

Complaint

Miss P has complained that Nationwide Building Society (“Nationwide”) continued to allow her to use her overdraft over an extended period and even when she was in financial difficulty.

Background

One of our investigators looked at Miss P’s complaint and thought that Nationwide hadn’t done anything wrong when initially providing Miss P with her overdraft. However, he also thought that Nationwide should have realised that Miss P’s overdraft had become demonstrably unsustainable for her by January 2020. So she upheld Miss P’s complaint and said that Nationwide needed to refund all the interest, fees and charges it added to her account from January 2020 onwards.

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

As the parties are in agreement with the initial decision to provide Miss P with an overdraft, this decision is only considering whether Nationwide acted fairly and reasonably when allowing Miss P to continue using the facility from January 2020 onwards.

My findings

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

Having carefully considered everything, I’m upholding Miss P’s complaint. I’ll explain why this is the case in a little more detail.

Nationwide will 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, fees and any associated charges on Miss P’s facility from January 2020. By this point, Miss P’s account hadn’t seen a credit balance for an extended period of time and her statements show that she was what is known as hardcore borrowing.

It’s my understanding that Miss P’s also had a loan with Nationwide which had payments of almost £500 a month as well as a credit card. Nationwide also says that it is entitled to lend as it sees fit, provided that that it complies with CONC. Nationwide says that this was within its risk appetite.

But I don’t think that this lending being within its risk appetite means that it was affordable or that it acted in compliance with the regulations. Indeed, Nationwide has ignored that Miss P

was displaying the signs of an inability to clear a problem debt and this is a factor it was required to take into account under the regulations.

I also think that any credit searches Nationwide carried out showed that Miss P's credit position elsewhere was worsening too as she looks to have had a large amount of external credit. All of this suggested that Miss P wasn't in any sort of position to repay what she already owed without undue difficulty or borrowing further either.

In these circumstances, I think that by January 2020, at the absolute latest, Nationwide should have stopped providing the overdraft on the same terms and treated Miss P with forbearance rather than adding even more interest, fees and charges on the overdraft.

In reaching my conclusions, I've considered that Nationwide has said our investigator's conclusions fail to acknowledge the letters it sent and that Miss P failed to get in touch to say that she was in financial difficulty. I've thought about what Nationwide has said, but, in my view, its letters failed to react to the unfolding situation or seek to address what was at the root of Miss P's issue.

Indeed, if I take Nationwide's argument to its logical conclusion here, I see it as being that it acted fairly and reasonably towards Miss P because it sent her letters as it had identified that her overdraft usage had become a problem. And because Miss P didn't respond to the letters it was reasonable to continue allowing Miss P to use her overdraft in the same way. This is despite the fact that Miss P hadn't provided any indication that she'd be able to clear the persistent debt she was in and so Nationwide's actions (and Miss P's continued usage of overdraft in the same way) were never likely to remedy the situation.

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. I also think that this fails to take any account of the fact that 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 Miss P didn't contact Nationwide, most likely because she 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 she'd be able to clear the persistent debt she was in. Particularly as Nationwide's actions (and Miss P's continued usage of overdraft in the same way) were never likely to remedy the situation.

Furthermore, no one is suggesting that Nationwide should have provided an interest free overdraft in perpetuity. Nationwide could have taken other action - such as providing the facility interest free for an extended period, or providing Miss P with some other basis for a repayment strategy – like a conversion of the debt to a loan and then removing the overdraft from the account. But in my view, ignoring the clear warning signs and continuing to charge Miss P in the same way going forward, in circumstances where her account conduct was indicating she couldn't afford to pay these charges, simply wasn't fair and reasonable.

I'd also add that all of this took place in circumstances, where CONC 5D was introduced, to require lenders to take action in circumstances where a customer is experiencing high overdraft charges and financial difficulty as a result of using an overdraft unsustainably. I find the suggestion that taking corrective action in these circumstances would have led to irresponsible lending to be perplexing. Ultimately, by failing to react to the situation and continuing to lend in the same way, Nationwide was lending irresponsibly.

In my view, all Nationwide's actions here were likely to result in (in sending Miss P letters and hoping she'd eventually respond irrespective of everything else that was unfolding in front of it), was Miss P paying high amounts of interest and charges (relative to the amount she owed) for the privilege of being allowed to continue holding, what Miss P's actions suggested, was a debt that had become unsustainable.

So as far as I'm concerned Nationwide's actions in allowing Miss P to continue using her overdraft and incurring further charges, when everything it had was suggesting she would struggle to be able to repay what she owed, worsened Miss P's problem rather than helped her.

Overall and having considered Nationwide's arguments, I'm satisfied that it failed to act fairly and reasonably towards Miss P by not taking corrective action in relation to her overdraft when it ought to have realised she was struggling to repay what had become a problem debt by January 2020 at the latest. It follows that I'm upholding Miss P's complaint.

In reaching my conclusions, I've also considered whether the lending relationship between Nationwide and Miss P might have been unfair to Miss P under s140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I'm directing Nationwide to do results in fair compensation for Miss P given the overall circumstances of her complaint. For the reasons I've explained, 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 Miss P

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

- reworking Miss P's current overdraft balance so that all interest, fees and charges added from January 2020 onwards are removed. This is to reflect the fact that Nationwide ought to have realised that the overdraft had become demonstrably unsustainable for Miss P by this stage at the latest and she should have been offered forbearance.

AND

- If an outstanding balance remains on the overdraft once the adjustments set out above have been made Nationwide should contact Miss P to arrange a suitable repayment plan Miss P 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 Miss P's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in January 2020. Nationwide can also reduce Miss P'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 her over her 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 Miss P 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 Miss P's credit file. Nationwide can also reduce Miss P's overdraft limit by the amount of refund if it considers it appropriate to do so.

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

My final decision

For the reasons I've explained, I'm upholding Miss P'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 Miss P to accept or reject my decision before 16 December 2024.

Jeshen Narayanan
Ombudsman