

Complaint

Mr J has complained about the overdraft charges Nationwide Building Society (“Nationwide”) applied to his current account. He’s said the charges were applied unfairly as he was allowed to use his overdraft for a prolonged period.

Mr J is being represented in his complaint by a Claims Management Company who I’ll refer to as “the representative”.

The representative has said the charges applied to Mr J’s account were unfair as there was a failure to take account of his 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 him.

Background

Nationwide initially provided Mr J with an overdraft in July 2019. He was given an overdraft limit of £500. This limit was steadily increased over the course of the following two and a half years or so until it reached £1,500.00 in November 2021.

Mr J’s complaint was looked at by one of our investigators. He thought that Nationwide ought to have realised that it shouldn’t have provided the overdraft to begin with. Therefore, he recommended the Mr J’s complaint be upheld and thought that Nationwide needed to refund all of the interest, fees and charges added to Mr J’s overdraft from the outset.

Nationwide disagreed with the investigator and asked for an ombudsman’s decision.

My provisional decision of 13 February 2025

I issued a provisional decision – on 13 February 2025 - setting out why I was not intending to uphold Mr J’s complaint.

In summary, I wasn’t intending to uphold Mr J’s complaint because I was satisfied that Nationwide didn’t unfairly when providing Mr J with his overdraft or increasing his limit to £1,500.00. I was also satisfied that Nationwide didn’t allow Mr J to continue using his overdraft in a way that was unsustainable or otherwise harmful for him either.

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.

Mr J’s response to my provisional decision

The representative responded on Mr J’s behalf. It said that Mr J disagreed with my provisional decision. It said that this was, in summary, because:

- it provided a credit report showing payments to debt collection agencies and also said that Mr J was reliant on other credit.
- it argued that Mr J's discretionary spending was irrelevant as Mr J wasn't using the overdraft appropriately.
- it argued that a final decision from our database of published decisions, issued by myself, which it provided a copy of, said that simply sending letters and hoping that a borrower's overdrawn position would improve would not see a lender acting fairly and reasonably to a customer.

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, including the responses to my provisional decision, I'm still not upholding Mr J's complaint. I'll now explain why in more detail.

I've started by looking whether Nationwide acted fairly and reasonably when providing the overdraft as well as the limit increases.

Did Nationwide act fairly and reasonably in granting Mr J with the overdraft in the first place?

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 Mr J's complaint.

Nationwide needed to make sure it didn't lend irresponsibly. In practice, what this means is Nationwide needed to carry out proportionate checks to be able to understand whether Mr J could afford to repay any credit it provided.

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 understand that Nationwide agreed to Mr J's initial overdraft application and the limit increases after it obtained information on his income and carried out a credit search. And, in its view, the information obtained indicated that Mr J would be able to clear the balance that he could owe within a reasonable period of time.

On the other hand, Mr J says that Nationwide failed to take into account his patterns of debt and lent to him in circumstances where it shouldn't have done so.

I've considered what the parties have said.

Nationwide has not provided any details of the credit checks that it carried out. Nonetheless, I've considered all of the other information provided by both Nationwide and Mr J in order to get an idea of what Nationwide is likely to have had an idea of at the time that the overdraft and the subsequent limit increases were provided.

Having considered the information provided, namely the bank statements, I do accept that Mr J did have a significant number of existing credit commitments. However, it's also fair to say that Mr J had significant credits into his accounts too. Furthermore, in my view, the amount Mr J had left each month once his non-discretionary expenditure is deducted from his income looks to me to be sufficient to clear a limit of between £500 and £1,500.00 within a reasonable period of time.

I fully accept it's possible that Mr J's position might have been worse than what it looks like on his bank statements and Nationwide may have realised that this was the case, if it had requested statements for other accounts. But it wouldn't be fair and reasonable for me to use hindsight here, or say that Nationwide should have known this was the case at the time it was making its lending decision. This is especially as a review of all of Mr J's finances wouldn't be proportionate in circumstances where he had the potential to owe £1,500.00 at the absolute most.

As this is the case, I'm not persuaded that Nationwide acted unfairly or unreasonably when providing the overdraft or agreeing to Mr J's limit increase requests.

Did Nationwide act unfairly in allowing Mr J to continue using the overdraft in the way that he did?

Even though I don't think that Nationwide acted unfairly or unreasonably when providing Mr J with his overdraft, or when increasing his limit until it reached £1,500.00 in May 2021, Nationwide still had an ongoing duty to review Mr J's overdraft and consider whether it was fair and reasonable for it to continue allowing him to use the facility in light of the way he was using it.

I've considered whether Nationwide acted fairly and reasonably in this regard. Nationwide as well as the representative will be familiar with all the rules, regulations and good industry practice we consider when looking at whether a bank treated a customer fairly and reasonably when applying overdraft charges. So I don't consider it necessary to set all of this out in this decision.

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

In other words, I've considered whether there were periods where Nationwide continued charging Mr J 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 he was in financial difficulty.

I've looked through Mr J's account statements throughout the period concerned. And I don't agree that Nationwide ought reasonably to have taken unilateral corrective measures in

relation to Mr J's overdraft. I don't think that there was ever a time when it ought to have realised that the overdraft had become demonstrable unsustainable and I'll now explain why.

It's fair to say that Mr J used his overdraft and the representative appears to be suggesting that this in itself was an indication that Nationwide ought to have taken action. Indeed, I note that, in its response to my provisional decision, the representative has stated that the fact that Mr J was using credit means that he was relying on it.

However, I think it is far too simplistic to say that it automatically follows that someone was in financial difficulty simply because they were using financial products that they were entitled to use. Indeed, if I take the representative's argument to its logical conclusion, this would mean that any customer who uses any form of credit would be reliant on it. And they should not be allowed to use an overdraft, or any other credit, in such circumstances.

There isn't anything in any of the regulator's rules, guidance or good industry practice which indicates that it is a matter of fact that a customer is struggling financially should they be using credit in the way that Mr J was. So I don't think that the fact that Mr J had other credit, in itself, means that Nationwide shouldn't have allowed him to continue using his overdraft.

In considering whether Nationwide acted fairly and reasonably towards Mr J, I think that it is important to look at overall circumstances of his overdraft usage – particular in light of what this may suggest about his overall position. Therefore, I've considered Mr J's incomings and outgoings as well as any overdrawn balance and thought about whether it was possible for him to have stopped using his overdraft, based on this.

After all, if Mr J was locked into paying charges because there was no prospect of him exiting his overdraft then his facility would have been unsustainable for him. So I've carefully considered whether this was the case.

The first thing for me to say is that this isn't a case where a customer was advanced an overdraft facility which had a limit that was well in excess of their monthly salary. Indeed, I'm mindful that Mr J was not only in receipt of a monthly salary that had the potential to clear what he could owe within a reasonable period of time, he also received a significant amount of other credits into his account which had the ability to substantially reduce his overall indebtedness.

So I'm satisfied that this isn't a case where the borrower was permanently in their overdraft. Indeed, there were not only periods where Mr J was in credit, there were periods where Mr J received very significant influxes of funds, particularly when considering the amount of his overdraft limit.

For example, Mr J received credits totalling £16,000.00 in September 2020, credits totalling £18,000.00 in September 2021, credits totalling £42,000.00 in December 2021 and finally credits totalling £15,000.00 in May/June 2023. I note that the representative's response to my provisional decision hasn't said anything at all about these credits, or said anything about why Mr J would not have been able to clear his overdraft balance of £1,500.00 with these significant influxes of funds.

However, irrespective of these large credits, I do accept that there were times where Mr J would have met the criteria of someone who displayed a pattern of repeat use of their overdraft. That said, even though this is the case, the question here is whether Mr J's use of his overdraft was causing him to incur high cumulative charges that were harmful to him. 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 Mr J expenditure, nonetheless I can't see much, at all, in the way of living expenses going out of his account, which suggests that he didn't have much in the way of this. Furthermore, there are also significant amounts of non-committed, non-contractual and discretionary transactions going from Mr J's account.

Indeed, it's fair to say that there were significant amounts of discretionary spending going from Mr J's account too. The representative states that this is irrelevant and that it's view is supported by a decision on our database of published decisions issued by another ombudsman. I think that the representative has taken one part of a final decision wholly out of context.

I say this because it never has been the position that a bank allowing a customer to use an overdraft will automatically mean it failed to act fairly and reasonably, irrespective of the circumstances. Such an approach would run contrary to our obligation to look at each case individually and reach a decision based on the facts and circumstances of a particular case.

I also disagree that it is a lender's responsibility to support an individual's discretionary spending, where they appear to be able to afford this and in circumstances where the borrower themselves hasn't said that there is a problem. Equally, I can't see anything to indicate that the charges Mr J was incurring for his discretionary spending were causing him harm. For example, I can't see that he was borrowing from unsustainable sources in order to meet these charges.

I accept neither of these things in themselves (or when taken together) mean that Mr J wasn't experiencing difficulty. But I don't agree that Mr J was reliant on credit in the way that the representative is suggesting. Mr J did have credit commitments but the sheer amount of funds he was in receipt of appear to show that he could afford this and didn't need to use his overdraft if he didn't wish to do so.

I 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 Mr J failing to meet consecutive payments to credit, or Mr J failing to meet his commitments out of his disposable income – were present in Mr J's circumstances.

I appreciate that the representative has provided a copy of a financial standing report and has referred to payments to debt collection agencies. But these appear to be one-off payments to individual agencies. I can three one-off payments to separate companies in August 2022 for £51.78, in February 2023 for £10 and in March 2023 for £80.

As these are one-off payments it's not entirely clear to me what these payments were for. And given I can't see that they relate to defaulted accounts, or sustained arrears, I can't fairly and reasonably say that Nationwide ought to have concluded Mr J was in difficulty as a result of these one-off payments.

Given the representative's reference to decisions from our database and its reference to CONC 5D, I also wish to make it clear that it isn't simply the case that a customer should never be allowed to make discretionary payments from an overdraft. Indeed, it's argument appears to be suggesting that a corrective action should be taken against a customer every time they meet the criteria for being sent a letter, irrespective of the circumstances. However, the rules and guidance aren't as blunt a tool as this. The position is far more nuanced.

For the sake of completeness, I would also make it clear that the decision of mine that the representative has referred to, does not state that sending letters in accordance with the

requirements, will never be sufficient for a lender to have acted fair and reasonably. What the final decision the representative has provided said was that given the circumstances of that particular case, where I found (on the facts of the case) the lender ought to have realised that the customer was experiencing difficulty, it was unfair to simply send letters and hope any difficulty would pass.

In my view, there was no obvious difficulty which Nationwide was aware of, or ought to have been aware of, given the account activity. Furthermore, the representative's interpretation of the rules and guidance as well as the upheld final decisions on our database, runs contrary to the purpose of the rules and guidance which is to ensure that customers are protected from high cumulative charges where they are likely to cause harm. The rules and guidance aren't to prevent the use of an overdraft in all circumstances where a repeat use letter has been sent in the way that the representative's argument suggests.

Even more importantly the representative's argument is at odds with the concept of proportionality – a firm should take action proportionate to the circumstances – which runs right through CONC 5 as a whole. Given the amount of funds that Mr J was in receipt of, I'm not persuaded that Nationwide ought reasonably to have realised that Mr J's overdraft usage was causing him harm.

Overall and having considered everything, including the responses to my provisional decision, 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 Mr J immediately repay his overdraft, in circumstances where there was a realistic prospect of Mr J clearing what he owed in a reasonable period of time.

So as well as concluding that it wasn't unfair for Nationwide to provide the overdraft or the limit increases to Mr J, I'm satisfied that Nationwide did not charge Mr J 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 Mr J might have been unfair to Mr J 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 Mr J to use his overdraft in the way that he 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 Mr J's complaint. I appreciate that this will be very disappointing for Mr J – particularly as the investigator, albeit erroneously, suggested that the complaint should be upheld. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

For the reasons I've explained and in my final decision of 13 February 2025, I'm not upholding Mr J's complaint.

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

Jeshen Narayanan
Ombudsman