

Complaint

Mr T has complained about a loan that Nationwide Building Society (“Nationwide”) provided to him. He’s said that the loan was unaffordable, that the debt he ended up defaulting on was too high and he’s had to continue making payments on it.

Background

Mr T was provided with a loan for £20,000.00 in July 2003. The loan was due to be repaid in 84 monthly repayments of around £368.12. Mr T had difficulties making payments and it looks like Nationwide took the decision to default the loan in July 2007.

As more than six years have passed since Nationwide defaulted this loan, I understand that it is no longer reporting any information on this loan to credit reference agencies. However, it is still accepting reduced payments to the defaulted debt. Furthermore, while a third-party is administering the account, it is doing so on Nationwide’s behalf and Nationwide remains the owner of Mr T’s debt.

In 2024, Mr T complained to Nationwide saying that the loan was unaffordable, that the debt he ended up defaulting on was too high and he’s had to continue making payments on it.

Nationwide didn’t uphold Mr T’s complaint. As far as it was concerned, it didn’t do anything wrong either when providing the loan or in relation to the outstanding balance. Mr T remained dissatisfied at Nationwide’s response and referred his complaint to our service.

When Mr T’s complaint was referred to our service, Nationwide told us that we couldn’t consider it as it was made too late. One of our investigators reviewed what Mr T and Nationwide had told us. He reached the conclusion that we could look at Mr T’s complaint. However, as Nationwide hadn’t charged any interest on the loan in the six years prior to Mr T making his complaint, it wouldn’t be fair and reasonable to require it to compensate him.

Mr T disagreed with the investigator and asked for an ombudsman’s 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.

The time limits for making a complaint to our service

There are time limits for referring a complaint to the Financial Ombudsman Service. Nationwide has argued that Mr T’s complaint was made too late because he complained more than six years after he was provided with his loan, as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

The rules I must apply say that, where a business doesn’t agree, I can’t look at a complaint made more than six years after what’s been complained about, or if later, more than three

years after the complainant (in this case, Mr T) knew, or should really have known they had reason to complain. Dispute Resolution rule 2.8.2R can be found online.

Mr T complaint effectively stems from being provided with, what he says, was an unaffordable loan. This means that Mr T had, at least, six years from when the loan was provided – July 2009 - in order to complain. Mr T didn't make this complaint until 2024. I'm therefore satisfied that Mr T clearly complained more than six years after he was provided with his loan.

However, DISP 2.8.2R (2)(b) can potentially provide a consumer with longer than six years to complain, as long as they complained within three years of when they were aware, or they ought reasonably to have been aware, they had cause to. So I've considered whether DISP 2.8.2R (2)(b) provides Mr T with longer to complain here.

I want to start by saying that I think that in order for it to be the case that Mr T was aware, or he ought reasonably to have been aware of his cause for complaint, it would have to be the case that he was aware or ought reasonably to have been aware that:

- there was a problem – in this case his loan was unaffordable;
- the loan had caused him loss;
- another party's actions (or its failure to act) may have caused the loss; and
- the other party was Nationwide.

I think that Mr T ought to have been aware of any difficulty he was having making his payments at the time this happened and certainly by the time that the loan was defaulted in July 2007. Furthermore, given what Mr T has said about it being unfair for Nationwide to have added late payment and other charges in the period up to the default, I think that Mr T ought to have realised his loan had caused him loss at this stage too (in other words, Mr T ought to have been aware of the first two parts of the test set out above at the time he was struggling to make his payments).

Given Nationwide was the party that had added these charges and then defaulted the loan, I think that Mr T ought to have realised that Nationwide may have had some responsibility for his problem at the time the loan defaulted and the balance crystallised in July 2007.

Three years from when the loan defaulted in July 2007 does provide Mr T with more time than six years from the initial event he's complaining of. Nonetheless, as Mr T complained later than July 2010, I'm satisfied that he in any event complained later than the additional time DISP 2.8.2R (2)(b) provided him with.

I can look at a complaint made outside of the time limit if I'm persuaded that this was because of exceptional circumstances. I've seen what Mr T has said about his personal struggles and the difficulties he's had.

I've carefully thought about what Mr T has told us. However, it may help for me to explain that I'm only really able to say that exceptional circumstances apply where the evidence provided shows me that the complainant was unable to complain in time.

In this case, Mr T has been able to make complaints about other products with Nationwide – indeed Mr T says he's had a complaint considered by this service in other matters relating to this loan in 2014. Although if we did receive such a complaint we no longer have any record of it.

Nonetheless and more importantly, as Mr T has been able to make and refer other complaints much sooner than he made this complaint in 2024, while I sympathise with the

difficulties that he has had, I cannot reasonably say that what Mr T has told us about accounts for the complaint being made when it was.

So given Mr T's actions on other complaints, I cannot reasonably say that he couldn't have made this complaint sooner than he did and in these circumstances, I don't think that exceptional circumstances do apply in this case.

Section 140A of the Consumer Credit Act 1974 and its relevance to this complaint

Our investigator also explained why it was reasonable to interpret Mr T's complaint as being one alleging that the lending relationship between Mr T and Nationwide was unfair to Mr T as described in s140A of the Consumer Credit Act 1974 ("CCA"). He also explained why this complaint about an allegedly unfair lending relationship had been made in time.

For the sake of completeness, I wish to confirm that I'm in agreement with the investigator that Mr T's complaint should be considered more broadly than just the decision to provide Mr T with his loan. I consider this to be the case as Mr T has not only complained about the circumstances behind the decision to provide him with the loan, but the charges added prior to the loan being defaulted and the effect that this had on what he's still being required to repay.

In deciding what is fair and reasonable in all the circumstances of Mr T's case, I am required to take relevant law into account. As I'm satisfied that Mr T's complaint can be reasonably interpreted as being about that his lending relationship with Nationwide was unfair to him, 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 (Mr T), 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 his 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.

Application to Mr T's complaint

I've been provided with a statement of account for Mr T's loan. This shows that Mr T wasn't charged any interest after July 2007 onwards. Furthermore, Nationwide is no longer reporting any information regarding the default to credit reference agencies. This effectively means that there is no unfairness to remedy on this loan from July 2007 onwards.

It is possible that any such unfairness may have existed earlier. For example, it is possible that Nationwide applied charges in circumstances where it shouldn't have done so prior to July 2007. While I've seen the investigator's conclusions, I make no findings on this matter as I do not need to do so. It therefore should not be assumed that I would also have reached

the same conclusion, on whether Nationwide acted fairly and reasonably when providing the loan, as the investigator had I myself reviewed this matter.

The reason I say this is just because there may have been unfairness in a debtor's relationship with a creditor, this doesn't automatically mean it would be fair to refund all of the interest and charges on the account from when that unfairness began.

In *Smith v Royal Bank of Scotland Plc*¹, the Supreme Court pointed out that remedies for unfair relationships are at the court's discretion and the court may deny a remedy where the claimant had knowledge of the facts relevant to their claim, but substantially delayed making that claim.

There is no fixed period of delay that brings this principle into play, but the Supreme Court approved the District Judge's comment in the case that a court would be slow to remedy unfairness in a situation where the claimant delayed more than six years after knowing the facts.

Therefore, in determining a fair and reasonable outcome to Mr T's complaint and what is fair compensation, it's important for me to take this into account as relevant law. I consider that a complainant would have knowledge of the facts that caused any unfairness when they became aware of a problem and that they were suffering a loss.

Where a consumer had knowledge of the relevant facts, our typical approach to cases of this nature is for the respondent firm to refund to them, the interest and charges they paid for the six years before they made their complaint. 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 the consumer, along with 8% simple interest on the overpayments from the date they were made until the date of settlement.

In the section of this decision relating to time limits, I've already explained why I think that Mr T had enough to know whether he considered the loan was unaffordable and whether the charges that had been added were, as he says, unfair by July 2007 at the latest. I'm satisfied that this is also sufficient for Mr T to have had knowledge of the relevant facts. However, Mr T didn't do anything about this until he complained in 2024.

So, even if were to have reached the conclusion that Nationwide had acted unfairly, for the sake of completeness I wish to re-emphasise that I haven't made such a finding as it isn't necessary for me to do so, it would be right for any refund of interest and charges to be limited to the six-year period prior to Mr T making his complaint.

As I've explained, Nationwide didn't charge Mr T any interest in the six years prior to him making his complaint. Furthermore, it is no longer reporting any information regarding this loan to credit reference agencies. This means that even if I were to have found that any unfairness began earlier than 2018 (which is six years prior to Mr T making his complaint), which may or may not be the case, I still wouldn't have required Nationwide to have compensated Mr T. This is because I think that he had knowledge of the facts relevant to his claim, but substantially delayed making that claim.

As this is the case, I don't think that it would be fair and reasonable for me to require Nationwide to do anything in this instance and I'm therefore not upholding Mr T's complaint.

Overall and having considered everything, while I can understand Mr T's sentiments and appreciate why he is unhappy, I'm satisfied that it wouldn't be fair and reasonable in all the

¹ *Smith and another v Royal Bank of Scotland plc* [2023] UKSC 34.

circumstances of this complaint for me to require Nationwide to pay Mr T compensation. Therefore, I'm not upholding this complaint. I appreciate this will be very disappointing for Mr T. 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, I'm not upholding Mr T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 2 September 2025.

Jeshen Narayanan
Ombudsman