DRN-5302046

Complaint

This complaint is being made against Nationwide Building Society ("Nationwide") by the estate of Mrs H. For the sake of clarity I will refer to the estate of Mrs H as "the estate" in this final decision.

The estate has complained about credit card limit increases that Nationwide provided to Mrs H. It says the limit on the credit card was irresponsibly increased and in circumstances where there was little prospect of the balance being repaid within Mrs H's lifetime.

Background

Nationwide provided Mrs H with a credit card with an initial limit of £1,900.00 in November 2002. Nationwide says that the credit limit was increased to £9,550.00 at some point prior to April 2013[1] however it is unable to confirm exactly when this was. The limit was subsequently increased to £12,050.00 in June 2014. The limit was decreased to £9,800.00 in December 2021. As I understand it, after Mrs H passed away in December 2021, Nationwide went on register a claim of £9,559.48 against her estate.

In January 2023, the estate complained that the credit limit increases on the credit card shouldn't have been provided to her. Therefore, the amount being claimed against the estate needed to be reduced to take account of this. Nationwide didn't uphold the estate's complaint. In its view it would have completed all relevant checks and will have provided the card on the basis that it was affordable.

One of our investigators reviewed what Nationwide and the estate had told us. She thought that Nationwide hadn't done anything wrong or treated Mrs H unfairly when increasing the credit limit to £9,550.00 in April 2013. However, she wasn't persuaded that Nationwide had acted fairly and reasonable to Mrs H when increasing her credit limit in £12,050.00 in June 2014. This resulted in her partially upholding the complaint.

Nationwide disagreed with our investigator's assessment and asked for an ombudsman to look at the complaint.

As the estate has reiterated that it does not dispute Nationwide's initial decision to provide the credit card, I am limiting my consideration to whether Nationwide acted fairly and reasonably when increasing Mrs H's credit limit.

My findings

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

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[1] Nationwide initially said that the first limit increase took place in April 2013 and the investigator's assessment repeats this. However, Nationwide did clarify that it only began keeping track of credit card transaction data in April 2013 and that Mrs H's credit limit was at £9,550.00 at this point. So the credit limit was increased at some point prior to April 20213 but Nationwide is unable to confirm exactly when this was.

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 this complaint made by the estate.

Having carefully considered everything, I'm partially upholding this complaint. I'll explain why in a little 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 Mrs H could afford to repay before it agreed to increase her credit limit on the occasions that it did.

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 considering this complaint.

Did Nationwide carry out reasonable and proportionate checks before agreeing to provide Mrs H with the credit limit increases on her credit card?

Nationwide says that agreed to increase the credit limit on Mrs H's credit card after it completed income and expenditure assessments on her on each occasion. During these assessments, Nationwide says it will have considered information from credit reference agencies as well as Mrs H's income.

It says that the information it would have obtained would have shown that the increases were affordable for Mrs H. In particular, it believes that this is the case as a limit increase would not have been agreed, if a customer had adverse credit information recorded against them, or the credit was unaffordable.

I've carefully thought about what Mrs H and Nationwide have said.

Mrs H was being provided with credit limits of £9,550.00 and £12,050.00. So Nationwide was required to understand whether Mrs H could repay £9,550.00 and £12,050.00 within a reasonable period of time. It's fair to say that limits of this much would have required fairly chunky monthly repayments, for the balance to have been cleared within a reasonable period of time, should Mrs H have ended up owing the whole amount.

Nationwide has been unable to provide the details of the credit check information that it obtained on Mrs H at the time of either decision. As I've explained previously, Nationwide hasn't been able to confirm when Mrs H's limit was increased to £9,550.00. Nonetheless, given these lending decisions took place over a decade ago, I don't think that it is unreasonable that Nationwide no longer has this information. And I've not drawn any adverse inferences as a result.

Furthermore, I've not seen anything to suggest and neither has it been argued that Mrs H had significant adverse information – such as defaulted accounts or county court judgments

("CCJ") - recorded against her at this stage. So I'm prepared to accept that Mrs H is unlikely to have had any such information recorded against her at the time.

However, while Mrs H may not have had difficulty previously, I don't think that this in itself is sufficient for me to conclude that this means it was fair to increase her credit limit. After all, if I were to follow such an argument to its logical conclusion, this would mean that it would be fair and reasonable to continue increasing a borrower's credit limit until they experienced difficulty. And this would appear to run contrary to the purpose of the relevant rules, regulations and guidance, which requires a lender to take steps to be satisfied that a borrower won't go into difficulty, as a result of being advanced credit, in the first place.

I, therefore, don't think that Mrs H not having any significant adverse information recorded against her, in itself means that it was fair and reasonable for Nationwide to increase her credit limit when it did.

As I've explained, I think that it would have required relatively chunky repayments in order for balances of £9,550.00 and £12,050.00, plus any interest accrued, to be cleared within a reasonable period of time. In these circumstances, I'm satisfied that Nationwide needed to get a good understanding of Mrs H's circumstances – particularly around her income and living expenses – before it could be able to reasonably conclude that Mrs H could afford the limit increases. I think that this is especially the case for the second limit increase as Nationwide ought to have been aware that Mrs H was on a fixed income at this stage.

As I can't see that Nationwide did obtain this level of information, at the time it provided the limit increases, I don't think that the checks it carried out before increasing the limit on Mrs H's credit card were reasonable and proportionate.

Would reasonable and proportionate checks have indicated to Nationwide that Mrs H would not have been able to repay £9,550.00 within a reasonable period of time?

Ordinarily, where a firm failed to carry out reasonable and proportionate checks before providing credit or increasing the amount available to a customer, I'd usually go on to recreate reasonable and proportionate checks in order to get an indication of what such checks would more likely than not have shown.

However, the estate is unable to provide us with the information for us to be able to assess what Nationwide finding out more about Mrs H regular monthly living costs is likely to have shown at the time of the first limit increase. So I've not been provided with sufficient evidence to reasonably conclude that the first limit increase was as a matter of fact unaffordable for Mrs H.

I appreciate that the estate may consider it unreasonable and unfair to expect it to provide information which it doesn't have and cannot reasonably be expected to have. Particularly as Nationwide isn't able to confirm when the limit increase even took place. But I also have to take into account that Nationwide isn't required to have retained all of this information either and as the estate made a complaint when it did, I have to decide the complaint on what I have before me.

Equally, it is only fair and reasonable for me to uphold a complaint in circumstances where I can see that any additional credit provided was unaffordable. And I'm afraid that I've not been provided with sufficient evidence which corroborates what the estate has said about this limit being unaffordable.

For the sake of completeness, I would also add that I've also considered what the estate has said about the limit increase having taken place prior to April 2013, rather than in April 2013 as had been suggested earlier. But even if, as seems likely, this was the case, I've still not been provided with sufficient information on Mrs H's circumstances prior to April 2013, such that I could reasonably conclude that a limit of £9,550.00 was as a matter of fact unaffordable. So I'm not persuaded that it being possible that the limit increase was applied earlier makes a difference.

As this is the case, I've not been persuaded to uphold the complaint about the limit increase to £9,550.00.

Would reasonable and proportionate checks have indicated to Nationwide that Mrs H would not have been able to repay £12,050.00 within a reasonable period of time?

Nationwide has been able to provide copies of Mrs H's current account statements in the period leading up to the second limit increase. So for this limit increase, I do have quite a bit of information on Mrs H's circumstances. And I'm satisfied that I have sufficient information available to form a view on whether I think a limit of £12,050.00 was affordable for Mrs H in June 2014. I've therefore proceeded to do so.

In reaching my conclusions, I've noted that Nationwide's arguments, on this complaint as a whole as well as in relation to this particular credit limit increase, have been focused along the lines that all of the credit it advanced to Mrs H must have been affordable for her, because its systems approved it.

However, I don't agree that this credit limit increase was affordable for Mrs H simply because Nationwide systems approved the lending. This is even though Nationwide happens to consider that its systems were compliant with the requirements in place at the time. So I'm not prepared to accept that the estate complaint should not be upheld solely on the basis that Nationwide's systems approved the credit limit increase.

Furthermore, I note that Nationwide has said that reviewing a single current account in isolation would not provide a wide enough view of Mrs H's circumstances. However, I'm only in the place where I need to recreate what a proportionate check is likely to have shown, because Nationwide hasn't persuaded me that its checks were proportionate.

Nationwide not being in a position to provide the results of its checks from the time, is part of this. Although, its argument that its system approved the credit limit increase, so it must have been affordable is also unpersuasive. Equally, Nationwide hasn't provided anything to show that its review at the time was as wide it is saying that any review carried out now should be.

For the sake of completeness, I would also add that the single current account Nationwide has objected to, is a Nationwide account which appears to be Mrs H's main one as it has her income and main expenditure going from it. As this is a Nationwide account (and therefore Nationwide clearly had access to it in June 2014), I consider it perfectly fair and reasonable to place considerable weight on the information it contains and I have therefore done so.

In response to our investigator's assessment, Nationwide has calculated its own retrospective income and expenditure assessment based on the current account statements. It calculates that Mrs H had a monthly disposable income of over £800 at this stage. It has also determined that some of the payments going out of Mrs H's account – for example her payments to her telecoms supplier – were for well above the average amount for fixed internet and telephone subscriptions at the time.

Whether or not Mrs H's payments to her telecoms provider were higher than average, Mrs H was still contractually obliged to make this payment. So I don't see how or why it would be fair and reasonable to use a lower amount in any income and expenditure assessment. Most importantly, Nationwide's comments take no account of the fact that it was lending up to £12,050,00 to someone on a fixed income. And there was no obvious indication that Mrs H's fixed income would increase and therefore she was more susceptible to the harms of problem debt. It's worth noting that Nationwide's assessment in an around June 2014 needed to be borrower focused and not simply concerned with any credit risk.

Mrs H was already paying around £270 a month to Nationwide as a result of her loan. The earliest credit card statements Nationwide has provided show that Mrs H was paying around £240 to £250 a month by direct debit. This suggests to me that this is likely to have been a rounded up minimum payment that Mrs H was making. Although the lack of full credit card statements, instead of transaction lists, means that I'm unable to say this for sure. In any event, the most important thing to take from this is that Mrs H was already paying Nationwide around £500 a month for the credit that she already had.

I would also add that even if I were to agree that Mrs H had a monthly income of around £1,500.00, to be clear I'm not actually persuaded she did receive as much as this, credit repayments to Nationwide were already accounting for a third of what she already received. In my view, there is nothing in Mrs H's repayment record to her credit card, or in her bank account statements which show that she could sustainably afford to repay a further £3,000.00. Indeed, the fact that Mrs H was making regular payments to HMRC at this point indicates that she was likely in some sort of tax arrears too.

So even without even taking into account the minutiae of the detail, there appear to be significant questions whether Nationwide was increasing Mrs H's indebtedness in a way that was unsustainable or otherwise harmful for her. Mrs H owing more in December 2021 more than seven years after the limit increase, appears to evidence this.

In any event, I'm satisfied that the information in Mrs H's bank statements do not show that she had a monthly disposable income of £800. Equally, having considered Mrs H committed monthly expenditure added this to her credit commitments and deducted this from her income, I'm satisfied that she did not have sufficient funds to repay £12,050.00 within a reasonable period of time.

In my view, the savings account statements Nationwide has supplied do not show that Mrs H had a surplus of funds that would enable her to repay £12,050.00 either. Indeed, for one of the accounts, at the time the limit increase was offered Mrs H had her lowest balance and on the other account the balance is negligible. This is hardly evidence of a strong financial position.

As Nationwide was required to establish that Mrs H could repay £12,500.00 within a reasonable period of time before it increased her credit limit in June 2014, it follows that I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Nationwide should not have increased Mrs H's credit limit.

Nationwide increasing Mrs H's credit limit in these circumstances means that I'm satisfied that it failed to act fairly and reasonably towards her and that it should now put things right.

Fair compensation – what Nationwide needs to do to put things right

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

- reworking the account to ensure that from June 2014 onwards interest is only charged on the first £9,550.00 outstanding - to reflect the fact that the second credit limit increase should not have been provided. All late payment and over limit fees should also be removed;

- if an outstanding balance remains on the account once all adjustments have been made Nationwide should work with the estate to ensure that this balance is repaid;
- 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 the estate along with 8% simple interest† on the overpayments from the date they were made until the date of settlement.

† There may well be various tax implications in relation to the interest part of the award should one be due. It will be a matter for Nationwide and the estate to determine what these are and what may need to be paid to HM Revenue & Customs.

My final decision

For the reasons I've explained, I'm partially upholding the estate of Mrs H's complaint. Nationwide Building Society should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs H to accept or reject my decision before 12 March 2025.

Jeshen Narayanan
Ombudsman