

Complaint

Mr N has complained that Nationwide Building Society ("Nationwide") continued to allow him to use his overdraft over an extended period and even when he was in financial difficulty.

Background

One of our investigators looked at Mr N's complaint and thought that Nationwide hadn't done anything wrong when initially providing Mr N with his overdraft. However, she also thought that Nationwide should have realised that Mr N's overdraft had become demonstrably unsustainable for him by September 2020. So she upheld Mr N's complaint and that Nationwide needed to refund all the interest, fees and charges it added to his account from September 2020 onwards.

Nationwide disagreed with the investigator's view and so the complaint was passed to an ombudsman for review.

As the parties are in agreement with the initial decision to provide Mr N with an overdraft, this decision is only considering whether Nationwide acted fairly and reasonably when allowing Mr N to continue using the facility from September 2020 onwards.

My findings

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

Having carefully considered everything, I'm upholding Mr N's complaint. I'll explain why this is the case in a little more detail.

Nationwide 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 here.

Having carefully considered everything provided, I think Nationwide acted unfairly when it continued charging overdraft interest, fees and any associated charges on Mr N's facility from September 2020. By this point, Mr N's account hadn't seen a credit balance for an extended period of time and his statements show that he was what is known as hardcore borrowing.

Mr N's statements also show that the credits he was receiving were insufficient to free him from his overdraft. It is also my understanding that Nationwide would have known that Mr N was having returned direct debits on another Nationwide account. So the overall information Nationwide had as well as the activity on Mr N's account didn't suggest he was in any sort of position to repay what he already owed without undue difficulty or borrowing further either.

In these circumstances, I think that by September 2020, at the absolute latest, Nationwide should have stopped providing the overdraft on the same terms and treated Mr N with forbearance rather than adding even more interest, fees and charges on the overdraft.

In reaching my conclusions, I've considered that Nationwide has said our investigator's conclusions fail to acknowledge the robustness of its contact strategy and that Mr N failed to get in touch to say that he was in financial difficulty. I've thought about what Nationwide has said, but, in my view, its 'robust contact strategy' failed to react to the unfolding situation or seek to address what was at the root of Mr N's issue.

Indeed, if I take Nationwide's argument to its logical conclusion here, I see it as being that it acted fairly and reasonably towards Mr N because its robust contact strategy saw it send him sixteen letters as it had identified that his overdraft usage had become a problem. And because Mr N didn't say he was in financial difficulty then it was reasonable to continue in the same way.

This is despite the fact that Mr N hadn't provided any indication that he'd be able to clear the persistent debt he was in and his position was worsening. For example, I've noted that Mr N started making payments to a debt collector in 2020 and that there were occasions when the overdraft charges were pushing Mr N above his limit.

Indeed, while Nationwide says that Mr N got in contact with it in June 2021 to explain that he wasn't experiencing difficulty and it was simply that he hadn't been monitoring his account, the fact that he was regularly spending right to the limit before the overdraft charges pushed him over it ought to have told it otherwise. It would have been somewhat lucky for Mr N to have spent exactly the amount of funds in his account for a few months without checking the his balance. I'm also mindful that this was also shortly after Mr N had a returned direct debit payment to a third-party debt collector, which in itself was indicative of difficulty.

In my view, Nationwide's arguments here ignore the fact that there comes a point where a lender cannot continue simply relying on a borrower not wanting to discuss the situation. I have to query just how many letters needed to be sent and what needed to happen on the account, before Mr N would be challenged on the plausibility of what he was saying.

I also think that this fails to take any account of the fact that there are many reasons why a consumer might not want to get into discussions about their finances even though they're in a situation where they're struggling, or they may even go further and say they can and will make payment when the reality is they can't. While Mr N didn't say he was struggling, most likely because he didn't realise the impact failing to deal with the matter at hand was having, I don't think it was reasonable for Nationwide to conclude that he'd be able to clear the persistent debt he was in.

This is especially as Nationwide's actions (and Mr N's continued usage of overdraft in the same way) were never likely to remedy the situation. Pointing Mr N towards self-help and money guidance simply wasn't working.

I've also considered Nationwide's argument that it couldn't act because of an industry wide position, which was supported by the regulator the Financial Conduct Authority, not to expire overdrafts because of the pandemic. I don't know if the banking industry took the decision not to remove or reduce overdrafts under any circumstances during the course of the pandemic. Indeed, my experience of deciding overdraft complaints about events from this period lead me to think that there wasn't an absolute prohibition on this.

Nonetheless, regardless of what the industry position might have been, I do think that Nationwide is only telling half the story when it comes to the regulator's requirements and guidance at the time. Nationwide hasn't specifically stated what in particular it feels demonstrated the FCA's support of its (and the industry's) position.

However, the FCA's Overdrafts and coronavirus: additional guidance for firms¹ ("the additional guidance") published in September 2020 does set out some idea of the FCA's thinking at the time I think that Nationwide ought reasonably to have acted in relation to Mr N's overdraft.

Section 2.8 of this guidance states:

2.8. A firm should not reduce the credit limit or suspend or remove the overdraft facility of a customer receiving help under this guidance if that reduction, suspension or removal would cause financial hardship to the customer.

It's unclear whether Mr N received any help under the coronavirus guidance. Nonetheless section 6 of the guidance does cover repeat use strategies. And Section 6.6 states:

6.6. In line with paragraph 2.8 above, firms should not reduce or withdraw the overdraft facility where it would cause financial hardship to the customer.

Having considered the guidance, I don't think that there was an absolute prohibition on reducing or removing overdrafts in the way that Nationwide suggested. More importantly, I haven't seen anything at all to suggest that Nationwide took any steps to assess what if any financial hardship would be caused to Mr N should his overdraft have been reduced or removed.

So it isn't immediately clear to me how Nationwide continuing to allow Mr N to use his overdraft in the way that he was, rather than taking corrective action, was in his best interests or with a view to preventing him from experiencing financial hardship.

For the sake of completeness, I'd also point out that even if I were to accept that Nationwide couldn't or shouldn't have reduced or removed Mr N's overdraft because of the pandemic, I do find Nationwide's argument that it couldn't take any action at all to be unpersuasive. I firstly say this because even if it genuinely believed that it wasn't able to remove Mr N's overdraft during the pandemic, this didn't mean that it had to continue applying interest, fees and charges in the same way. Nationwide arguments suggests a belief that it had a binary choice between removing Mr N's overdraft or continuing to charge him in the same way.

However, section 5.6 of the additional guidance stated:

5.6 When providing support to customers experiencing difficulties with their finances as a result of circumstances related to coronavirus, whether under this guidance or in accordance with the repeat use rules in CONC 5D, firms should provide forbearance that is appropriate to the individual circumstances of the customer, including doing one or more of the following where appropriate:

- reducing or waiving interest*
- transferring the overdraft debt to an alternative credit product on more favourable terms ('refinancing')*
- agreeing a programme of staged reductions in the overdraft limit (and balance), ('agreeing a repayment plan')*

And at section 5.10 the additional guidance stated:

¹ <https://www.fca.org.uk/publication/finalised-guidance/finalised-guidance-overdrafts-coronavirus-additional-guidance-firms.pdf>

- 5.10. *Firms should not take a 'one size fits all' approach and a firm offering a single solution to all customers is unlikely to be consistent with this guidance, or CONC 5D. Firms should not repeatedly pursue one forbearance option, when it is more appropriate to consider alternative options.*

Additionally, Nationwide's position ignores that there isn't anything within CONC (and specifically CONC 7, which the regulator's temporary guidance made clear remained in force) that requires a lender to default an account, or remove a facility, before assisting a customer who is struggling financially. This is a position that Nationwide has chosen to adopt. If Nationwide was concerned about acting contrary to the industry agreed position not to remove overdrafts, it could have taken some of the other actions suggested in section 5.6 of the additional guidance - such as providing the facility interest free for an extended period – and left his overdraft in place.

I'm also concerned that Nationwide is relying on what happened during the pandemic to justify the fact that it still hasn't done anything differently a number of years later. In my view, all Nationwide's actions here were likely to result in (in sending Mr N letters and presuming that nothing was wrong until Mr N got in touch to confirm he was struggling), was Mr N paying high amounts of interest and charges (relative to the amount he owed) for the privilege of being allowed to continue holding, what Mr N's actions suggested, was a debt that had become unsustainable.

As far as I'm concerned Nationwide's actions in allowing Mr N to continue using his overdraft and incurring further charges, when everything it had was suggesting he would struggle to be able to repay what he owed, worsened Mr N's problem rather than helped him.

For the avoidance of doubt, I wish to be clear that my direction of Nationwide refunding all of the interest, fees and charges added to Mr N's overdraft, is based on the particular circumstances of Mr N's complaint. In other words, I am looking towards a fair and reasonable way of putting things right, sometime after action should have been taken, as a result of Nationwide's actions causing Mr N to pay high amounts of interest and charges (relative to the amount he owed) for the privilege of being allowed to continue holding, what Mr N's account activity suggest was a debt that had become unsustainable.

Overall and having considered Nationwide's arguments, I'm satisfied that it failed to act fairly and reasonably towards Mr N by not taking corrective action in relation to his overdraft when it ought to have realised he was struggling to repay what had become a problem debt by September 2020 at the latest. It follows that I'm upholding Mr N's complaint.

In reaching my conclusions, I've also considered whether the lending relationship between Nationwide and Mr N might have been unfair to Mr N under s140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I'm directing Nationwide to do results in fair compensation for Mr N given the overall circumstances of his complaint. For the reasons I've explained, I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

Fair compensation – what Nationwide needs to do to put things right for Mr N

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

- Reworking Mr N's current overdraft balance so that all interest, fees and charges added from September 2020 onwards are removed. This is to reflect the fact that Nationwide ought to have realised that the overdraft had become demonstrably

unsustainable for Mr N by this stage at the latest and he should have been offered forbearance.

AND

- If an outstanding balance remains on the overdraft once adjustments a and b (set out above) have been made Nationwide should contact Mr N to arrange a suitable repayment plan Mr N 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 Mr N's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in September 2020. Nationwide can also reduce Mr N's overdraft limit by the amount of any refund if it considers it appropriate to do so, as long as doing so wouldn't leave him over his limit.

OR

- If the effect of carrying out the above adjustments results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr N 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 Mr N's credit file. Nationwide can also reduce Mr N'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 Mr N a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons I've explained, I'm upholding Mr N's complaint. Nationwide Building Society should put things right in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 18 August 2025.

Jeshen Narayanan
Ombudsman