DRN-5050337

The complaint

Miss C complains that Nationwide Building Society ("Nationwide") irresponsibly agreed loans for her.

What happened

Nationwide agreed a loan of £15,000 for Miss C in late November 2019. The total amount owed was £19,824 to be repaid at £236 a month over 84 months (approximate figures). This loan was refinanced in November 2020 as Miss C had taken a payment holiday due to the pandemic. The total amount then owed was £17,732.25, to be repaid in 75 monthly instalments of £236.43.

A few months later, in early February 2021, Nationwide agreed a second loan of £8,000 for Miss C. The total amount owed on this loan was £11,183.40 to be repaid at £186.39 a month for 60 months. This second loan ran alongside the first, so the total monthly payment Miss C needed to make came to £422.82.

Miss C complained to Nationwide in early 2024 that the loans were unaffordable for her.

Nationwide didn't uphold Miss C's complaint. It said it completed all the appropriate checks before lending to her, and that Miss C had met her repayments.

Miss C referred her complaint to us and we looked into things. Our investigator found that that Nationwide didn't carry out proportionate checks before lending to Miss C on either occasion, and such checks would likely have shown that she was overindebted and reliant on credit. They concluded that Nationwide didn't treat Miss C fairly when it entered into these agreements and recommended that her complaint be upheld.

Nationwide didn't agree with this recommendation and asked for the complaint to come to an ombudsman to decide and it came to me. I found that Miss C's complaint about her second loan should be upheld, but not her first. I sent a provisional decision to both parties on 13 September to explain how I'd reached my conclusions and to share the information I'd relied on.

Neither party agreed with my provisional decision. Miss C didn't agree with my conclusion about her first loan, and Nationwide didn't agree with my conclusion about the second.

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 everything again, including what both parties said in response to my provisional decision, I remain of the view that Miss C's complaint about her second loan should succeed but not her complaint about her first. I appreciate that will be disappointing for both parties and I am sorry I can't provide an outcome agreeable to both. I'll set out again my conclusions and reasoning in this final decision, and address the parties' responses where appropriate.

As before, when making my decision I've had regard to the regulator's rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as Nationwide, need to abide by. Nationwide will be aware of these, and our approach to this type of lending is set out on our website, so I won't refer to the regulations in detail here but will summarise them.

Before entering into a credit agreement, Nationwide needed to check that Miss C could afford to meet her repayments as they fell due out of her usual income, without having to borrow further or miss other commitments, and without the repayments having significant adverse consequences on her financial situation. The checks needed to be proportionate to the nature of the credit (the amount borrowed, for example) and take into consideration Miss C's circumstances. Nationwide needed to pay proper regard to the outcome of its checks in respect of affordability risk.

The overarching requirement was that Nationwide needed to pay due regard to Miss C's interests and treat her fairly. CONC 2.2.2G gave an example of contravening this as 'targeting customers with regulated credit agreements which are unsuitable for them by virtue of their indebtedness, poor credit history, age, health, disability or any other reason.'

With this in mind, my considerations are did Nationwide complete reasonable and proportionate checks when it agreed to lend to Miss C to satisfy itself that she would be able to repay the credit offered without difficult? If it didn't do this, what would reasonable and proportionate checks have shown? Was there anything of concern in the checks Nationwide carried out and did it make fair lending decisions? Did Nationwide treat Miss C unfairly or unreasonably in any other way, including whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974?

<u>Loan 1 taken out in November 2019</u>

Nationwide provided the information it relied on when making its lending decisions including Miss C's application form, summary information from her credit file and its affordability estimates. Miss C provided a recent copy of her credit file, bank statements from around the time and information about her circumstances.

Miss C gave her net monthly income as £1,989 and her rent as £225 in her application form. Nationwide estimated a figure of £550 for Miss C's household expenses and £89 for council tax. The summary credit file information showed Miss C had an existing debt balance of £16,486. £6,256 of this was revolving credit such as credit cards or mail order accounts. Nationwide relied on a figure of £163 for Miss C's existing loan repayments and an estimated £113 for her credit card repayments based on repaying 5% of her balance on two cards each month. Altogether, it estimated that Miss C had monthly expenses of £1,140 leaving her with £849 a month spare to meet her loan repayment of £236 and any other costs.

As our investigator pointed out, 5% of Miss C's existing credit card balances of over £6,000 would amount to at least £300 which reduced the estimated disposable income figure to closer to £550. Nationwide said in response that the loan repayments of £236 still remained affordable for Miss C.

As Nationwide will know, it was required not only to check that Miss C could afford the repayments but also that she could do so without them having a significant adverse impact on her financial situation. Nationwide also needed to bear in mind that certain factors might point towards a more rigorous assessment, for example in the case of more expensive credit or credit that is higher in amount.

Nationwide hasn't provided me with a full account of the information it obtained from the credit reference agency but said that no adverse information was recorded with the agency it used and I see no reason to doubt this. I've noted from a recent copy of Miss C's credit file that her loan repayment of £163 was for a loan of £5,000 (I'll call this Loan A) taken out in September and she'd taken out cash withdrawals on two of her revolving credit account in five of the six months prior to the lending. I don't know if Nationwide saw that level of information about Miss C's financial situation, which might have raised concerns about a reliance on credit to meet living costs.

In any case, agreeing this loan for Miss C potentially more than doubled her existing debt and was a significant amount of credit to offer relative to her income, potentially committing her to spending £700 or over a third of her income meeting her debt repayments going forwards. I think it would have been reasonable and proportionate of Nationwide to have carried out a more rigorous check on this occasion and verified what Miss C said about her income and verified its expenditure estimates. I appreciate that Nationwide sense-checked Miss C's income with a report that returned a high confidence in her income level. Nevertheless, Miss C held a current account and an instant access Individual Savings Account with Nationwide, and so it already held information about her actual means which it could have reviewed.

Miss C's current account statements show that her income was as she'd declared and included monthly wages of £1,922 and benefits of £83. They also show that her monthly expenses were higher than the figure Nationwide relied on amounting to over £1,000 including what I've assumed were rent payments. In addition to the £16,486 mentioned above, the statements show that Miss C had taken out two more loans the month before in October borrowing £5,000 and £3,995.

Nationwide recorded the purpose of the loan as 'other'. However, had Nationwide gone further in its checks, as I think it should have, and asked Miss C about the purpose of the loan, I think it's likely she'd have said it was to consolidate some of her existing debt. Miss C used the loan to clear her credit card balances and one of the October loans. She'd already repaid Loan A mentioned above with money from her savings account along with another outstanding defaulted balance of over £4,000. This left her with a loan repayment of £134 (for the other October loan) plus this new loan repayment of £236 and, it seems likely, with sufficient disposable income to meet her usual living costs.

Miss C used her savings account to hold some of the amounts she'd borrowed but I don't know the source of all of the deposits into it – she'd deposited around £27,000 throughout 2019 by the 1st of November and at the time of taking out this loan her savings balance stood at over £12,000.

Altogether, I can't reasonably find that more rigorous checks on Miss C's income and expenses would have revealed that the loan repayments would be unaffordable for her or likely to impact adversely on her financial situation.

We asked Miss C about her ISA and her financial circumstances. It's clear from the bank statements that, aside from her income and expenses, Miss C received deposits from and made payments to another individual. These ranged from less than £100 to significant sums of over £10,000 for example. Miss C shared with us that she'd suffered life changing trauma and it was in her recovery from this that she borrowed from this person and repaid them as and when she could. Let me acknowledge at this point the highly sensitive nature of the information Miss C has shared with us. She's told us that she's being supported by various bodies, and I sincerely hope things are easier for her now.

Although Miss C has shared her experiences, I can't say I fully understand the details of her financial relationship with this other individual when she applied for this loan. However, I have concluded that reasonable and proportionate checks would likely have shown the loan to be affordable for her and that she planned to use it to clear some of her existing debt. I can't say that she would not have been offered the loan, but for shortcomings in Nationwide's assessment. So I haven't found that Nationwide made an irresponsible lending decision on this occasion, or treated Miss C unfairly and without regard to her interests when it entered into the agreement.

In response to my provisional decision, Nationwide said that it remained steadfast in its view that the checks undertaken were reasonable and proportionate, in not only this case, but in all its cases.

As set out in CONC 5.2A.20R, the steps that Nationwide need to take for a creditworthiness assessment to satisfy the requirement of being reasonable are dependent upon, and proportionate to, *the individual circumstances of each case* (my emphasis). The factors to which Nationwide must have regard when complying with this rule include the nature of the credit and any other potential adverse consequences for the customer. As I'd said in my provisional decision, Nationwide needed to bear in mind that certain factors might point towards a more rigorous assessment, for example in the case of more expensive credit or credit that is higher in amount (as per CONC 5.2A.21G). I have explained in my provisional decision why I concluded its checks were not reasonable and proportionate in the circumstances of this case and without any new information to consider, I remain of this view.

In response to my provisional decision, Miss C said that:

- Nationwide would not have been aware that she planned to clear some of her debt with this loan and didn't ask the question;
- A detailed assessment of her bank statements for October 2019 would have shown that the loan would have been unaffordable regardless of whether she paid off some debt with the loan. Miss C provided an income and expenditure assessment which estimated her income to be £1,922 and her expenditure to be £2,189. This left a deficit of £268 after making her loan repayment;
- This assessment didn't include any payments to the individual that she was making payments to for bills and for money she owed from previous borrowing;
- Nationwide hasn't provided the details of its credit file checks and it would have seen that she had a lot of debt and was taking out cash advances.

Nationwide may not have asked Miss C if she planned to consolidate her debts with the loan, but I have found that it didn't carry out proportionate checks. I also found that, had everything gone as it should have and Nationwide had carried out a proportionate check, it's likely it would have found out that Miss C was planning to use the loan to clear some of her current debt and would have factored that into its decision. The above expenditure estimate of £2,189 included payments of £250 and £300 to two of Miss C's existing credit card balances which, as I've explained, she used the loan to clear and so these payments would not have formed part of her expenses going forward.

While this assessment didn't include payments to the individual in question, neither did it include any payments *from* this individual, and there were more of the latter in this month. As I'd said in my provisional decision, I don't fully understand the financial relationship between Miss C and this person, and I can't reasonably say that a proportionate check would have shown Nationwide that it should have considered that Miss C was indebted to them and owed them money.

I don't know if Nationwide's credit checks showed the extent of the debts Miss C had or that she'd been taking out cash advances. As I'd said in my provisional decision, had it seen this information, it should have prompted Nationwide to carry out a more in-depth check of her circumstances but such a check would not have shown the loan to be unaffordable.

Finally, as I've said above, Miss C had a relatively large balance in a savings account when this loan was taken out and had been making deposits into this throughout 2019, including in October. I can't see that Nationwide took this into account when making its decision, but as the account was with Nationwide it had access to this information, and would likely have been reassured by the balance.

Loan 2 taken out in February 2021

Miss C gave her net monthly income as £2,230 and her rent as £225 in her application for this loan. Nationwide estimated a figure of £581 for Miss C's household expenses and £97 for council tax. The summary credit file information showed that Miss C now had an existing debt balance of £28,134. £2,057 of this was revolving credit such as credit cards or mail order accounts. Nationwide relied on a figure of £494 for Miss C's existing loan repayments and an estimated £31 for her credit card repayments based on repaying 5% of her balance each month. Altogether, this amounted to monthly expenses of £1,428 leaving Miss C with an estimated £802 a month spare to meet her new loan repayments of £186 and any other costs.

Miss C's existing debts had increased from £16,000 to over £24,000 in the 14 or so months since she'd taken out her first loan, despite her using that loan to consolidate some of her debts. I appreciate that Miss C had met her repayments for her first loan but it doesn't seem to me, from a high level view of her finances, that she managed to do so without borrowing from elsewhere. I've also noted that Miss C was fully using her £2,150 overdraft each month for at least the previous six months, and her wages were barely taking her out of it. Miss C had made minimal deposits into her savings account since the time of the first loan and the balance was zero around this time.

As before, agreeing this second loan for Miss C potentially committed her to spending over £700 or around a third of her income meeting her debt repayments going forwards. Even without carrying out more rigorous checks, I think Nationwide should have seen that Miss C was overindebted and not managing to make inroads into her debt, and so wasn't likely to be able to meet her repayments for this loan without borrowing again or experiencing other adverse impacts on her finances. The purpose of the loan was recorded as 'other' and I don't think Nationwide could have reasonably considered it would be used for consolidation, had it asked, as most of Miss C's debt comprised two large loans – its first loan and a loan of over £12,000 she'd taken out just two months previously.

Nationwide said in its response to our investigator that it wasn't correct to consider that the overdraft usage on the account indicated that Miss C was struggling with her finances because another individual was essentially using the account. Nationwide also said that there was significant discretionary spending from the account.

As I've said above, I don't fully understand the financial relationship between Miss C and the individual in question. When information is incomplete or contradictory, I'll make my decision on the balance of probabilities. Looking at Miss C's usual means and what she was committed to repaying, I think it's most likely that she was overindebted and further credit would prolong her indebtedness and have an adverse impact on her finances. Miss C's credit report created in January this year shows she now owes over £40,000 and has the lowest credit rating possible.

Altogether, I don't think Nationwide treated Miss C fairly or with regard to her interests when it agreed this second loan for her. I've concluded that it was irresponsible to lend to Miss C on this occasion and I am upholding her complaint about this loan.

Nationwide said in response to my provisional decision that:

- It was perplexed by the suggestion that the second loan was unaffordable when Miss C had a disposable monthly income of over £800, reducing to £616 after the new loan payments;
- While it agreed that the nature of the relationship between Miss C and the individual in question is unclear, given the significant number and value of transfers being made between them, it was evident this account was being utilised by both parties. With this in mind, it was more than plausible that while the loans were taken out solely in Miss C's name, the individual has also benefited from these loans and contributed towards the repayments.

As I explained in my provisional decision, it wasn't sufficient for Nationwide to check that the loan repayments were affordable for Miss C on a pounds and pence basis. Before entering into a credit agreement, Nationwide needed to check that Miss C could afford to meet her repayments as they fell due out of her usual income, without having to borrow further or miss other commitments, and without the repayments having significant adverse consequences on her financial situation (CONC 5.2A.12R). I explained in my provisional decision why it wasn't likely Miss C would be able to meet her repayments without these adverse impacts and, bearing in mind CONC 2.2.2G, why I concluded that Nationwide didn't treat her fairly.

To Nationwide's final point, Miss C was solely responsible for the repayment of these loans, the repayments came out of her sole bank account and the loans' progress was reported to her credit file. As I explained in my provisional decision, in the absence of clear information about Miss C's financial relationships, I concluded it was most likely that she was overindebted and that further credit would prolong her indebtedness and have an adverse impact on her finances. I remain of this view.

For completeness, I did also consider whether Nationwide treated Miss C unfairly or unreasonably in any other way, including whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. And I'm satisfied the redress I have directed below results in fair compensation for Miss C in the circumstances of her complaint and that no additional award would be appropriate in this case.

Putting things right

I've concluded that Nationwide was irresponsible to have agreed a loan for Miss C in February 2021. I think it's fair that she repays the capital amount she borrowed as she's had the use of the money but I don't think it's fair that she pays any interest, fees or premiums associated with the loan.

To put things right for Miss C, Nationwide should:

- Cap the amount she needs to repay at the capital amount she borrowed, this being £8,000;
- Consider all payments she's made as payments towards this capital amount; and
  - If Miss C has repaid more than the capital she borrowed, which I don't think is the case here, then Nationwide should refund these overpayments to her

    along with 8% simple interest per annum**; or
  - If she hasn't yet repaid the capital then Nationwide needs to treat Miss C fairly and with forbearance which may mean agreeing an affordable repayment plan with her.
- Remove any adverse information about this loan from Miss C's credit file once settled.

** HM Revenue & Customs requires Nationwide to take off tax from this interest. Nationwide must give Miss C a certificate showing how much tax it's taken off if she asks for one.

My final decision

For the reasons I've explained above I am partly upholding Miss C's complaint about Nationwide Building Society and it now needs to take the above steps to put things right for her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 5 November 2024.

Michelle Boundy
Ombudsman