

Complaint

Mr V has complained about the overdraft charges Nationwide Building Society (“Nationwide”) applied to his account.

Mr V is being represented, by the (“representative”), in his complaint.

The representative has said the charges applied to Mr V’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

In May 2019, Mr V successfully applied for an overdraft with a limit of £250. The overdraft limit was steadily increased until it reached £2,000.00 in January 2023, where it has remained ever since.

In January 2024, Mr V complained saying that he was allowed to continue using the overdraft in a way that was unsustainable and which caused him continued financial difficulty. Nationwide did not uphold Mr V’s complaint. It did not think that it had done anything wrong or treated Mr V unfairly in the period he had his overdraft. However, Nationwide refunded the interest that it had charged from July 2023 up until its final response. Mr V remained dissatisfied and referred his complaint to our service

One of our investigators reviewed what Mr V and Nationwide had told us. He reached the conclusion that Nationwide ought to have realised that Mr V was using his overdraft in a way that was unsustainable or otherwise harmful in May 2020. So the investigator recommended that Mr V’s complaint be upheld and that it refunded all interest, fees and charges charged from that point onwards.

Nationwide disagreed with the investigator and asked for an ombudsman to consider the matter.

My provisional decision of 28 July 2025

I issued a provisional decision – on 28 July 2025 - setting out why I wasn’t intending to uphold Mr V’s complaint.

In summary, I was satisfied that Nationwide hadn’t unfairly allowed Mr V to continue using his overdraft, in circumstances where it ought to have realised that it was unsustainable or otherwise harmful for him, prior to July 2023. Furthermore, as Nationwide had already refunded the interest, fees and charges added to the overdraft from July 2023 onwards, I was of the view that it hadn’t treated Mr V unfairly or unreasonably.

Nationwide’s response to my provisional decision

Nationwide responded to my provisional decision confirming that it agreed with it and that it had nothing further to add.

Mr V's response to my provisional decision

The representative, on behalf of Mr V, responded to say that it disagreed with my provisional decision. In summary this is because it considered that:

- I had incorrectly concluded that Mr V had complained too late. In the representative's view, he didn't have knowledge of cause for complaint until it contacted him and this means that he cannot have taken action against Nationwide sooner. This is previously an argument that has been accepted on other cases.
- whilst I appeared to have accepted that the relationship between Nationwide and Mr V, was unfair to Mr V, I incorrectly relied upon on *Smith v Royal Bank of Scotland Plc*¹ ("*Smith*") in order to conclude that Nationwide didn't need to compensate Mr V from the point the unfairness began.
- the complaint should now be escalated to an ombudsman.

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, including the responses to my provisional decision, I remain satisfied that what Nationwide has already done to put things right is fair and reasonable in all the circumstances. Therefore, I'm not requiring it to do anything more or anything further and I'm still not upholding Mr V's complaint.

Before I go any further, I wish to express my surprise at the representative's response to my provisional decision.

In the first instance, the representative asked for the complaint to be escalated to an ombudsman despite the fact that it must have known that the case was with an ombudsman for a provisional decision to have been issued. Secondly, while it has provided arguments in relation to why I had incorrectly reached the conclusion that Mr V ought reasonably to have been aware of his cause for complaint, more than three years before he complained (and has provided snippets sentences, which it says are, from other ombudsmen decisions and which support its interpretation), I made no such findings in my provisional decision.

Indeed, Nationwide first provided Mr V with an overdraft in May 2019 and the complaint was made in January 2024. This was clearly within six years of the earliest event that Mr V had complained of and as such there was absolutely no need for me to reach any sort of findings on when Mr V ought reasonably to have been aware of his cause for complaint as there was no dispute that he'd complained within time.

Finally, as Mr V complained within six years of the earliest event he'd complained of, my provisional decision made no reference to Mr V having sat on his hands or indeed any reference at all to *Smith*. For the avoidance of doubt, my findings were (and also remain) that that Nationwide hadn't acted unfairly or unreasonably prior to August 2023 and therefore was no unfairness prior to this stage. I'll now explain why I consider this to be the case in a little more detail.

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

To start with, as this essentially boils down to a complaint that Mr V was unfairly charged as a result of 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 charges for its 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 V if it applied this interest, fees and charges to Mr V's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr V was experiencing financial difficulty. So I've considered whether there was an instance, or there were instances, where Nationwide didn't treat Mr V fairly and reasonably.

In other words, I've considered whether there were periods where Nationwide continued charging Mr V 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.

Having looked through Mr V's account statements throughout the period concerned, I can't see that Nationwide ought reasonably to have realised that Mr V was experiencing financial difficulty to the extent that it would have been fair and reasonable for it to have unilaterally taken corrective measures in relation to Mr V's overdraft.

I'll now explain why I think this is the case in a little more detail.

There is no dispute that Mr V used his overdraft. The representative's arguments appear to suggest that this in itself means that Mr V was experiencing financial difficulty and therefore the complaint should be upheld. But I think that it is far too simplistic to say that it automatically follows that a customer was in financial difficulty simply because they were using a financial product that they were entitled to use.

I accept that the rules, guidance and industry codes of practice all suggest that prolonged and repeated overdraft usage can sometimes be an indication of financial difficulty. However, this is not the same as saying that prolonged and repeated overdraft usage by a customer will always mean that they are, as a matter of fact, in financial difficulty.

So I think it's important to look at overall circumstances of a customer's overdraft usage as part of considering their overall financial position. And, in this case, I've considered Mr V's incomings and outgoings as well as any overdrawn balances and thought about whether it was possible for him to have stopped using his overdraft, based on this.

I think that if Mr V was locked into paying charges in circumstances where there was no reasonable 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 Mr V was in receipt of credits that were sufficient to clear the overdraft within a reasonable period of time.

Furthermore, I'm satisfied that Mr V's case isn't one where the borrower was marooned in their overdraft with no hope of exiting it. Although I do accept that there were times where Mr V would have met the criteria of someone who displayed a pattern of repeat use of their overdraft. For the avoidance of doubt, I also accept that there is a section of CONC (CONC 5D) which relates to this.

However, even if Nationwide didn't meet all of the requirements set out in CONC 5D, I wish to make it clear that I don't think that simply sending letters will mean that a lender met all of

its obligations, I'd still need to consider whether Mr V lost out as a result of any potential failing.

I've also therefore considered whether Mr V's use of his overdraft (and Nationwide continuing to allow him to use it) was causing him to incur high cumulative charges that were harmful to him. And having considered matters, I'm satisfied that this isn't the case.

To explain, while I'm not seeking to make retrospective value judgements over Mr V expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Mr V's account. Given the repeat usage letters Mr V is likely to have been sent by Nationwide, I think that he ought to have realised that how much he was paying for this.

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, its 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.

The representative's interpretation 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 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. This concept of proportionality runs right through CONC 5 as a whole. It's also worth noting that prior to July 2023 at least, the total amount of the credits Mr V received into his account each month suggested he could have cleared his overdraft within a reasonable period of time had he wished to do so.

I do have some concerns that, in October 2020, Mr V's overdraft limit appears to have been increased when he'd been exceeding his existing limit. A borrower exceeding a credit limit can sometimes be an indicator they may be struggling and shouldn't be advanced further credit. But I don't think that this was the case here as Mr V hadn't exceeded his limit by much and this wasn't because of payments that can objectively considered to be essential. In circumstances where Mr V was using his overdraft in this way, it's difficult for me to reasonably conclude that Mr V was forced to use his overdraft rather than choosing to do so.

I also can't see that Mr V was borrowing from unsustainable sources in order to meet the overdraft charges or that his borrowing was increasing exponentially. Indeed, having considered a copy of the credit report Mr V has provided, I can't see that he had much other credit in his name at all.

I accept neither of these things in themselves (or when taken together) mean that Mr V wasn't experiencing difficulty. But I don't agree that Mr V was reliant on credit in the way that has been suggested. He appears have been able to make any essential commitments without using his overdraft had he wished to do so and he had sufficient funds to completely clear the overdraft balance had he wished to.

Overall and having considered everything, I don't think that it was unreasonable for Nationwide to have proceeded adding the charges that it did prior to July 2023. 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 V immediately repay his overdraft, in circumstances where there was a realistic prospect of Mr V clearing what he owed in a reasonable period of time.

Indeed, I think that if Nationwide had suggested that it would take corrective action, Mr V would have argued that it would be unfair, bearing in mind the consequences of such action being taken – particularly as the pandemic had recently begun in May 2020 - in circumstances where he was using the overdraft in line with the terms and conditions and the funds he received appeared to show that he could afford to use it in the way he was.

As this is the case, I remain satisfied that what Nationwide has already done to put things right for Mr V is fair and reasonable in all the circumstances. I'm therefore not intending to require Nationwide to anything more or anything further.

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

However, for the reasons I've explained, I'm currently not persuaded that Nationwide irresponsibly lent to Mr V or otherwise unfairly allowed him to continue using his overdraft prior to July 2023. And any unfairness caused past this point has since been rectified by the interest fees, and charges that Nationwide has already been refunded. I haven't seen anything to suggest that s140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here.

So overall and having considered everything, while I can understand Mr V's sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Mr V. 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 above and in my provisional decision of 28 July 2025, I'm satisfied that what Nationwide Building Society has already done to put things right for Mr V is fair and reasonable in all the circumstances. Therefore, I'm not upholding this complaint.

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

Jeshen Narayanan
Ombudsman