decade ago, I don't think this is surprising. So I've not drawn any adverse inferences from Nationwide not being able to provide the results of the credit check.

Nonetheless, Nationwide seems to be focussing its argument on the fact that Mr B's credit limit was around 8% of his annual income. This may be the case, but the credit limit wasn't 8% of the amount that Mr B's declaration ought to have seen him receive once deductions were made from his salary. Furthermore, Nationwide has said Mr B's previous Nationwide credit card, which he held between 2003 and 2013, had been managed impeccably.

It's not clear to me how it managed to make this finding when it also says there isn't much information on this account. Furthermore, it is also difficult for me to say that it is fair and reasonable for Nationwide to highlight and place weight on a credit card account which had been closed for over a year, when it had more contemporaneous evidence of Mr B's circumstances, in the form of his current account.

Indeed the information which Nationwide itself has provided us with indicates that Mr B spent approaching £13,000.00 on gambling transactions in the two months prior to this credit card application. Given the sheer amount of the value of these transactions and the fact this was information which Nationwide was in possession of but chose not to consider, I don't think that the checks it carried out before providing this credit card to Mr B were reasonable and proportionate.

As I'm satisfied that reasonable and proportionate checks weren't carried out before Mr B was provided with his credit card, I can't say for sure what such checks would more likely than not have shown. Nonetheless, I still need to decide whether it is more likely than not that proportionate checks would have told Nationwide that Mr B would have been unable to sustainably repay £5,500.00 within a reasonable period of time.

In my view, given the sheer amount of the gambling transactions which I think that Nationwide ought to have been aware of, I think that it needed to have a reasonable understanding of the impact this might have on Mr B's ability to sustainably repay £5,500.00 within a reasonable period of time.

Having looked at the sheer amount of Mr B's income being gambled around this time, I'm satisfied that Nationwide ought reasonably to have realised that it shouldn't have provided this credit card to Mr B. I want to be clear in saying that I haven't reached this conclusion because Nationwide didn't request statements for bank accounts Mr B held with other providers. What I'm saying here is that Nationwide needed to consider the information it already had.

Indeed Nationwide argument appears to suggest that it ignored actual information that it had on Mr B's circumstances in favour of making assumptions based on third party information – such as credit checks – which it obtained. While I'm mindful that on many occasions involving prime borrowing – such as here - relying on third party information won't matter as it won't differ too much from the actual information, nonetheless the actual information, in this particular case, which Nationwide already had, indicated there was a significant likelihood that Mr B's gambling would impact his ability to repay what he was lent.

I've noted that Nationwide's response to the investigator's view has suggested that he was retrospectively applying today's expectations to a credit card application completed nearly ten years ago. While Nationwide has said this it hasn't said which rules, guidance or even expectations it believes is being considered retrospectively. Nonetheless, I note that Nationwide provided this credit card to Mr B while it was regulated by the Financial Conduct Authority ("FCA").

At this point the Consumer Credit Sourcebook ("CONC") was already in force. CONC 5.3.1 was concerned Creditworthiness and sustainability. And CONC 5.3.1 G (1) states:

In making the *creditworthiness assessment* or the assessment required by CONC 5.2.2R (1), a *firm* should take into account more than assessing the *customer's* ability to repay the *credit*.

[Note: paragraph 4.2 of ILG]

CONC 5.3.1 G (2) states:

The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.

[Note: paragraph 4.1 (box) and 4.2 of ILG]

So it's clear that the requirements in place, at the time Nationwide lent to Mr B, required a lender to assess and consider more than just a prospective borrower's ability to repay any credit advanced. A lender was required to consider the possibility of the customer experiencing significant adverse consequences as a result of being advanced credit.

Furthermore, both of the provisions I've set out above refer back to the previous regulator of consumer credit - The Office of Fair Trading's - Irresponsible Lending Guidance which was first published in March 2010. So the need to consider more than whether the likely monthly payment necessarily was technically affordable on a strict pounds and pence calculation has been in place since March 2010 at the absolute earliest.

I therefore don't agree that I am judging Nationwide's decision to lend to Mr B against anything other than the rules, regulations, guidance and good industry practice in place at the time. And it is incorrect to somehow suggest that there was a substantially, or materially, (I accept that there were some changes which the FCA described as a clarification of the rules and expression of how they were always intended to operate in November 2018) different framework in operation in November 2014.

It is possible that the difference between the rules in place at the time and which are in place now, which Nationwide has referred to, are the changes brought in, in April 2020, which mean that gambling companies are no longer permitted to accept credit cards for gambling transactions.

In any event, I don't see how this would help Nationwide in this instance as Mr B could (although I don't know whether he did or not) have used the credit card he was being provided with to gamble in November 2014, in a way that he would find it far more difficult to now. And, in my view, bearing in mind the information Nationwide had, it ought reasonably to have realised that there was a significant risk that providing Mr B with a credit card – particularly one with a credit limit of £5,500.00 - could cause him to experience significant adverse consequences.

I don't think that Mr B was in a position where he is likely to have been able to make the payments that would have been necessary to repay £5,500.00 within a reasonable period of time, while also maintaining his existing commitments and without suffering significant adverse consequences.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Mr B would not have been able to repay £5,500.00 within a reasonable period of time and certainly without experiencing significant adverse consequences.

In these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted Nationwide to the fact that Mr B couldn't afford to sustainably repay a credit card which had a limit of £5,500.00 in November 2014. I'm therefore satisfied that Nationwide shouldn't have provided this credit card to Mr B.

Mr B ended up paying and is still being expected to pay interest on a credit card which he should never have been provided with. So I'm satisfied that he lost out because of what Nationwide did wrong and that Nationwide should now put things right.

In reaching my conclusions, I've also considered whether the lending relationship between Nationwide and Mr B might have been unfair to Mr B under section 140A of the Consumer Credit Act 1974.

However, I'm satisfied that the direction I set out in the section below will result in fair compensation for Mr B given the overall circumstances of his complaint. I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

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

Having carefully considered everything, I'm satisfied that it would be fair and reasonable, in all the circumstances of Mr B's complaint, for Nationwide to put things right in the following way:

- rework Mr B's account to ensure that no interest is charged on this credit card - to reflect the fact that it should not have been provided in the first place. All late payment and over limit fees should also be removed;
- if an outstanding balance remains on Mr B's account once all adjustments have been made, it should contact Mr B to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr B's credit file, it should backdate this to when it shouldn't have provided the credit in the first place;
- if the effect of all adjustments results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr B along with 8% simple interest† on the overpayments from the date they were made until the date of settlement. If no outstanding balance remains on Mr B account after all adjustments have been made, then Nationwide should remove any adverse information it (not any third party) has recorded from Mr B's credit file.

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

My final decision

For the reasons I've explained, I'm upholding Mr B's complaint. Nationwide Building Society should put things right in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 September 2024.

Jeshen Narayanan
Ombudsman