

The complaint

Mr and Mrs C, who are represented by a third party, complain that Nationwide Building Society ('Nationwide') irresponsibly provided them with an overdraft they couldn't afford to repay sustainably.

What happened

In June 2009 Nationwide agreed to provide Mr and Mrs C with an overdraft facility of £2,450. It was then increased eleven times between October 2009 and February 2018.

Mr and Mrs C, who started their complaint with Nationwide in September 2023, say Nationwide acted unfairly and irresponsibly in providing them with the overdraft facility and the increases it went on to agree to it that followed later. They say that Nationwide ought to have seen that Mr and Mrs C became over-dependant on their overdraft and that this had a long-term impact on their overall financial situation.

Nationwide said it had followed its correct procedures in providing the overdraft facility and the increases that followed. It also said the part of the complaint from 2016 and earlier had been made too late.

Our investigator agreed that Mr and Mrs C had brought part of their complaint too late under the time limit rules, but said we could look into those lending decisions from within six years of the complaint being made – that is from 2016 onwards. Our investigator also thought Mr and Mrs C's complaint could be interpreted as being about an unfair credit relationship as described in Section 140A of the Consumer Credit Act 1974 (s140), which is in time under the rules. But, having looked into the merits of the complaint, she couldn't find sufficient evidence or information to make an uphold finding.

As Mr and Mrs C didn't agree, their complaint has been passed to me for a final decision.

What I've decided – and why

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

I've read and considered the whole file for this complaint, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it in order to reach what I think is the right outcome.

There are time limits for referring a complaint to the Financial Ombudsman Service, and Nationwide has suggested that part of this complaint was referred to us too late because some of the lending decisions to lend took place more than six years before the complaint was made. Our investigator explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in Section 140A of the Consumer Credit Act 1974, and the part of this complaint about the six-year period before the complaint was started was something we could consider.

Seeing as I've also decided not to uphold Mr and Mrs C's complaint, the question as to whether or not Mr and Mrs C referred their complaint to us too late under our time limit rules has no impact on that outcome. Like our investigator, I think Mr and Mrs C's complaint should be considered more broadly than just the decisions to grant overdraft credit, seeing as they have complained not just about those decisions but also the impact they've had over the course of their relationship with Nationwide. Mr and Mrs C's complaint in this respect can therefore reasonably be interpreted as a complaint about the fairness of their relationship with Nationwide.

In deciding what is fair and reasonable, I am required to take relevant law into account. Because Mr and Mrs C's complaint can be reasonably interpreted as being about the fairness of their relationship with Nationwide, the relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974.

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (Nationwide) and the debtor (Mr and Mrs C), 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.

S.140B 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 what Mr and Mrs C have complained about, I therefore need to think about whether Nationwide's decision to provide overdraft credit or other actions in relation to how it monitored their overdraft use created unfairness in the relationship between them and Nationwide, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr and Mrs C's relationship with Nationwide is therefore likely to be unfair if it didn't carry out proportionate affordability checks that might have shown the provision of overdraft credit to be irresponsible or unaffordable, and if it didn't remove that unfairness if the overdraft went on to become unsustainable or otherwise harmful.

When assessing affordability, there wasn't a set list of checks that Nationwide needed to complete. But they still needed to be borrower focussed and proportionate to things like the type of lending, its cost (such as interest, fees and charges) and Mr and Mrs C's level of reliance on it plus – and importantly - how long it would take them to sustainably pay it off.

Before agreeing each overdraft increase, I would have expected Nationwide to look into Mr and Mrs C's financial situation to find out whether the facility was likely to be affordable as well as something they'd be able to use in a way that was sustainable. Unfortunately, Nationwide haven't been able to provide us with details of their checks from before November 2017. So I can't say that the checks were reasonable and proportionate. As for the checks carried out after that, I only have limited information about Mr and Mrs C's

income and spending. So again, that's not enough for me to make a finding that the checks were enough.

Nationwide and those representing Mr and Mrs C have together been able to send us bank statements from Mr and Mrs C's joint bank account going forwards from May 2013. More recently, they also sent us some flex account statements from between 2022 and 2024.

I think these statements give a good indication of what Nationwide would have discovered when it carried out its checks as part of each lending decision. And I've kept in mind that since Mr and Mrs C were banking with them, this same level of detail would have been readily available to Nationwide.

In 2013 and 2014 Mr and Mrs C's combined level of earned income of each month remained consistently between £3,600 and £4,300. Alongside that, I've looked at the level of spending each month. Having done so, I'm broadly in agreement with what our investigator found. Their committed household spending, including utilities, mortgage, car expenses, insurance and food shops varied between £2,000 and I would say £2,600 each month. That means they were left with a good level of funds. This could have been used to steadily reduce and eventually pay off the overdraft facility.

I've seen that Mr and Mrs C were using their overdraft facility consistently – at whatever level it had been set – throughout this time. In 2013 and 2014 they tended to spend a bit more time out of their overdraft each month than in the years that followed. But there were no obvious signs to show or suggest that they were in or at risk of getting into serious financial difficulties. They were frequently spending on non-essential items, such as leisure items.

I've also seen that Mr and Mrs C approached Nationwide in 2019 and on three occasions in 2022 when seeking to increase their existing overdraft limit and were turned down. Nationwide did however agree an interest payment holiday in late 2022. That indicates Mr and Mrs C may have been feeling pressure on their finances, even if that wasn't yet apparent. That raises the question of whether Nationwide ought to have intervened and taken steps to reduce their overdraft level. But I think on balance, given the points I've already made about there being sufficient disposable income, not granting them further credit was an acceptable course of action.

I've also seen that Mr and Mrs C requested that their overdraft be reduced – once in 2011 and twice in 2015. So I think at those points Mr and Mrs C had likely decided to take steps to reduce their level of overdraft use and felt able to request these reductions. In 2015 they were able to reduce their overdraft borrowing level by £1,400 and maintain for around four months. That suggests they were at least aware of the need to reduce to their overdraft reliance if they felt able to.

I appreciate that there would have been times – and it may even have been often – when Mr and Mrs C may have been financially stretched and even finding themselves juggling their finances for a period of time. An overdraft is ideally intended as a short-term or emergency borrowing facility. Having looked at the way they were using their overdraft over the years, I would say they were significantly reliant on it and weren't perhaps taking all the steps they could have done to reduce it. I think that's something that might have been addressed by Nationwide writing to them to warn them about the risk of persistent debt. Nationwide says it did this on several occasions.

To summarise, I don't think Nationwide acted unreasonably when it approved the initial overdraft and then continued to provide the facility with the various increases it made after

that. I therefore don't find that Mr and Mrs C's relationship with Nationwide is currently unfair. It doesn't seem to me that Nationwide created unfairness in its relationship with Mr and Mrs C by irresponsibly giving them overdraft credit. And I don't find Nationwide treated them unfairly in any other way, based on what I've seen.

I acknowledge this outcome will be disappointing for Mr and Mrs C. But I hope they will understand the reasons for my decision and so will at least feel their concerns have been listened to.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 9 September 2025.

Michael Goldberg

Ombudsman