

Complaint

Miss L and Mr L have complained about the overdraft charges Nationwide Building Society (“Nationwide”) applied to their current account.

Miss L and Mr L are being represented, by the (“representative”), in their complaint.

The representative has said the charges applied to Miss L and Mr L’s account were unfair as there was a failure to take account of their patterns of reliance on debt and hardcore borrowing. In the representative’s view, there was no proper consideration of the longer-term impact of the borrowing on them.

Background

Miss L and Mr L successfully applied for an overdraft in or around 2009.

The overdraft limit was changed up and down on a few occasions until it was increased from £500 to £1,500.00 in July 2021.

In September 2023, Miss L and Mr L complained saying that they were allowed to continue using the overdraft in a way that was unsustainable and which caused them continued financial difficulty.

Nationwide did not uphold Miss L and Mr L’s complaint. It did not think that it had done anything wrong or treated Miss L and Mr L unfairly in the period they used their overdraft. Miss L and Mr L was dissatisfied at Nationwide’s response and referred their complaint to our service.

When Miss L and Mr L’s complaint was referred to our service, Nationwide told us that we couldn’t consider part of it as it was made too late. One of our investigators reviewed what Miss L and Mr L and Nationwide had told us. She reached the conclusion that we could look at the entire period Miss L and Mr L had their overdraft for, but she wasn’t persuaded that Nationwide had acted unfairly towards Miss L and Mr L prior to July 2021.

Nonetheless, she also thought that Nationwide had acted unfairly towards Miss L and Mr L from July 2021 onwards by increasing their overdraft limit and then allowing them to continue using the facility in a way that was unsustainable or otherwise harmful for them. So the investigator recommended that Miss L and Mr L’s complaint be partially upheld. Nationwide disagreed and asked for an ombudsman to look at the complaint.

My provisional decision of 3 February 2025

I issued a provisional decision – on 3 February 2025 - setting out why I was not intending to uphold Miss L and Mr L’s complaint.

In summary, I wasn't intending to uphold Miss L and Mr L's complaint because I was satisfied that Nationwide didn't unfairly allow Miss L and Mr L to continue using their overdraft in a way that was unsustainable or otherwise harmful for them.

Miss L and Mr L's response to my provisional decision

Miss L and Mr L didn't respond to my provisional decision or ask for any additional time to do so.

Nationwide's response to my provisional decision

Nationwide responded to confirm that it accepted the conclusions in my provisional decision and didn't provide anything further for me to consider ahead of my final decision.

My findings

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

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. Nationwide has argued that part of Miss L and Mr L's complaint was made too late because they complained more than six years after some of the charges on the overdraft were applied, as well as more than three years after they ought reasonably to have been aware of their cause to make this complaint.

Our investigator explained why Miss L and Mr L's complaint was one alleging that the relationship between them and Nationwide was unfair to them as described in s140A of the Consumer Credit Act 1974 ("CCA"). She also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Miss L and Mr L's complaint. Given the reasons for this, I'm satisfied that whether Miss L and Mr L's complaint about some of the specific charges applied was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Miss L and Mr L's complaint should be considered more broadly than just the individual charges or lending decisions. I consider this to be the case as Miss L and Mr L have not only complained about the circumstances behind the application of the individual charges, but also the fact Nationwide's failure to act during the periods they allege it ought to have seen they were experiencing difficulty caused ongoing hardship.

I'm therefore satisfied that Miss L and Mr L's complaint is a complaint that the lending relationship between themselves and Nationwide was unfair to them. I acknowledge that Nationwide may still disagree that we are able to look at all of Miss L and Mr L's complaint, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Miss L and Mr L's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Miss L and Mr L's complaint can be reasonably interpreted as being about that

their lending relationship with Nationwide was unfair to them, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (Nationwide) and the debtor (Miss L and Mr L), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of their rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Miss L and Mr L's complaint, I therefore need to think about whether Nationwide's actions in allowing Miss L and Mr L to use their overdraft in the way that it did, resulted in the lending relationship between Miss L and Mr L and Nationwide being unfair to Miss L and Mr L, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove any such unfairness.

Miss L and Mr L's relationship with Nationwide is therefore likely to be unfair if Nationwide allowed Miss L and Mr L to continue using their overdraft in circumstances where it ought reasonably to have realised that the facility had become unsustainable or otherwise harmful for them. And if this was the case, Nationwide didn't then somehow remove the unfairness this created.

Did Nationwide unfairly allow Miss L and Mr L to continue using their overdraft in a way that was unsustainable or otherwise harmful for them?

Having carefully considered everything, including events since my provisional decision of 3 February 2025, I've not been persuaded that Nationwide did act unfairly or unreasonably to Miss L and Mr L. I'll now proceed to explain why in a bit more detail.

Before I go any further, as this essentially boils down to a complaint that Miss L and Mr L was unfairly charged as a result of being allowed to continue using their 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 its 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 L and Mr L if it applied this interest, fees and charges to Miss L and Mr L's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Miss L and Mr L were experiencing financial difficulty. So I've considered whether there was an instance, or there were instances, where Nationwide didn't treat Miss L and Mr L fairly and reasonably.

In other words, I've considered whether there were periods where Nationwide continued charging Miss L and Mr L 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 they were in financial difficulty.

Having looked through Miss L and Mr L's account statements throughout the period concerned, I can't see that Nationwide ought reasonably to have realised that Miss L and Mr L were experiencing financial difficulty to the extent that it would have been fair and reasonable for it to have unilaterally taken corrective measures in relation to the overdraft facility. I'll explain why I think this is the case in a little more detail.

Our investigator reached the conclusion that Miss L and Mr L's overdraft limit shouldn't have been increased in July 2021 as Nationwide ought to have seen that they were experiencing financial difficulty at this point. However, having looked at Miss L and Mr L's account statements, it's clear that not only were they in credit at this point, they went on to have a balance of £5,000.00 a few days later. So I'm simply not persuaded that there is any reasonable basis to conclude that Miss L and Mr L were experiencing financial difficulty in July 2021.

Furthermore, I accept that Miss L and Mr L used their overdraft more from September 2021 onwards. The representative's arguments appear to suggest that this in itself means that Miss L and Mr L were experiencing financial difficulty and therefore the complaint should be upheld. But I think that it is far too simplistic to say that it automatically follows that a customer was in financial difficulty simply because they were using a financial product that they were entitled to use.

I accept that the rules, guidance and industry codes of practice all suggest that prolonged and repeated overdraft usage can sometimes be an indication of financial difficulty. However, this is not the same as saying that prolonged and repeated overdraft usage by a customer will always mean that they are, as a matter of fact, in financial difficulty.

So I think it's important to look at overall circumstances of a customer's overdraft usage as part of considering their overall financial position. And, in this case, I've considered Miss L and Mr L's incomings and outgoings as well as any overdrawn balances and thought about whether it was possible for them to have stopped using their overdraft, based on this.

I think that if Miss L and Mr L was locked into paying charges in circumstances where there was no reasonable prospect of them exiting their overdraft then their facility would have been unsustainable for them. So I've carefully considered whether this was the case. The first thing for me to say is that, while this eventually reduced but not completely stop, Miss L and Mr L's account was in receipt of credits that were sufficient to clear the overdraft within a reasonable period of time.

Although I do accept that there were times where Miss L and Mr L would have met the criteria of account users who displayed a pattern of repeat use of their overdraft. For the avoidance of doubt, I accept that there is a section of CONC (CONC 5D) which relates to this.

However, even if Nationwide didn't meet all of the requirements set out in CONC 5D, I wish to make it clear that I don't think that simply sending letters will mean that a lender met all of its obligations, I'd still need to consider whether Miss L and Mr L lost out as a result of any potential failing.

I've also therefore considered whether Miss L and Mr L's use of their overdraft (and Nationwide continuing to allow them to use it) was causing them to incur high cumulative charges, which they had absolutely no way of avoiding and which were harmful to them. And having considered matters, I'm satisfied that this isn't the case.

To explain, while I'm not seeking to make retrospective value judgements over Miss L and Mr L expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Miss L and Mr L's account as well as cash machine withdrawals and transfers.

Given the repeat usage letters Miss L and Mr L are likely to have been sent by Nationwide, I think that they ought to have realised that how much they were paying for this. So I simply don't agree that Miss L and Mr L was using their overdraft purely for essential spending (indeed the statements show very little in the way of essential spend), or because they had a reliance on credit to get by, as the representative says.

As I've already explained, the total amount of the credits Miss L and Mr L received into their account were enough to chip away at the balance, without the further discretionary spending. And it's fair to say that these credits suggested they could have cleared their overdraft within a reasonable period of time had they wished to do so. Equally, I can't see that they were borrowing from unsustainable sources in order to meet the overdraft charges or that their borrowing was increasing exponentially.

I accept neither of these things in themselves (or when taken together) mean that Miss L and Mr L weren't experiencing difficulty. But I don't agree that Miss L and Mr L were reliant on credit in the way that has been suggested. They appear have been able to make any essential commitments without using their overdraft.

However, they were choosing to use their overdraft to make discretionary transactions and in periods where they had increased funds their discretionary expenditure increased. It's also worth noting that the limit changes on the overdraft, which was often reduced as well as increased, demonstrates that Miss L and Mr L were choosing to use their overdraft in the way that they were.

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 way that the representative is suggesting it should have, would have been disproportionate.

I say this because I don't think that it would have been proportionate for Nationwide to demand that Miss L and Mr L immediately repay their overdraft, in circumstances where there was a realistic prospect of Miss L and Mr L clearing what they owed in a reasonable period of time.

Therefore, I'm not persuaded that the relationship between Miss L and Mr L and Nationwide was unfair to Miss L and Mr L. I've not been persuaded that Nationwide created unfairness in its relationship with Miss L and Mr L by allowing them to use their overdraft in the way that they did and based on what I've seen, I don't think that Nationwide treated Miss L and Mr L unfairly in any other way either.

Overall and having considered everything, while I can understand Miss L and Mr L's sentiments and appreciate why they are unhappy, I'm not upholding this complaint. I appreciate this will be very disappointing for Miss L and Mr L. But I hope they'll understand the reasons for my decision and that they'll at least feel their concerns have been listened to.

My final decision

For the reasons I've explained above and in my provisional decision of 3 February 2025, I'm not upholding Miss L and Mr L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L and Mr L to accept or reject my decision before 24 March 2025.

Jeshen Narayanan
Ombudsman