

The complaint

Mr W complains that Nationwide Building Society lent to him irresponsibly.

What happened

Mr W has had a current account with Nationwide since May 2007. In December 2015, he applied for an overdraft limit which was agreed and later increased as follows:

Date	Event	Increase	Limit
December 2015	Opening limit	£100	£100
December 2016	Limit Increase 1 (LI1)	£100	£200
January 2016	LI2	£300	£500
August 2018	LI3	£1,500	£2,000

On 7 August 2023, Mr W complained to Nationwide. He said it had lent to him irresponsibly and failed to properly monitor his accounts as it is obliged to under the regulations. He said if it had done so, it would have realised the overdraft limit was unaffordable for him and taken action to assist him. As it didn't, he says his credit relationship with Nationwide was unfair as described by Section 140A of the Consumer Credit Act 1974 (s140).

Nationwide looked into Mr W's complaint and issued a final response letter. It said it had assessed his applications using its automated process. This included information from credit reference agencies and his existing account performance. Nationwide said if any of his applications had been outside its lending criteria then they would have been declined. It didn't uphold the complaint.

Mr W was unhappy with Nationwide's response so he referred his complaint to our service. When our investigator asked Nationwide for its file on the complaint, it said it felt the initial overdraft limit and LI's 1 and 2 were outside our jurisdiction as Mr W had complained too late. It agreed we have the power to look into LI3.

Our investigator didn't agree with Nationwide's comments that the complaint had been brought too late and went on to look at the merits of it. He said the early lending decisions – the initial limit and LI's 1 and 2 – appeared affordable for Mr W. But he said LI3 was more than his monthly income and appeared to be unaffordable for him. He upheld Mr W's complaint from that point and explained how Nationwide should put matters right by refunding interest and charges incurred by Mr W on balances in excess of £500 (the limit our investigator felt was reasonable) from the date the limit was increased.

Mr W questioned why the award recommended was only over and above £500, but he appears to have accepted our investigator's further explanation on that point. Nationwide however, rejected our investigator's view of the complaint. It said in summary, that its automated assessment of the application meant it had undertaken reasonable and proportionate checks. It said prior to LI3, Mr W had been able to maintain a credit balance and it believed the limit of £2,000 was affordable.

As there was no agreement, the complaint has been passed to me for a decision.

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.

Mr W has accepted our investigator's view that the initial limit and LI's 1 and 2 were affordable. That being so, I don't intend to comment further on those lending decisions. And it's clear that all parties agree we have the jurisdiction to consider LI3 as it has been brought within the time limits set out in the rules that govern our service, so again, I don't intend to comment further on our jurisdiction.

We've set out our approach to complaints about irresponsible and unaffordable lending on our website – including the key relevant rules, guidance, good industry practice and law. I've considered this approach when deciding this complaint.

Nationwide needed to carry out reasonable and proportionate checks to ensure that it didn't lend to Mr W irresponsibly. I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did Nationwide carry out reasonable and proportionate checks to ensure the overdraft was affordable for Mr W?
- If not, what would reasonable and proportionate checks have shown at the time?
- Did Nationwide make a fair lending decision?
- Did Nationwide act unfairly or unreasonably towards Mr W in some other way?

There is no set list of checks Nationwide had to do, but it could take into account different things such as the amount of the overdraft and the overall circumstances of the borrower.

Did Nationwide carry out reasonable and proportionate checks to ensure the overdraft was affordable for Mr W?

Nationwide has explained that Mr W's application for LI3 was put through its usual automated assessment and therefore must have met its lending criteria. It said his account performance doesn't indicate that Mr W was in financial difficulty at the time of the application or since. It says as there was *"nothing unusual about Mr W's request to increase the overdraft"* it had no need to carry out further checks.

I note what Nationwide says and understand that it relies on automated decisions as a quick and reasonably efficient way of reviewing applications. But in this case, I disagree with its assertion that there was *"nothing unusual"* in Mr W's request. Let me explain.

As we've seen, Mr W had had an overdraft limit of £500 for 2½ years or so prior to his application for LI3. That appeared to have worked well for him. He was weekly paid and received around £400 a week, so his account would fluctuate between credit and being overdrawn for a few days at a time. In my experience, this isn't uncommon for people who are weekly paid as many essential bills are paid monthly, so an overdraft can be a useful tool to assist with budgeting and cashflow.

But in August 2018, Mr W applied to increase his overdraft by £1,500 to £2,000. The limit requested was clearly more than his weekly – and indeed monthly – income. I do think that ought to be considered *"unusual"* to use Nationwide's word. Overdrafts are intended for short term emergency expenditure rather than day to day use, so I find it difficult to see how someone paid weekly at the rate Mr W was, could reasonably be expected to use such a large overdraft in the way it is intended. For that reason, I don't think Nationwide's checks

were reasonable and proportionate for the application it received.

What would reasonable and proportionate checks have shown at the time? Did Nationwide make a fair lending decision?

I've looked at Mr W's current account statements for the months leading up to his application for an overdraft. And as I've mentioned above, it's clear he's weekly paid and he earns around £1,600 per month. I think it ought to have been reasonably clear to Nationwide, that increasing his overdraft to a level beyond his monthly income would mean if he used the facility, he would be unlikely to see a credit balance for some time. This in turn would lead to him consistently paying overdraft interest and charges for a prolonged period – something he'd be unable to avoid.

I've noticed that very shortly after the overdraft was agreed, Mr W made a payment of £1,700 to a third party to whom he makes other, fairly regular, smaller transactions. I've asked Mr W about who this individual is and what the purpose of the £1,700 payment was. He tells me that the third party is his partner, and the larger payment was for car repairs. He said he applied for a loan with Nationwide at the time, but it was refused.

If Nationwide had engaged with Mr W's application, it would have seen that the overdraft was likely to be unsuitable for him as there was no real prospect of it being short term once it was used. And by speaking to Mr W while conducting further checks, it would have understood the need for the increased borrowing and realised the need for finance was better suited to a loan rather than an overdraft. I say this because the interest rate is likely to have been lower, and it would be repaid on a structured basis with fixed repayments.

So, I think if reasonable and proportionate checks had been conducted, I think Nationwide ought to have realised an overdraft of £2,000 was unsuitable for Mr W. It follows that I don't think it made a fair decision to agree his application.

Did Nationwide act unfairly or unreasonably towards Mr W in some other way?

I've looked carefully at the circumstances of this case and, as a result of what I believe to be irresponsible lending, I think Nationwide has treated Mr W unfairly by allowing him to continue in the overdraft since it was agreed. The regulations say that lenders have a duty to monitor their customers' accounts to look out for signs of financial difficulty and to take steps where difficulty is evident.

One of the examples which the regulations cite as a potential indicator of financial difficulty is an account not seeing a credit balance for over 12 months. Not surprisingly, Mr W falls into this category, and I think it's fair to expect that Nationwide would have been aware of this and take action. But it didn't, instead continuing to charge overdraft fees and interest. I don't think however, that Nationwide has treated him unfairly in some other way.

I've thought about whether I need to comment or rely on s140 as Mr W specifically raised this as a complaint point. In this instance, I don't think I need to. I say this because I've seen no evidence of unfairness in the relationship prior to LI3 (August 2018) and Mr W has accepted our investigator's view of the overdraft opening limit and LI's 1 and 2. I'm upholding this complaint for Nationwide's failings which took place within six years of Mr W raising his complaint.

I've thought about whether it would be reasonable to reduce the redress I'm awarding below, by the amount of interest Mr W would have paid had the car repairs been financed by loan. But as Mr W says Nationwide had already refused his loan application, I don't think it would be reasonable for me to assume it would have changed its mind on that, so we don't know

what any finance raised elsewhere might have cost him. Furthermore, I don't think it would be reasonable for Nationwide to benefit from the money lent to Mr W in an irresponsible way by allowing it to keep some of the interest and charges levied.

Putting things right

Nationwide Building Society should remove the unfairness caused by failing to ensure the limit increase was affordable for Mr W by doing the following:

- Re-work Mr W's current overdraft balance so that any additional interest, fees and charges applied as a result of the overdraft limit increase from 8 August 2018 onwards are removed. This means that from 8 August 2018 onwards interest can only be charged on the first £500 of any overdrawn balance.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made, Nationwide Building Society should contact Mr W to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr W's credit file, it should backdate this to 8 August 2018.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr W, 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 Building Society should remove any adverse information from Mr W's credit file.*

*HM Revenue & Customs requires Nationwide Building Society to take off tax from this interest. Nationwide Building Society must give Mr W a certificate showing how much tax it's taken off if he asks for one.

My final decision

My final decision is that I uphold this complaint. Nationwide Building Society should put matters right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 11 March 2025.

Richard Hale

Ombudsman