

## **Complaint**

Ms L has complained that Nationwide Building Society (“Nationwide”) irresponsibly provided a credit card as well as a subsequent credit limit increase to her. She says that this credit was unaffordable and she had to borrow elsewhere in order to make her payments.

## **Background**

Nationwide initially provided Ms L with a credit card, which had a credit limit of £10,510.00, in February 2003. From the records provided, I understand that the credit limit was increased to £13,700.00 in February 2015.

In February 2024, Ms L complained saying that the credit card and the limit increase Nationwide provided to her were unaffordable and she had to borrow elsewhere in order to make her payments.

Nationwide did not uphold Ms L’s complaint. As far as it was concerned, Ms L had passed all the relevant checks to indicate that she could repay this credit card. Ms L remained dissatisfied at Nationwide’s response and referred her complaint to our service. When responding to our request for its file on Ms L’s complaint, Nationwide told us that it thought Ms L had complained too late.

One of our investigators reviewed what Ms L and Nationwide had told us. She thought that she hadn’t seen enough to be persuaded that Nationwide failed to act fairly and reasonably to Ms L, either when initially providing Ms L with her credit card or when offering the credit limit increase. This resulted in the investigator deciding against recommending that Ms L’s complaint be upheld.

Ms L disagreed with the investigator’s conclusions and asked for an ombudsman to look at her complaint.

## **My findings**

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

### *Basis for my consideration of this complaint*

There are time limits for referring a complaint to the Financial Ombudsman Service. Nationwide has argued that Ms L’s complaint was made too late because she complained more than six years after the decisions to provide the credit card and all of the credit limit increases as well as more than three years after she ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why it was reasonable to interpret the complaint as being one alleging that the relationship between Ms L and Nationwide being unfair to Ms L as described in s140A of the Consumer Credit Act 1974 (“CCA”). She also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Ms L's complaint. Given the reasons for this, I'm satisfied that whether Ms L's complaint about the specific lending decisions was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Ms L's complaint should be considered more broadly than just those lending decisions. I consider this to be the case as Ms L has not only complained about the respective decisions to lend but has also alleged that this credit Nationwide provided meant that she had to borrow elsewhere in order to make her payments.

I'm therefore satisfied that Ms L's complaint can therefore reasonably be interpreted as a complaint about the fairness of her relationship with Nationwide. I acknowledge Nationwide still does not agree we can look at Ms L's complaint, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Ms L's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Ms L's complaint can be reasonably interpreted as being about the fairness of her relationship with Nationwide, 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 (Ms L), 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.

Given Ms L's complaint, I therefore need to think about whether Nationwide's decision to lend to Ms L and increase her credit limits, or its later actions resulted in the lending relationship between Ms L and Nationwide being unfair to Ms L, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Ms L's relationship with Nationwide is therefore likely to be unfair if it didn't carry out reasonable enquiries into Ms L's ability to repay in circumstances where doing so would have revealed the credit card or limit increases to be irresponsible or unaffordable. And if this was the case, Nationwide didn't then remove the unfairness this created somehow.

I've therefore considered whether Nationwide acted fairly and reasonably when agreeing to provide Ms L with her credit card and agreeing to increase her credit limit.

*Were the decisions to provide the credit card and subsequent credit limit increase unfair?*

We do have an explanation about how we handle complaints about unaffordable and irresponsible lending on our website and I've referred to it where it is relevant for me to do so. However, the vast majority of our website guidance covers regulated lending. In this instance, the first of the lending decisions that Nationwide made predate the regulation of lending and were made prior to the obligations, which our current guidance is based on, were introduced.

Furthermore and, in any event, bearing in mind Ms L's response to our investigator, I think that it would be helpful for me to set out that we consider what a firm did to check whether any repayments to credit were affordable (asking it to evidence what it did) and then determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

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 that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion. Indeed, the requirements have not and still do not mandate a list of checks that a lender should use. Any rules, guidance and good industry practice in place over the years has simply set out the types of things that a lender could do when considering whether to lend to a prospective borrower.

It is for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what was done was fair to the extent it allowed the lender to reasonably understand whether the borrower could make their payments. Furthermore, if we don't think that the lender did enough to establish whether the repayments that a prospective borrower might have to make were affordable, this doesn't on its own mean that a complaint should be upheld.

Most importantly of all, we would normally only go on to uphold a complaint in circumstances where we were able to recreate what reasonable checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were more likely than not unaffordable.

*Did Nationwide act fairly and reasonably towards Ms L when initially providing her with a credit card in February 2003?*

When Ms L applied for a credit card in February 2003, this not only predated the current regulator's (the Financial Conduct Authority ("FCA")) rules and guidance which came in in April 2014, it also predated April 2007. April 2007 is important because this was when it became a requirement for a lender to become regulated in order for it to be able to provide consumer credit lending.

Therefore, Nationwide's initial decision to offer Ms L a credit card with a limit of £10,510.00 in February 2003 took place prior to the introduction of the main regulations and standards in relation to irresponsible and unaffordable lending. That's not to say that there weren't any expectations or standards in relation to lending at the time Ms L applied for a credit card and the first nine limit increases were offered.

Indeed, the then British Bankers' Association had its own Banking Code in place at the time. Even though it's possible that Nationwide wasn't a member, I still consider this code to be good industry practice. Nonetheless, it would be fair to say that its obligations and responsibilities were not the same as they are now.

For example, the concepts of borrower focused assessments and proportionate checks were not part of the expectations or requirements at the time. It's also fair to say that the requirements were more geared towards credit risk. In other words, the onus was more on the lender to understand whether it was likely to get its money back, rather than understand how the prospective borrower would make their payments.

What a subscriber to the banking code – at the time of Ms L's application for a credit card – effectively agreed to do was assess whether it felt that the potential borrower would be able to repay any lending. I therefore need to consider this part of Ms L's complaint in relation to these expectations that were in place on a lender at this time.

In this instance, I'm led to understand that Nationwide will have agreed to Ms L's application after carrying out a credit search. And in February 2003 the information Nationwide obtained led it to conclude that Ms L would be able to make the monthly repayments due on a credit card with a limit of £10,510.00.

What's important to note is that Ms L was provided with a revolving credit facility rather than a loan. This means that to start with Nationwide was required to understand whether Ms L could repay £10,510.00 within a reasonable period of time. A reasonable period of time has never been defined. But amongst things that are likely to influence this is the typical term a fixed sum loan for an equivalent amount is taken over. In 2003, it's fair to say that a fixed sum loan for around £10,000.00 would likely be taken over a term of seven to ten years.

Nationwide hasn't been able to provide any details on what it found out about Ms L as a result of the credit checks that it carried out prior providing the card. Given this application took place more than twenty years ago, I don't think that this lack of information is unreasonable.

Therefore, I've not drawn any adverse conclusions as a result of Nationwide not being able to provide this credit check information. In any event, I'm also mindful that I've not been provided with any information and neither has it even been argued, that Ms L had any significant adverse information recorded against her at the time.

I note that in Ms L's initial letter of complaint she said that she believed that she was offered credit cards because her parents lived in an affluent area. I don't know if that was the case. But what I do know is that Ms L has said that she had sold a property in the 1990s and had been relying on these funds as a passive income.

I think that this is important because it looks to be the case that Nationwide relied on Ms L having a relatively large balance in a savings product as evidence that Ms L was in a position where she had the funds to clear the balance on the credit card, in one go, should she need to.

Of course, I accept that this doesn't in itself mean that Ms L could make the monthly repayments require on this card. However, as I've explained, lending decisions at this stage were more concerned with credit risk, rather than a borrower focused assessment of the impact of a customer having to repay any credit advanced. With this in mind, I can understand why Nationwide felt that Ms L could repay £10,510.00 within a reasonable period of time.

As this is what Nationwide needed to be satisfied of before lending in February 2003, I've not been persuaded that Nationwide's decision to provide Ms L with her credit card was unfair or that it resulted in unfairness going forward.

*Did Nationwide carry out reasonable and proportionate checks before agreeing to increase Ms L's credit limit to £13,700.00 in February 2015?*

Ms L's credit limit was not only increased after the regulation of consumer credit but also after the carrying out of credit regulated activities had passed to the Financial Conduct Authority ("FCA"). It's fair to say that there was a significant difference between what was expected at this stage and what was expected when Nationwide initially provided this card to Ms L.

By this stage, the FCA's rules, which were contained in its Consumer Credit Sourcebook ("CONC"), set out that a lender was required to carry out proportionate checks into a customer's circumstances in order to reach a reasonable determination on whether they could repay any credit provided.

Nationwide hasn't been able to provide the details of any credit checks that it carried out, or any other information that it may have gathered about Ms L's circumstances before it increased Ms L's credit limit in February 2015. Given the length of time that has passed since any checks would have been carried out and it wasn't mandatory to retain them for as long as this, I've not drawn any adverse inferences from Nationwide be able to provide the results of any credit checks.

I've not seen anything to suggest that Ms L had any defaulted accounts or CCJs recorded against her in February 2015. In any event, even though Ms L may not have had defaulted accounts or CCJs in February 2015, as Ms L was being provided with a limit of £13,700.00, I can't see how Nationwide could reasonably have carried out a borrower focused assessment and assessed the impact of the required repayments on Ms L, without having an income of her income and expenditure.

As Nationwide hasn't provided me with any such indication that it did do this, let alone what any such results showed, I'm not in a position to say that the checks it carried out before it increased Ms L's credit limit were reasonable and proportionate. As this is the case, I'm satisfied that Nationwide failed to carry out reasonable and proportionate checks before increasing Ms L's credit limit in February 2015.

*Would further checks have made a difference to Nationwide's decision to increase her credit limit in February 2015?*

As I've explained earlier on in this decision, we would usually only go on to uphold a complaint in circumstances where we were able to recreate what the checks in question are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

Therefore, as Nationwide should have done more before increasing Ms L's credit limit, I've gone on to decide what I think Nationwide is more likely than not to have decided had it done that here. Given the circumstances here, I would have expected Nationwide to have had a reasonable understanding about Ms L's regular living expenses as well as her income and existing credit commitments.

I've considered the information Ms L has provided us with. Having done so, it's fair to say that her finances were far from straightforward at this time. And the information provided

does not clearly show me that Ms L did not have the funds, in February 2015 at least, to make the required payments, which she was committing to make.

Ms L has provided some bank account statements. The first thing for me to say is that Nationwide did not need to obtain Ms L's bank statements before lending. Indeed, it isn't even a requirement for a lender to request bank statements at this time. So I've not looked at these bank accounts because Nationwide ought to have obtained them from Ms L.

Nonetheless, these statements don't clearly show me that Ms L was struggling financially. I appreciate that Ms L may have been using an overdraft. But using a financial product and being charged for doing so, does not mean that a customer should not be provided with other credit. Furthermore, while it's clear that Ms L did have credit cards elsewhere, it is clear that she was managing those accounts.

Indeed, she made some very significant payments to those creditors. I appreciate that Ms L says she did this to reduce the amount of interest she'd have to pay. I think that it is important to note that Ms L had a 0% interest balance transfer option on this card and transferring some of the existing debt that she was unable to clear, to a much lower interest rate, on to this account is likely to have improved her financial position.

Indeed, as Ms L had the opportunity of transferring existing credit card balances on to this account at 0% interest, she was likely to pay less interest than she would have done had the balance stayed where it was. This coupled with the large payments that she had already made does suggest the possibility that Nationwide could reasonably have concluded that Ms L would be able to repay the balance on this credit card within a reasonable period of time.

I appreciate that Ms L may feel that it is unreasonable and unfair to expect her to provide information which she doesn't have and cannot reasonably be expected to have. But I also have to take into account that Nationwide isn't required to have retained all of this information either. Ultimately, it was Ms L that chose to make her complaint in February 2024. As this is the case, I have to decide the complaint on what I have before me.

It is only fair and reasonable for me to uphold a complaint in circumstances where I can see that any additional credit provided was unaffordable. It's very difficult for me to uphold a complaint on the basis of uncorroborated arguments regarding an individual's circumstances.

I know that Ms L did go on to have difficulties making her payments further down the line. However, what I need to think about is whether Nationwide was reasonably entitled to reach the conclusion that she could make these payments at the time that it made its decision to increase the credit limit in February 2015.

Having considered everything, I'm afraid that I've not been provided with sufficient evidence which corroborates what Ms L has said about not being able to make the increased monthly payments required should she owe the full amount of the new credit limit. While I've noted what Ms L has said about her income and have seen the information she has provided on this as well as her insurance claim, the payments she was able to make to her other creditors, which will have played a part in the decision on whether to lend, means that I cannot reasonably conclude that this limit increase was as a matter of fact unaffordable for Ms L.

### *Ms L's payment difficulties and the account defaulting in March 2020*

I now turn to the circumstances behind Ms L's credit card agreement being terminated in March 2020. It isn't in dispute that Ms L began missing payments from the latter part of 2019. Ms L wrote to Nationwide, in October 2019, asking for some time to assess how she might be able to address situation. Nationwide agreed to a 30-day breathing space on the account.

After the breathing space completed, Ms L then agreed to make payments of £20 a month. From what I can see, Nationwide not only agreed to this it also stopped adding interest to the account. However, £20 a month was substantially less than what Ms L needed to pay and the arrears on the account were increasing rapidly. As a result of this, Nationwide decided to begin taking action to terminate Ms L's credit card agreement as it was entitled to do in the circumstances. And it issued Ms L with a default notice in January 2020.

I do sympathise with what Ms L has told us. I fully appreciate why she will be unhappy with adverse information being recorded on her credit file. But by March 2020, it was clear that Ms L's financial situation hadn't improved and I don't think it would have been fair, reasonable or proportionate for Nationwide to hope for the best and ignore Ms L's obvious and apparent difficulty, or the fact that the credit card had become demonstrably unsustainable for her, indefinitely. So by this stage, I would have expected Nationwide to have taken action in the way that it did.

After all while terminating a facility and recording a default or other adverse information, might be viewed negatively by other lenders, it does offer the borrower certain protections in relation to the credit card debt. For example, it has meant that Nationwide has stopped adding interest to the account and prevented the debt from growing further. And asking Nationwide to remove the default, when Ms L didn't repay this debt in line with the initial arrangements and was significantly in arrears, would arguably be counterproductive and not in Ms L's interests or that of any future lender.

So I'm satisfied it was fair and reasonable for Nationwide to begin the process of terminating Ms L's credit card when it did in January 2020 by issuing a default notice. As this is the case and Ms L didn't, or wasn't able to, take steps to repay what was owed, within a reasonable period of time, I'm satisfied that Nationwide was entitled to withdraw Ms L's credit card and record the adverse information it did in March 2020.

### *Conclusions*

It's clear that Ms L feels strongly about her complaint and I do sympathise with the difficulties that she has had. I also accept that given the rules, guidance and standards in place today - in relation to a lender now needing to ensure that it does not lend irresponsibly rather than just considering the credit risk – it's possible that Nationwide wouldn't take the same lending decisions now. Indeed, it's also likely to have to bear in mind persistent debt requirements at this stage too.

However, all I can do is consider Nationwide's actions against the obligations and expectations that were in place at the time and in light of this make a call on whether it acted fairly and reasonably at that time. Finding that a firm was required to do something that it wasn't, or retrospectively applying rules that didn't apply at the time, would not only result in a decision that is not fair and reasonable all the circumstances, it would result in a decision that was unlawful. So I can't view whether Nationwide treated Ms L fairly and reasonably through the prism of today's standards.

Given, as I've explained, it's fair to say that the standards expected of lenders at this time was far more light touch than it is today and there's quite understandably very limited information from the time, I've not been persuaded that it was clearly unreasonable for Nationwide to have provided this credit card or the limit increase to her.

Therefore, bearing in mind all that I've considered here, I don't find that Ms L's relationship with Nationwide was unfair. I've not been persuaded that Nationwide created unfairness in its relationship with Ms L by unfairly lending to her whether when initially agreeing to provide her with a credit card, or in respect of it offering her the limit increase. Based on everything I've seen, I don't find Nationwide treated Ms L unfairly in any other way either.

As this is the case, while I can understand Ms L's sentiments and appreciate why she is extremely unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Ms L. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

### **My final decision**

For the reasons I've explained, I'm not upholding Ms L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 3 November 2025.

Jeshen Narayanan  
**Ombudsman**