

Complaint

Miss J has essentially complained that Nationwide Building Society (“Nationwide”) unfairly provided her with an overdraft that was unaffordable. She also says that it continued applying charges to her overdraft even after it should have realised that she couldn’t sustainably repay it.

Background

Miss J has also made complaints about a credit card and an overdraft on a joint account which Nationwide also provided. However, we’ve looked at the complaint about those products separately and this decision is concerned with the overdraft and limit increase on Miss J’s sole account.

Miss J was initially provided with an overdraft that had a limit of £800 in December 2019. Miss J’s overdraft limit was increased to £1,000.00 in January 2020.

One of our investigators looked at this complaint and thought Nationwide shouldn’t have provided an overdraft to Miss J. So he thought that Nationwide needed to refund all of the interest, fees and charges that it added to Miss J’s account.

Nationwide didn’t agree with the investigator’s assessment of the complaint. And it asked for an ombudsman’s review.

My provisional decision of 17 February 2025

I issued a provisional decision – on 17 February 2025 - setting out why I was intending to partially uphold Miss J’s complaint.

In summary, I was satisfied that that Nationwide didn’t initially act unfairly when providing Miss J with her overdraft or increasing her limit. However, I was also satisfied that from December 2020 onwards Nationwide unfairly allowed Miss J to continue using her overdraft in circumstances where it knew, or it ought reasonably to have known, that the facility had become unsustainable or otherwise harmful for her.

Nationwide’s response to my provisional decision

Nationwide responded to my provisional decision confirming that it accepted my conclusions and that it would put things right by refunding all the interest, fees and charges it applied to Miss J’s account from December 2020 onwards. It also agreed to make any credit file amendments that were necessary.

Miss J’s response to my provisional decision.

Miss J responded to confirm that she disagreed with my conclusion that her complaint should only be partially upheld. In summary, she considers this to be the case and argues that:

- she was not at the start of her lending relationship with Nationwide.
- it is unreasonable to suggest that Nationwide didn't need to consider other accounts she held with it.
- there was a lack of due consideration taken with regard to her applications. And she had an unstable income due to mental health which is a factor protected under the Equality Act 2010.
- the provisional decision acknowledges her income was approximately £1,200.00 and does not consider her expenditure. It therefore concluded she had a disposable income of £1,200.00.
- my provisional decision was inconsistent as it states the account should have been reviewed in December 2020, but not December 2019.
- my provisional decision is also inconsistent with other decisions on our database of published decisions.
- although this account is separate from her other Nationwide ones, her complaint to the Financial Ombudsman Service included all of her accounts. Given her complaints about her other Nationwide accounts have already been upheld in full on the basis of irresponsible lending, it is unreasonable that this case is being treated differently despite the investigator also recommending that this complaint be upheld in full.
- while her income averaged £1,200.00 per month at the time, this was not guaranteed. The income she declared on her application was £8,400.00 so this is what her application should have been based on.

Although, I've summarised Miss J's response to my provisional decision, I'd like to assure her that I've read and considered everything she has said and provided in reaching 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.

I thank the parties for their responses to my provisional decision. As Nationwide has accepted that it failed to act fairly and reasonably in allowing Miss J to continue using her overdraft from December 2020 and Miss J hasn't disputed this part of my provisional decision, I no longer need to determine this part of the complaint.

Therefore at this stage all that is left for me to decide is whether Nationwide acted fairly and reasonably when initially granting the overdraft and increasing the limit on it. I'll now proceed to set out my findings on these matters.

Having carefully considered everything, including the responses to my provisional decision, I'm satisfied that what Nationwide has now agreed to do to put things right for Miss J is fair and reasonable in all the circumstances of her complaint. I'll explain why in a little more detail.

Our general approach to irresponsible and unaffordable lending complaints

As I've explained in my provisional decision, we've set out our general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when considering Miss J's complaint.

Nationwide needed to make sure that it didn't lend irresponsibly. In practice, what this means is Nationwide needed to carry out proportionate checks to be able to understand whether Miss J would be able to repay what she was being lent before providing any credit to her.

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.

Bearing in mind Miss J's response to my provisional decision, I think that I should explain that each separate credit facility will have its own separate credit agreement and will therefore have its own lending relationship. I accept that I could have made this clearer in my provisional decision and apologise for not doing so.

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.

Nationwide's decisions to initially provide Miss J with an overdraft of £800 and then increase the limit to £1,000.00

Nationwide says that it will have obtained some information on Miss J's income and her expenditure before deciding to lend to her. It says that this will have been cross-referenced against information it obtained on the funds going into Miss J's main account and her existing credit commitments which it obtained from credit reference agencies.

Miss J's overdraft was an open-ended (running account) agreement (in other words, while Nationwide was required to periodically review the facility, there was no fixed end date) where there was an expectation that she'd repay what she borrowed plus the interest due within a reasonable period of time.

CONC didn't (and still doesn't) set out what a reasonable period of time was. So I think it's important to note that a reasonable period of time will always be dependent on the circumstances of the individual case. It's fair to say that overdraft limits of £800 and £1,000.00 will not have required huge credits in order to clear the full amount that could have been owed within a reasonable period of time. Furthermore, there is an argument for saying that the limit increase in January 2020 wasn't significant and therefore an assessment of affordability wasn't required.

I've noted that Miss J has said that she found this observation from my provisional decision concerning. Nonetheless, I have to consider that the regulatory provision (in this case CONC 5.2A.4) states that a firm only needs to consider that a customer needs to undertake an assessment of creditworthiness (affordability) where it is entering into a credit agreement or significantly increasing a credit limit. There is a reasonable argument for saying that £200 wasn't a significant credit limit increase, this is particularly as Miss J may have already been approved for a limit of £1,000.00 in December 2019.

To what extent ought Nationwide to have been aware of Miss J's gambling and should this have played a part in its decision to provide the overdraft and the limit increase?

Miss J has said that it is unreasonable to suggest that Nationwide didn't need to consider her gambling on this account and on other Nationwide accounts that she held. I've thought about what Miss J has said. However, I think it would be useful to clarify that accounts are rarely reviewed or monitored by human beings. As this is the case, Nationwide wasn't reviewing

what was happening on Miss J's account in the way she argued it ought to have done prior to her overdraft application either.

Manual reviews, where a staff member will actively read account statements and review the account activity, only happen when there is a specific risk identified that prompts the business to think such a review is necessary. This is especially the case where the account in question does not have a credit facility on it – such as here. There may sometimes be a specific obligation for a bank to carry out a manual review. For example, where a customer gets in touch and asks for assistance, or asks for reasonable adjustments to be made under the Equality Act 2010.

Indeed, I've noted that Miss J has referred to the Equality Act 2010 in her response to my provisional decision. However, having reviewed all of the information provided on this case I cannot see that Miss J did ask for assistance or reasonable adjustments to be made prior to December 2019 and January 2020. As this is the case, it's difficult for me to say that Nationwide had reason not to rely on its algorithms in order to identify any risks in relation to Miss J's account, or that it should have made reasonable adjustments to factors that it wasn't aware of.

The algorithms that financial institutions such as Nationwide use are primarily designed to look for things such as the indicators of financial difficulty set out in CONC 1.3 (for example, consecutively failing to meet repayments to existing commitments, adverse credit file information, evidence of non-payment of bills etc), or fraud and scams, where unauthorised third parties access funds without permission.

In Miss J's case, while there was gambling on this account, there was never any clear evidence of the financial harms Nationwide will have been looking for, in the sense that at no point in time did the account show bills returned unpaid, or Miss J regularly using an unarranged overdraft. Instead, the spending on the account was all kept within the funds available and so nothing would have flagged to Nationwide that Miss J was spending beyond her means, on this account, or in a harmful way.

Having reviewed these statements myself now, I fully appreciate that the reality was Miss J was spending in a harmful and compulsive way. However, as she had sufficient funds in her account (and bearing in mind what Nationwide will have been looking for) this wouldn't have been obvious to Nationwide during the time it was happening.

Equally as Miss J was fully authorising all transactions, there was nothing to indicate there might be a risk of fraud or scam. Which means no manual account review took place, and so no one in Nationwide would have been aware that Miss J was spending money in the manner she was on this account prior to this application taking place.

Where a customer has not reached out to ask for help, or has not asked for reasonable adjustments to be made, it's not unreasonable for an account to only be monitored in this way. Indeed, accounts are typically reviewed this way and there is no obligation on businesses to provide a customer with a detailed manual review of their account. This is especially the case where credit isn't being granted on the facility.

I appreciate Miss J feels very strongly that Nationwide should have factored in what had happened on her account prior to it agreeing an overdraft. However, I can only reasonably uphold her complaint if I think the business failed in its obligations. And despite the fact that Miss J was genuinely vulnerable and may well have required support, Nationwide did not know this. Therefore, I can't fairly and reasonably conclude that a manual review needed to take place. And I can't say that Nationwide acted unfairly by not manually reviewing the

account and considering what this showed as part of Miss J's overdraft application and limit increase.

Miss J has questioned why I considered that the position was different by December 2020 and reached the conclusion that Nationwide should have carried out a more in-depth review of her account usage in this time. In my view there are multiple reasons for this. In the first instance, by December 2020, the lending relation with regard to agreement on this particular facility was not new.

Secondly, the rules and regulation in place required a financial institution to take a more proactive review of how an overdraft facility is being used, once that facility is granted. These reviews typically take place on an annual basis and December 2020 was the first anniversary of when the overdraft facility on this particular account had been provided. This is the reason why I was of the opinion that a review, focusing on what had happened on the account, should have taken place by December 2020 at the latest.

Finally, once Miss J's overdraft had been granted her account had the potential to become a credit facility. As this was the case, Nationwide was under different obligations regarding monitoring how Miss J's account was being used. Miss J has referred to some of the post-contractual requirements in CONC.

Once she entered into an agreement for an overdraft with Nationwide, some of the post contractual provisions Miss J has referred to became relevant considerations in relation to whether it was appropriate to allow Miss J to continue using her overdraft. I think it is also fair to say that the requirements upon a financial institution to monitor how borrowed funds on a facility, where it has transaction data, such as here, are more onerous than where a customer is spending their own funds.

I'm therefore satisfied that the position was different once Miss J was granted her overdraft and this is why I reached the conclusion that Nationwide ought to have been aware of the gambling on the account and the impact that it was having on Miss J hardcore borrowing. As this is the case and while I understand Miss J's concerns, the differing obligations upon Nationwide explain why I think the position changed and I don't consider my conclusions in relation to whether Miss J should have been given the overdraft in the first place, to be inconsistent with my conclusions on whether Nationwide acted fairly and reasonably in allowing her to continue using it.

I appreciate that Miss J may feel that my conclusions here are inconsistent with those that she's received from the ombudsmen who looked at her other complaint. However, the rules of this service require me to consider the facts and circumstances of the case and reach my own determination. I cannot allow my determination of a complaint to be fettered by the conclusions that other ombudsmen may have reached on another case – even where those conclusions were reached on cases for the same complainant.

Furthermore, while I appreciate that Miss J may not agree with my conclusions, I nonetheless do hope she will understand why I have reached the conclusions that I have regarding the relevance of her pre-overdraft activity on this particular case.

I now return to whether it was fair and reasonable for Nationwide to grant Miss J the overdraft in December 2019 and the limit increase in January 2020.

Did the information Nationwide have suggest that it was reasonable to grant Miss J an overdraft with a limit of £800 and then increase it to £1,000?

As I've explained, the information that Nationwide has provided suggests that Miss J was in receipt of around £1,200.00 a month at the time of this application. Miss J has said that her application for this account stated that Miss J was earning £8,400.00. It's not clear whether Miss J is referring to the opening of the current account itself or when she applied for the overdraft facility.

However, I've not been provided with a record of what if anything Miss J was required to declare about her income at the time she applied for the overdraft in December 2019. I only have details of what was declared at the time Miss J applied for her credit cards. In any event, there seems to be little dispute that Miss J was receiving around £1,200.00 a month in the period leading up to this application and I think that's what Nationwide's algorithm is likely to have determined at this time.

Taking into account Miss J's salary credits, as well as the amount that needed to be repaid should Miss J owe the full amount on the overdraft, I think that Nationwide was entitled to conclude that Miss J had sufficient funds to cover sustainable credits to her overdraft as well as also cover whatever regular monthly living costs she may have had.

I've noted what Miss J has said regarding the conclusion, I reached in my provisional decision, in relation to her disposable income. However, I wish to be clear in saying that I don't think it's a case that the whole of Miss J's income was available to repay this overdraft. Equally, this isn't what Nationwide needed to determine. What it needed to determine is whether it was reasonable to conclude that a sufficient enough portion of Miss J's salary would be left over to repay between £800 and £1,200.00 within a reasonable period of time. And bearing in mind everything, I think that Nationwide was reasonably entitled to reach this conclusion.

I appreciate that our investigator said that Nationwide's credit check will have shown that Miss J had recently taken out a loan to buy a car and that she'd taken a mortgage. In his view, this ought to have demonstrated that Miss J was reliant on credit. However, I don't agree with this as cars and properties are often purchased on credit.

To be clear, I'm not saying that this means that Nationwide didn't need to take the payments that Miss J was required to make to this agreement into account. Indeed, as these were payments Miss J was required to make, I would expect Nationwide to have factored these into any affordability assessment. That said, the point I made in my provisional decision (and which I restate here) is that I don't think Miss J having taken out car finance and a mortgage, to fund purchases that are typically financed with credit, means that this, in itself, ought to have shown Nationwide that she was obviously reliant on credit in the way that the investigator suggested.

I note that Miss J has referred to having been declined for a credit limit increase on her credit card in July 2019 – due to a low behaviour score and that she says this ought to have been taken into account in the overdraft decisions. In the first instance, I should say that the lending relationship in relation to this overdraft is different from the one that Miss J had with Nationwide in respect of her credit card.

In any event, I don't know what triggered in relation to Miss J's use of her credit card which led to Nationwide considering she had a low behaviour score, in relation to the credit card, at this point. However, it seems to me that Nationwide must have considered this to be temporary given it subsequently agreed to increase the limit on Miss J's credit card in September 2019. In these circumstances, it's difficult for me to say that whatever happened in relation to Miss J's credit card in July 2019 meant that she shouldn't have been provided with this overdraft in December 2019.

Furthermore, while Miss J may have been a party to a joint account that had an overdraft, I don't think that this means that Miss J wasn't entitled to an overdraft on her sole account either. This is particularly as Nationwide would reasonably have been entitled to conclude that Miss J was responsible for some but not all of the amount required to repay this facility within a reasonable period of time.

Finally, I've also considered Miss J arguments regarding having referred all of her Nationwide complaints together and that queried how it is possible for this complaint not to be upheld in full, in circumstances where her other ones have. I can understand why Miss J might find it strange that she's received different outcomes on complaints which she perceives to be materially the same.

However, I've already explained that we are required to consider complaints on an individual basis and looking at the individual circumstances. And what will constitute a proportionate check will very much depend on the particular circumstances of the individual application – a proportionate check – even for the same customer - could look different for different applications. I've also explained that I am not bound by the outcomes reached by investigators, or even other ombudsmen. Ultimately, I have to consider the individual facts of a case and reach my own conclusion.

That said it's probably worth me stating as Miss J's other Nationwide complaints have been upheld, the compensation she has received in relation to them has effectively sought, as best as possible, to place her in the position she would be in had she not been provided with that credit in the first place. As this correction has been made and that is effectively the position Nationwide has tried to place Miss J in, it would not be fair and reasonable for me to now 'double count' the other credit, by now also considering the payments she would have to make on those accounts, that she's already had complaints upheld for.

To do so would seek to place Miss J in the position she would be in had Nationwide not provided her with any credit at all, because she was in a position where she couldn't afford make any repayments to Nationwide. I don't think that this is the position that reasonable and proportionate checks will have shown Nationwide that Miss J was in. Therefore, I don't think that the outcomes the ombudsmen reached in Miss J's other cases means that it automatically follows this complaint should also be upheld from the outset.

As this is the case, bearing in mind the relatively low credits required to clear balances of £800 and £1,000.00 in a reasonable period of time and everything else I've explained, I've not been persuaded to uphold the complaint on the basis that Miss J should not have been provided with an overdraft in December 2019, or the limit increase in January 2020.

I appreciate this will be very disappointing for Miss J – particularly given everything she's said since my provisional decision and the investigator, albeit erroneously, suggested that the complaint should be upheld in full. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to. I therefore leave it up to Miss J to decide whether she wishes to accept Nationwide's offer to settle her complaint in the way I direct below.

Fair compensation – what Nationwide should do to put things right for Miss J

Having thought about everything, I remain satisfied that it would be fair and reasonable in all the circumstances of Miss J's complaint for Nationwide to put things right by:

- Reworking Miss J's current overdraft balance so that all interest, fees and charges applied to it from December 2020 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Nationwide should contact Miss J to arrange a suitable repayment plan, Miss J is encouraged to get in contact with and cooperate with Nationwide to reach a suitable agreement for this. If it considers it appropriate to record negative information on Miss J's credit file, it should reflect what would have been recorded if it had started the process of taking corrective action on the overdraft in December 2020. Nationwide can also reduce Miss J's overdraft limit by the amount of refund if it considers it appropriate to do so, as long as doing so wouldn't leave her over her limit.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Miss J along with 8% simple interest† on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then Nationwide should remove any adverse information from Miss J's credit file. Nationwide can also reduce Miss J's overdraft limit by the amount of refund if it considers it appropriate to do so.

† HM Revenue & Customs requires Nationwide to take off tax from this interest. Nationwide must give Miss J a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained above and in my provisional decision of 17 February 2025, I'm satisfied that what Nationwide Building Society has already agreed to do to put things right for Miss J is fair and reasonable in all the circumstances of her complaint. I'm therefore not requiring it to do anything more or anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before **25 April 2025**.

If Miss J does not accept my decision before **25 April 2025** it will not be binding on Nationwide. Should Miss J seek to accept the decision at a later date, it will be a matter for Nationwide to decide whether it is still prepared to settle the complaint in line in the way that it has agreed to.

Jeshen Narayanan
Ombudsman