

Complaint

Miss G has complained about the overdraft charges Nationwide Building Society (“Nationwide”) applied to her current account. She’s said the charges were applied unfairly as she was allowed to use her overdraft for a prolonged period and even when it was clear that she was struggling.

Background

Nationwide provided Miss G with an overdraft in March 2017. Miss G’s limit fluctuated over the period of time that she had an overdraft. The highest overdraft limit Miss G had was £1,750.

Miss G’s complaint was looked at by one of our investigators. She thought that Nationwide ought to have realised that it shouldn’t have continued allowing Miss G to use her overdraft by February 2018. Therefore, it needed to refund all of the interest, fees and charges added to Miss G’s overdraft from this point onwards. Nationwide disagreed with the investigator and asked for an ombudsman’s decision.

My provisional decision of 10 February 2025

I issued a provisional decision – on 10 February 2025 - setting out why I was not intending to uphold Miss G’s complaint.

In summary, I wasn’t intending to uphold Miss G’s complaint because I was satisfied that that Nationwide didn’t allow Miss G to continue using her overdraft in circumstances where it knew, or it ought reasonably to have known, that it was unsustainable or otherwise harmful for her.

Nationwide’s response to my provisional decision

Nationwide responded to confirm that it agreed with my provisional decision and that it had nothing further to add prior to my final decision.

Miss G’s response to my provisional decision

Miss G responded and disagreed with my provisional decision. Miss G, in summary, said that this was because she:

- reduced her overdraft usage because she took out a consolidation loan from Nationwide. But the increase to her rent, utilities and overall cost of living saw her relying on her overdraft again.
- does not consider that her salary was well in excess of her overdraft and she was locked into paying the charges.
- was in overdraft for 96% of the month like the investigator said.
- accepts that she is objectively not a worst-case scenario regarding debt. However, there is little room left in her budget to repay the overdraft.
- has not spent frivolously. She feels that this is an important point to make as my

provisional decision commented on discretionary expenditure frequently.

My findings

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

I thank the parties for their responses to my provisional decision.

Having carefully considered everything provided, I'm afraid that I'm still not upholding Miss G's complaint. I'll explain why in a little more detail.

Before I go any further, as this essentially boils down to a complaint that Miss G was unfairly charged by being allowed to continue using her overdraft, I want to be clear in saying that I haven't considered whether the various amounts Nationwide charged were fair and reasonable, or proportionate in comparison to the costs of the service provided. Ultimately how much a bank charges for services is a commercial decision. And it isn't something for me to get involved with.

That said, while I'm not looking at Nationwide's charging structure per se, it won't have acted fairly and reasonably towards Miss G if it applied this interest, fees and charges to Miss G's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Miss G was experiencing financial difficulty. So I've considered whether there was an instance, or there were instances, where Nationwide didn't treat Miss G fairly and reasonably.

In other words, I've considered whether there were periods where Nationwide continued charging Miss G even though it ought to have instead stepped in and taken corrective measures on the overdraft as it knew, or it ought to have realised, that she was in financial difficulty.

In the first instance and I accept that I probably ought to have made this clearer in my provisional decision, I can't see that Miss G did contact Nationwide directly about her overdraft in order to ask for help repaying it, or say that she was experiencing difficulty. If Miss G had said this, I would have expected Nationwide to exercise forbearance in accordance with its regulatory obligations.

As I can't see that Miss G did reach out to Nationwide to say that she couldn't repay what she owed because she was experiencing difficulty, I've looked through her account statements throughout the period concerned, to see if Nationwide ought to have realised this. In other words, I've also considered whether it was obvious from the statements that Miss G was in financial difficulty.

Having done so, I can't see that Miss G's overdraft usage was so obviously unsustainable that Nationwide ought to have unilaterally taken corrective measures irrespective of whether Miss G would have wanted this and regardless of the impact that this would undoubtedly have had on her ability to obtain other credit.

Miss G did use her overdraft regularly. I note that both Miss G and our investigator have referred to her using it 96% of the month. Miss G and our investigator appear to argue that the fact that this usage, in itself, was an indication that Nationwide ought to have taken action. But I think that it is far too simplistic to say that it automatically follows that someone was in financial difficulty simply because they were using a financial product that they were entitled to use.

I think it's important to look at overall circumstances of a customer's overdraft usage – particular in light of what this may suggest about their overall position. Therefore, in this case, I've considered Miss G's incomings and outgoings as well as any overdrawn balance and thought about whether it was possible for her to have stopped using her overdraft, based on this. After all, if Miss G was locked into paying charges because there was no prospect of her exiting her overdraft then her facility would have been unsustainable for her. So I've carefully considered whether this was the case.

In the first instance, I wish to make it clear that the point I made in my provisional decision was that Miss G wasn't advanced an overdraft facility where the limit was well in excess of her monthly salary. I apologise if it came across as saying that Miss G's salary was well in excess of the overdraft limit. But what I said was that the overdraft limit didn't significantly exceed her monthly income as overdraft limits sometimes do for some customers.

With this in mind and as Miss G was not required to clear the balance in one go, I remain satisfied that Miss G was not only in receipt of a monthly salary that had the potential to clear what she could owe within a reasonable period of time and that for most of the period of time her salary did exceed the amount of her overdraft limit. Although the degree to which Miss G's salary exceeded the limit did fluctuate over the period.

I therefore also remain satisfied that this isn't a case where the borrower was permanently in their overdraft. I say this because a customer never seeing a credit balance or ever being close to seeing one would be something I would expect a lender to pick up on. However, in this case there were periods where Miss G was in credit – although I do accept that Miss G is likely to have met the criteria of someone who displayed a pattern of repeat use of their overdraft. I also do accept that living costs have increased significantly in the past few years too.

That said, even though this is the case, the question here is whether Miss G's use of her overdraft was causing her to incur high cumulative charges that were harmful to her. And having considered matters, I don't think that this is the case. To explain, while I'm not seeking to make retrospective value judgements over Miss G's expenditure, nonetheless there are also significant amounts of non-committed, non-contractual and discretionary transactions going from Miss G's account.

Indeed, it's fair to say that a significant proportion of Miss G's expenditure at the time that the investigator believes that the complaint should be upheld would be classed as discretionary and non-essential. To be clear, I'm not stating that Miss G was spending frivolously. Ultimately, it isn't for me to tell a consumer what they should or shouldn't be spending money on.

However, given the complaint before me and as much as I dislike having to decide between what is essential and what is not, I do have to form a view on whether the transactions in the statements obviously demonstrated that Miss G was in financial difficulty. While I appreciate what Miss G has said about her situation at the time, it isn't obvious from her account statements that she was in financial difficulty. And as I've already explained, the total amount Miss G received into her account was enough to chip away at the balance. Furthermore, although I accept that it was unlikely Miss G could have repaid the balance in one go, Miss G wasn't required to do so.

Equally, I can't see anything to indicate that the charges were causing her harm either. For example, I can't see that Miss G was borrowing from unsustainable sources in order to meet these charges or that her borrowing was increasing exponentially. I appreciate that Miss G has referred to the impact that the communications she was sent had. But it was a

requirement for a lender to send such communications where an overdraft was being used. And this was irrespective of whether the borrower was being charged for using the overdraft.

I accept neither of these things in themselves (or when taken together) mean that Miss G wasn't experiencing difficulty. I wish to apologise if Miss G feels that my provisional decision in any way implied that she was spending frivolously or extravagantly, or that there was any attempt to downplay what she had told us. That certainly wasn't my intention.

However, when taking a step back and viewing the account activity objectively, which after all is what Nationwide was required to do, I think that Miss G appears to have been able to make her commitments from her income and could have slowly reduced her balance over time. And in these circumstances, I do think that Nationwide was reasonably entitled to believe that Miss G was choosing to use her overdraft, as she was entitled to bearing in mind she'd been granted the facility, rather than it being a case she was in her overdraft because she had no other choice.

I also say all of this while mindful that I've seen no indication that any of the potential signs of financial difficulty contained in the regulator's guidance on financial difficulty (set out in CONC 1.3) – such as Miss G failing to meet consecutive payments to credit, borrowing from payday or other high-cost lenders, or Miss G failing to meet her commitments out of her disposable income – were present in Miss G's circumstances in February 2018 or at any time prior to her complaint.

Overall and having considered everything, I don't think that it was unreasonable for Nationwide to have proceeded adding the charges that it did. This is particularly bearing in mind the consequences of Nationwide taking corrective action, in the way that it would have done had it acted in February 2018, would have been disproportionate.

I say this because I don't think that it would have been proportionate for Nationwide to demand that Miss G immediately repay her overdraft, in circumstances where there was a realistic prospect of Miss G clearing what she owed in a reasonable period of time. This is especially as the likelihood would have been Nationwide would have issued a final demand letter requiring the whole balance being paid in one go and then terminated the account should Miss G not have been able to do this. I think such action would have been disproportionate given the facts I've set out.

So, while I do appreciate that Miss G is likely to disagree with this, nonetheless and having reviewed everything I don't think that Nationwide did not charge Miss G in circumstances where it ought to have realised that it was unfair to do so.

In reaching my conclusions, I've also considered whether the lending relationship between Nationwide and Miss G might have been unfair to Miss G under s140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've already explained, I'm satisfied that Nationwide did not lend irresponsibly or act unfairly in allowing Miss G to use her overdraft in the way that she did bearing in mind all of the circumstances. And I haven't seen anything to suggest that s140A CCA would, given the facts of this complaint, lead to a different outcome here.

As this is the case, I'm not upholding Miss G's complaint. I appreciate that this will be very disappointing for Miss G – particularly as the investigator, albeit erroneously, suggested that the complaint should be upheld. But I hope she'll understand the reasons for my likely decision and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained above and in my provisional decision of 10 February 2025, I'm not upholding Miss G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 28 March 2025.

Jeshen Narayanan
Ombudsman