

Complaint

Mr L has complained that Nationwide Building Society (“Nationwide”) continued to allow him to use his overdraft over an extended period and even when he was in financial difficulty.

Background

One of our investigators looked at Mr L’s complaint and thought that Nationwide hadn’t done anything wrong when initially providing Mr L with his overdraft. However, she also thought that Nationwide should have realised that Mr L’s overdraft had become demonstrably unsustainable for him by December 2022. So she upheld Mr L’s complaint and that Nationwide needed to refund all the interest, fees and charges it added to his account from December 2022 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 Mr L with an overdraft, this decision is only considering whether Nationwide acted fairly and reasonably when allowing Mr L to continue using the facility from December 2022 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 Mr L’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 Mr L’s facility from December 2022. By this point, Mr L’s account hadn’t seen a credit balance for an extended period of time and his statements show that he was what is known as hardcore borrowing.

Mr L’s statements also show that in the period leading up to December 2022 the credits going into the account were low. It is also my understanding that the credit searches Nationwide carried out showed that Mr L’s credit position elsewhere was worsening too as he’d defaulted on a credit commitment. So the external information Nationwide received as well as the activity on Mr L’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.

In these circumstances, I think that by December 2022, at the absolute latest, Nationwide should have stopped providing the overdraft on the same terms and treated Mr L 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 robustness of its contact strategy and that Mr L failed to get in touch to say that he was in financial difficulty. I've thought about what Nationwide has said, but, in my view, its 'robust contact strategy' failed to react to the unfolding situation or seek to address what was at the root of Mr L'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 Mr L because its robust contact strategy saw it send him sixteen letters as it had identified that his overdraft usage had become a problem. And because Mr L didn't respond to the letters it was reasonable to continue allowing Mr L to use his overdraft in the same way. This is despite the fact that Mr L hadn't provided any indication that he'd be able to clear the persistent debt he was in and so Nationwide's actions (and Mr L'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 say this particularly as Nationwide itself has argued that having already sent Mr L sixteen letters it is unlikely that he would have got in touch if it had simply sent further letters. I have to query just how many unanswered letters are needed to signify that there may be a problem in circumstances where Nationwide argues that it was fine to carry on as normal after sixteen unanswered letters.

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 Mr L 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 L's continued usage of overdraft in the same way) were never likely to remedy the situation. Pointing Mr L towards self-help and money guidance simply wasn't working. And, in mind that in 2024 Nationwide continued charging Mr L even though he was over his agreed overdraft limit, wasn't really crediting the account and he had direct debit payments returned.

I also find Nationwide's argument that it couldn't take corrective action because of CONC 5D.3.2. R(6) to be fallacious. I firstly say this because it's not clear whether it is saying that it couldn't remove the facility because Mr L was in financial difficulty (even though it has argued it did not know that he was), or whether it is saying that removing the facility would have caused Mr L financial difficulty.

In any event, if it genuinely believed that it wasn't able to remove Mr L's overdraft as a result of CONC 5D.3.2. R(6), this didn't mean that it had to continue applying interest, fees and charges in the same way. Indeed, Nationwide almost presents it as though it had a binary choice between removing Mr L's overdraft, or continuing to charge him in the same way.

This ignores that there isn't anything within CONC (and specifically CONC 7) 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.

And if Nationwide was concerned about acting contrary to CONC 5D.3.2. R(6), it could have taken other action - such as providing the facility interest free for an extended period, or providing Mr L with the basis for a repayment strategy. I certainly do not consider that CONC 5D.3.2. R(6) required Nationwide to ignore any warning signs and continue charging Mr L in the same way going forward, in circumstances where his account conduct was indicating he couldn't afford to pay them.

Furthermore, Nationwide's argument here effectively argues that CONC 5D.3.2. R(6) prevents a lender from helping a customer who is experiencing difficulty. And this is in circumstances, where CONC 5D itself 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.

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

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

Overall and having considered Nationwide's arguments, I'm satisfied that it failed to act fairly and reasonably towards Mr L 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 December 2022 at the latest. It follows that I'm upholding Mr L's complaint.

In reaching my conclusions, I've also considered whether the lending relationship between Nationwide and Mr L might have been unfair to Mr L 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 Mr L given the overall circumstances of his 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 Mr L

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

- Reworking Mr L's current overdraft balance so that all interest, fees and charges added from December 2022 onwards are removed. This is to reflect the fact that Nationwide ought to have realised that the overdraft had become demonstrably unsustainable for Mr L 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 L to arrange a suitable repayment plan Mr L 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 L's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in December 2022. Nationwide can also reduce Mr L'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 L 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 L's credit file. Nationwide can also reduce Mr L'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 Mr L 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 L'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 L to accept or reject my decision before 2 December 2024.

Jeshen Narayanan
Ombudsman