DRN-5330155

Financial Ombudsman Service

The complaint

Mrs T complains that Nationwide Building Society (NBS) irresponsibly lent to her.

What happened

In March 2021 Mrs T entered into a Fixed Sum loan agreement with NBS for £15,000. The loan was to be repaid over 84 months at £254.90 a month. After interest and charges were applied Mrs T had to repay in total £21,411.60. Mrs T said she struggled to make the repayments having to borrow further to sustain them, and that if NBS had properly checked they would have seen she was financially over committed. And that she also gambled. Mrs T complained to NBS.

NBS said their checks had been proportionate and reasonable. They said they'd seen some gambling activity on Mrs T's account but nothing that raised concerns. On the checks they carried out they said Mrs T had sufficient disposable income to maintain her repayments which she'd done for two years before bringing her concerns to them.

Mrs T wasn't happy with NBS' response and referred her complaint to us.

Our investigator said given the amount borrowed and the length of time Mrs T would be committed to the repayments NBS should have checked further into her financial situation. And if they had they would have seen Mrs T was financially over committed. And was using her Nationwide account solely for gambling. He said NBS had acted unfairly and unreasonably in lending to Mrs T.

NBS didn't agree they said their checks had been proportionate and reasonable and in line with the regulator's guidance. They asked for an ombudsman to decide.

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.

We've set out our approach to complaints about unaffordable and irresponsible lending on our website. I've taken this into account in deciding Mrs T's complaint. Having done so, I'm upholding Mrs T's complaint as I'm not persuaded it was reasonable for NBS to agree to lend – I'll explain why.

All lenders have an obligation to lend money responsibly. The relevant guidance is within the Financial Conduct Authority (FCA) rules on creditworthiness assessment as set out in its handbook, (CONC) section 5.2. These say that a firm must undertake a reasonable assessment of creditworthiness, considering both the risk of the customer not making the repayments, as well as the risk to the customer of not being able to make repayments.

So, in reaching my decision I need to consider:

1. Did NBS complete reasonable and proportionate checks to satisfy themselves that Mrs T would be able to sustainably repay the borrowing?

a. If they did, was the decision to then lend to Mrs T fair?

b. If they didn't, would reasonable and proportionate checks have shown that Mrs T could sustainably repay the borrowing?

2. Did NBS act unfairly or unreasonably in some other way?

The affordability checks should be "borrower-focused", meaning NBS need to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Mrs T. In other words, it wasn't enough for NBS to think only about the likelihood that they would get their money back without considering the impact of repayment on Mrs T herself. I'd expect that reasonable and proportionate checks would usually need to be more thorough:

- The lower a customer's income.
- The higher amount to be repaid.
- The greater the number of loans and frequency of loans.
- The longer the term of the loans.

There isn't a set list of what reasonable and proportionate checks should look like. But I'd expect the higher the amount, the greater the checks must be, and the lower the amount, then fewer checks can be made. I think it's reasonable for me to say that as this was a loan for £15,000 and over a fairly long period (seven years) NBS had an obligation to carry out detailed and proportionate checks before agreeing to the loan. The kind of things I expect lenders to consider include - but are not limited to the type and amount of credit, the borrower's income and credit history, the amount and frequency of repayments, as well as the consumer's personal circumstances.

I've looked at what checks NBS said they did when initially approving Mrs T's application in March 2021. NBS said they took information from Mrs T about her income, some outgoings and the purpose of the loan – debt consolidation. They also checked credit markers, used statistical data to assess some of Mrs T's non-discretionary spending. And considered internal data they had from Mrs T's account with them.

They said the checks showed that Mrs T had declared a net monthly income of £3,650. For her monthly outgoings she'd a mortgage of around £488, loan repayments of around £915, credit card repayments of £500 based on 5% of her outstanding balance, household costs of around £855 and council tax of around £135. After factoring the new loan NBS determined Mrs T would have available income each month of around £500.They said their checks didn't show any defaults or County Court Judgements (CCJ) being registered on Mrs T's credit file. NBS said they saw that Mrs T used her account with them for gambling activity but the transactions on her account didn't raise any concerns. And as part of the loan Mrs T applied for was to pay off her credit card balances – around £12,000, they'd be increasing Mrs T's available income as her monthly credit commitments would have reduced.

NBS has said they considered the credit markers on Mrs T's file. CONC 5.2A.7 says:

A firm must base its creditworthiness assessment on sufficient information:

> *(1) of which it is aware at the time the creditworthiness assessment is carried out.*
> *(2) obtained, where appropriate, from the customer, and where necessary from a credit reference agency, and the information must enable the firm to carry out a reasonable creditworthiness assessment.*

Mrs T has provided her credit report which would show what NBS would have seen about her credit history with credit reference agencies (CRA) at the time of the lending. This showed within the previous six months Mrs T had taken out a second charge against her property for around £37,500. I can see from Mrs T's credit report that around the time of the second charge loan she settled other existing credit. But this didn't include several loans and credit cards. At the time of her NBS application Mrs T had unsecured loans of around £45,000. So not including Mrs T's mortgage, but with the second charge loan Mrs T had loan commitments of around £82,500. As well as credit card and mail order credit limits of around £12,000.

NBS said they also considered an account Mrs T had with them which I can see was solely used for the purpose of gambling. While NBS may not have considered this to be concerning, given Mrs T's debt commitments and the recent indebtedness of £37,500 I don't think it was reasonable and proportionate to place a reliance on data to assess Mrs T's credit worthiness. I think NBS should have looked to establish Mrs T's actual financial situation further before they considered lending to her.

This doesn't automatically mean NBS shouldn't have lent to Mrs T as I need to consider whether further checks would have shown that the lending was unaffordable or unsustainable for Mrs T.

Mrs T has provided her bank statements leading up to her application to NBS. I'm not saying NBS needed to look at Mrs T's bank statements, but they provide a good indication of her income and expenditure at the time the lending decision was made.

From these I can see Mrs T's monthly income was around £3,650 which coincides with the figure used by NBS. Her mortgage was around £480, NBS had assessed this to be around £490. I've considered the other essential spending from Mrs T's bank statements. She'd several loans that totalled around £1,290 a month, credit card repayments of around £295 a month, utilities £236. Once phones, TV and media, car costs, food, insurance and mail order repayments were factored in, on average Mrs T had outgoings of around £3,172 (NBS' assessment was around £2,894). This would mean Mrs T would have around £473 in available income. But the bank statements Mrs T provided were at a time when her council tax and water rates wouldn't be reflected. I can see Mrs T's monthly council tax was around £228 and I'd consider her water rates to be around £80. This would leave her with around £165 in disposable income before the new lending of around £255 was factored in.

But Mrs T said she planned to use the lending to settle her credit cards which from her bank statements would have been around £295. So, considering this I think Mrs T could have had around £205 in disposable income.

By lending to Mrs T NBS was told she intended to settle her credit card accounts – as mentioned above any lending should be borrower focussed. By increasing Mrs T's credit commitment by £15,000 NBS were committing Mrs T to seven years for a potential monthly reduction in her outgoings of around £40 a month (the difference between what she was paying £295). I can also see from Mrs T's statements that she was consistently using her overdraft facility and incurring interest. It would only be a couple of days around the time her salary was paid in that Mrs T wasn't using her overdraft facility. So, I think this shows Mrs T was having to borrow to meet her monthly commitments.

Also, in early February 2021 Mrs T made some gambling transactions - £100, from her current account as her NBS account didn't have sufficient funds. It would seem Mrs T had some success with this as over £1,000 was paid into her NBS account from a gambling platform the same day, this was despite Mrs T being overdrawn by over £1,500 in her non-NBS account. And I can see that instead of using this money to decrease her overdraft she went on to use these funds for further gambling transactions, more than £1,000 from her

NBS account over the course of a month.

Taking all of the above into account I don't think NBS acted responsibility in agreeing to lend to Mrs T. I think if they'd checked further, they would have identified Mrs T's financial vulnerabilities and over indebtedness. And based on the evidence I've seen I don't think Mrs T could sustain the repayments. I know NBS has said Mrs T did sustain her payments without concerns for a couple of years, but I can see from her credit report that Mrs T had also increasing her borrowing.

I've also considered whether NBS acted unfairly or unreasonably in some other way given what Mrs T has complained about, including whether their relationship with her might have been viewed as unfair by a court under Section 140A Consumer Credit Act 1974. But because I'm satisfied the redress, I have directed below results in fair compensation for Mrs T in the circumstances of her complaint. I'm satisfied, based on what I've seen that no additional award would be appropriate in this case.

Putting things right

When I find that a business has done something wrong, I'd normally direct that business – as far as it's reasonably practicable – to put the complainant in the position they would be in now if the mistakes they made hadn't happened. In this case, that would mean putting Mrs T in the position she would now be in if she hadn't been given the loan in question.

But this isn't straightforward when the complaint is about unaffordable lending. Mrs T was given the loan and she used the money, I can't undo what's already been done. So, it isn't possible to put Mrs T back in the position she would be in if she hadn't been given the loan in the first place. So, I ask Nationwide Building Society to:

- Remove all interest, fees and charges applied to the loan from the outset. Any payments Mrs T made should then be deducted from the new starting balance. If the payments Mrs T has made total more than the amount she was originally lent, then any surplus should be treated as overpayments and refunded to her.

- Add 8% simple interest* calculated on any overpayments made, from the date they were paid by Mrs T to the date the complaint is settled.

- Agree with Mrs T an affordable plan to repay any amount left owing.

- Remove any adverse information recorded on Mrs T's credit file as a result of this loan (once Mrs T has repaid any outstanding balance).

*HM Revenue & Customs requires Nationwide Building Society to take off tax from this interest. Nationwide Building Society must give Mrs T a certificate showing how much tax they've taken off if she asks for it.

.My final decision

I uphold this complaint. And ask Nationwide Building Society to put things right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 14 April 2025.

Anne Scarr
Ombudsman