

The complaint

Mr G complains that Nationwide Building Society recorded adverse information on his credit file following a missed payment on his credit card account.

What happened

I issued a provisional decision setting out what happened and what I thought about the complaint. I've copied the relevant parts of that decision below – and they form part of this final decision.

Mr G holds a credit card account with Nationwide, which was set up to be repaid in full each month via direct debit. The minimum payment due on 19 November 2023 was £25, and the full outstanding balance was £1,822.82. The payment was attempted, but was reversed as there weren't sufficient funds in Mr G's account to cover the outstanding balance.

On 1 December 2023 Mr G realised what had happened and made the payment. He contacted Nationwide after discovering that it had reported a missed payment on his credit file. He queried this, and said he'd previously been told that Nationwide wouldn't normally report an occasional missed payment. He said he had sufficient funds to make the payment – but had forgotten to transfer them to the correct account. Nationwide said it couldn't change its decision to report the missed payment.

Mr G raised a complaint. He said the terms of the account state Nationwide "may" report information to credit reference agencies (CRAs) if a payment is missed – which is ambiguous. He also found it unfair that he'd previously been told missed payments wouldn't always be recorded but that Nationwide was now going against that approach. He said that – whilst it wasn't the main reason he missed the payment – he'd recently been hospitalised and was recovering from surgery when the payment was due.

Nationwide didn't agree it had made an error. It couldn't find any record of Mr G being told missed payments wouldn't be reported. It said it's required to report true and accurate information to CRAs and acted within the terms of the account by doing so.

Still unhappy, Mr G referred his complaint to this service. He raised several concerns about Nationwide's handling of the situation. I've summarised what I consider to be his key concerns:

- *Although the transaction was reversed due to insufficient funds, the payment was technically made – so it shouldn't be treated as 'missed'.*
- *He felt the way Nationwide wrote its account terms was overall unclear, and any ambiguity should be interpreted in his favour.*
- *Members of Nationwide's staff had given him conflicting answers to his questions – suggesting that even they don't understand the account terms.*
- *He was concerned Nationwide relied on undisclosed criteria to decide when to report adverse information. He questioned how he could possibly be expected to adhere to*

the account terms when this was the case.

- *Nationwide has suggested it uses an automated system to decide when to report adverse information about his account.*
- *Nationwide hasn't asked him for detail about why the payment was missed – despite him mentioning that he'd recently been in hospital. So, it didn't take his circumstances into account when deciding to report the missed payment.*
- *Nationwide's website says it will work with customers who can't pay, and provide options based on their individual situation – which hadn't happened here.*

One of our Investigators considered Mr G's complaint, but didn't uphold it. They said Nationwide had acted in line with the terms of the account when reporting the missed payment – and that it was required to do so. Mr G didn't agree, and asked for the complaint to be passed to an Ombudsman for a final decision.

What I've provisionally decided – and why

Although I've briefly summarised Mr G's concerns, I'd like to assure him that I've considered all of the information and evidence he's provided. Rather than addressing each point Mr G has raised in turn, my decision will focus on what I consider to be the key issues. The rules that govern this service allow me to take this approach. This is in keeping with our role as an informal service.

I've considered whether Nationwide made an error – or otherwise treated Mr G unfairly – when recording a missed payment on his credit file. I won't comment on whether Nationwide should make wider changes to the way it writes its account terms or the processes it puts in place – as that isn't the role of this service.

The missed payment

Mr G has suggested that the payment was – technically speaking – made on time, but was simply paid back by Nationwide. Mr G's account did not have sufficient funds for the direct debit to be successful. While Mr G's account may have had enough funds to cover the minimum payment due, he'd opted to pay the full outstanding balance each month. This meant there was no facility for the minimum payment to be made by direct debit – and that the full outstanding balance needed to be available in Mr G's account in order for the payment to go through. The fact that Nationwide attempted to process the payment does not discount the fact that it was returned and ultimately wasn't successful.

Mr G's credit card statements are clear about the amount he is required to pay each month and when that payment is due. I'm satisfied the payment was not successfully made on time. While the payment was made later, this was nearly two weeks after it was due. Because Mr G missed the payment, he was in breach of the terms of his credit agreement. And, because the payment wasn't successfully made, I think Nationwide acted fairly by describing it as a missed payment.

Nationwide – like all lenders – is required to report true and accurate information to credit reference agencies. This includes details of any missed payments on an account. I'm satisfied it did so correctly in this instance. Mr G is concerned that Nationwide applies undisclosed criteria to decide whether to report adverse data to CRAs, which may include his personal details. But I'm satisfied the decision was made simply because the payment was missed. I also don't draw any adverse inferences from Nationwide's suggestion that the report could have been made automatically by its computer system. It's not unusual for lenders to use automated systems to detect and report missed payments – and this isn't something I'd expect Nationwide to do manually in every instance.

The account terms

The terms of the account state the following:

“D Minimum payments and statements (...)

(vi) If you do not make the minimum payment by the payment due date you will have broken the terms of your agreement and one or more of the following consequences may apply: (...)
(b) we may report this to credit reference agencies”

Mr G says this term is ambiguous – as it only specifies that Nationwide “may” report a missed payment to credit reference agencies, not that it “will” do so. He’s suggested that the terms should include the specific circumstances that would – or would not – result in missed payments being reported. He’s also referred to the principle of ‘contra proferentem’ – meaning any ambiguity should be interpreted against the drafter of the contract (in this case Nationwide).

I’ve carefully considered this term, as well as Mr G’s comments. Having done so, I don’t find it ambiguous in Mr G’s case. The term says Nationwide is entitled to report missed payments to CRAs. The word “may” in this context seems to allow Nationwide to decide that, in some circumstances, it might not be appropriate or necessary to report adverse information. These terms – or very similar ones – are typical of most lenders, and not unusual.

Mr G says several members of Nationwide’s staff have given him contradicting information – suggesting the term isn’t easy to understand. The agents Mr G have spoken to have been consistent that Nationwide can report missed payments to CRAs. At least one agent stated that Nationwide “will” report information, rather than “may” – but I think it’s clear they meant this is what will typically happen. Some have – at his request – given examples of when that might not be the case. But I don’t think that means Nationwide has acted unfairly or contrary to its account terms by reporting a missed payment on Mr G’s credit file in this instance.

Mr G has highlighted other terms that he feels are unclear or contradictory for similar reasons. While I appreciate his intention to demonstrate an overall issue with the way Nationwide writes its terms, I can’t see that these are relevant to Nationwide’s ability to report adverse information in this instance – so I won’t comment on them here.

Consideration of Mr G’s circumstances

Where a customer provides information about their circumstances to explain why a payment was missed, I’d expect the lender to take it into account – and to ensure it treated its customer fairly in doing so. Mr G says Nationwide failed to ask him for details about his situation – so it couldn’t have considered his circumstances.

When first discussing the missed payment, Mr G told Nationwide that he forgot to transfer the funds. He’s since said he’d previously been hospitalised on two occasions – and was recovering from surgery at the time. But in his comments to both Nationwide and this service, Mr G has maintained that his recent medical circumstances aren’t the main reason for the payment being missed – but that they were a factor that contributed to him losing track of when the payment was due.

I can sympathise with Mr G here, and given his recent circumstances I can understand how he might have lost track and forgotten to transfer the funds before the payment was due. But Mr G was clear with Nationwide that he missed the payment due to an error on his part – not because he was incapacitated or otherwise unable to pay. I appreciate that he expected

Nationwide to ask him for more detail, but I'm satisfied based on the information he'd already provided it had enough to say that the missed payment should be reported. And if Mr G wanted to provide Nationwide with further information to explain why the payment was missed, he could have done so.

Mr G has also referred to Nationwide's website, which says it will work with customers and explain their options if they're unable to pay. In this case, Mr G was able to pay – he simply did so late, and there was nothing to suggest he might have trouble making his payments on an ongoing basis. So I don't think Nationwide had any reason to believe it needed to offer Mr G any additional support.

What Mr G was told over the phone

Mr G recalls being told during a phone call that occasional missed payments wouldn't be reported to CRAs. He's suggested that this call might have been with the mortgage department – but isn't sure of that. Nationwide says it's searched its records but hasn't been able to locate a call of this nature. It provided the call recordings it holds – which I've listened to. Those calls don't include the comments Mr G has mentioned. And I haven't seen anything else to persuade me that Mr G was given this information.

Where information is incomplete, unclear or contradictory, I must reach a decision based on the balance of probabilities. I've considered whether it's more likely than not that Mr G was told occasional missed payments wouldn't be reported. While I appreciate Mr G feels strongly about this, he hasn't been able to provide details which would help Nationwide locate the call – such as the time or date it took place, who it was with or what the call was regarding. Based on the information that is available, I can't fairly conclude – on balance – that Mr G was told missed payments wouldn't be reported at any point.

But even if he was, that wouldn't affect Mr G's obligation to make the payments required under his agreement with Nationwide. Nor would it mean Nationwide is not required to report details of missed payments to CRAs. Mr G says the main reason he missed the payment was that he forgot to transfer the funds to the correct account – not because he believed missed payments wouldn't be reported. So I don't think Mr G would have been in a different situation regardless of this call taking place.

Summary

While I understand Mr G will be disappointed, I don't find that Nationwide made an error when reporting a missed payment to CRAs – or that it treated him unfairly by doing so. So I don't intend to require it to remove that information or take any further action.

Responses to my provisional decision

Nationwide accepted my provisional decision, and had nothing further to add.

Mr G didn't agree with my provisional decision, and he provided several comments in response. I've briefly summarised what I consider to be the key points raised by Mr G:

- My decision interprets the facts and evidence of the complaint in Nationwide's favour – and isn't therefore impartial or evidence based.
- My decision looks back at events 'retrospectively' – and doesn't account for what he and Nationwide understood at the time the events took place.
- I've omitted several key facts – such as the fact Nationwide doesn't record all of its calls or that its website directly links to the page about customer support.

- I haven't commented on wider issues, such as the way Nationwide sets and drafts its account terms. Mr G says I cannot reach a fair conclusion on his complaint without doing so. The fact that other lenders work in a similar way doesn't mean Nationwide hasn't made an error.
- If he'd been aware that missed payments would be reported, he would have provided further information about his medical circumstances at the time. He thinks in hindsight his medical circumstances may have affected him more than he previously realised. It was Nationwide's responsibility to ask him about this.
- No medically qualified person has assessed his circumstances to determine whether he could have made the payment or not.
- It's unfair to expect him to recall details of the call with Nationwide in which he was told occasional missed payments wouldn't be reported. He's provided details of more recent calls where he was given conflicting information – which should be sufficient.
- If aware that occasional missed payments would be reported, he would have changed his direct debit to take the minimum payment each month – which would have prevented this payment from being missed.

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.

I've carefully considered all of the comments Mr G has provided in response to my provisional decision. I understand that there are several facts relating to the complaint that Mr G considers relevant. As in my provisional decision, I've focused on what I consider to be the key points here – rather than addressing each point he's raised in turn. This is in keeping with our role as an informal service. Where Mr G's points were previously addressed in my provisional decision, I won't add anything further except where I consider it beneficial.

The account terms

Mr G asked why my provisional decision didn't address how Nationwide writes its account terms – or his other concerns about its wider policies and procedures. As explained in that decision, my role is to decide whether Nationwide has made an error or otherwise treated Mr G unfairly in the circumstances of his complaint – rather than to comment on its overall business practices.

I appreciate Mr G feels there may be a wider issue here – and that other lenders as well as Nationwide may be treating customers unfairly. But that's not something I can comment on here. My decision is based on what I consider to be fair and reasonable in the circumstances of Mr G's complaint – taking into account the relevant law and regulations.

While my provisional decision referred to instances where Nationwide's actions were typical of other lenders, this is simply to say that I don't find Nationwide's actions unusual. But as outlined in my provisional decision, I'm satisfied Nationwide has treated Mr G fairly - irrespective of the actions or practices of other lenders. For the reasons I've explained, I don't find that Nationwide's account terms are ambiguous in the circumstances of his complaint. I'm satisfied it's entitled – and is in fact required – to report missed payments to CRAs as it did in this case.

Consideration of Mr G's circumstances

Mr G says he didn't provide Nationwide with detail about his circumstances after the payment was missed because he didn't know he had the option of doing so – or that it might be relevant. He says Nationwide ought to have asked him for further detail, especially when he mentioned that he'd been unwell. He also says that in hindsight, he doesn't think he fully appreciated how his medical circumstances had impacted him.

But Mr G was aware he'd missed the payment – and was told at the time that this would be reported to CRAs. If Mr G felt the payment was missed unavoidably due to circumstances beyond his control, he had the opportunity to explain this to Nationwide or provide additional information. Because Mr G told Nationwide that his medical circumstances weren't the reason for the payment being missed, I don't think it was unreasonable that it didn't ask him for further information at the time.

I appreciate Mr G's comment that no medically qualified person has assessed his circumstances. Mr G told Nationwide that he missed the payment because he forgot to transfer the funds – and I don't think it's unreasonable that Nationwide relied on that statement and made its decision on that basis. I don't think Nationwide needed to make a formal medical assessment of Mr G's circumstances to do this.

What Mr G was told over the phone

Mr G recalls being told that occasional missed payments would not be reported – and feels it unfair to expect him to provide further details of this call. As explained, my decision is based on what I think is more likely than not on the balance of probabilities.

Mr G says he's provided times and dates of other calls where he was given conflicting information – including calls where he was told missed payments wouldn't be reported unless it was a regular occurrence. I haven't heard this mentioned in any of the available call recordings. In any case, the calls Mr G describe took place after the payment was missed - though I understand Mr G's intention to demonstrate that Nationwide's staff provides conflicting information about this more generally.

Mr G notes that Nationwide says it 'may' record calls – so it's possible the call he describes simply wasn't recorded. I'd like to reassure Mr G that I've taken this possibility into account. But for the reasons I've explained, I ultimately haven't seen evidence to persuade me – on balance – that Mr G was told missed payments wouldn't be reported prior to the payment being missed.

Even if the call did take place as Mr G describes, I couldn't fairly conclude that the payment was missed as a direct consequence of what Mr G was told. Mr G says he would have changed his direct debit to take only the minimum payment if aware of the consequence of the payment failing – as he's now done. Mr G hasn't suggested that he set his direct debit to take the full payment because he was under the impression that payments could be missed without consequence. So, it doesn't follow that the payment being missed was a result of any misinformation he may have been given.

In any case, Mr G was aware of his responsibility under the agreement to ensure the minimum payment was made when it was due. I'm not persuaded that the payment being missed was a consequence of what he recalls being told over the phone.

Summary

I appreciate my conclusions will come as a disappointment to Mr G. Having taken his additional comments into account, I don't find that Nationwide has made an error or otherwise treated him unfairly – for the same reasons outlined in my provisional decision. So

my decision remains the same, and I won't be requiring Nationwide to do anything further.

My final decision

My final decision is that I don't uphold Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 21 March 2025.

Stephen Billings
Ombudsman