

Complaint

Mrs I has complained about the overdraft charges Nationwide Building Society ("Nationwide") applied to her current account.

Mrs I is being represented, by the ("representative"), in her complaint. The representative has said the charges applied to Mrs I's account were unfair as there was a failure to take account her 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 her.

Background

Mrs I initially successfully applied for an overdraft on her current account in September 2012. At this point the limit on it was £100. The limit has fluctuated over time and it was £100 at its lowest and £2,000.00 at its highest. In April 2024, Mrs I complained saying that she was allowed to continue using the overdraft in a way that was unsustainable and caused her continued financial difficulty.

Nationwide did not uphold Mrs I's complaint. This was because it considered that it didn't need to consider parts of Mrs I's complaint as it was made too late and for the parts that it did consider it didn't think that it had done anything wrong or unfairly. Mrs I was dissatisfied at Nationwide's response and referred her complaint to our service.

One of our investigators reviewed what Mrs I and Nationwide had told us. She reached the conclusion that she wasn't persuaded that Nationwide had acted unfairly by allowing Mrs I to use her overdraft in a way that was unsustainable or otherwise harmful. So the investigator didn't recommend that Mrs I's complaint be upheld.

The representative, on Mrs I's behalf, 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.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. Nationwide has argued that Mrs I's complaint was made too late because she complained more than six years after some of the charges on the overdraft were applied, 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 Mrs I's complaint was one alleging that the lending relationship between Mrs I and Nationwide was unfair to Mrs I 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 Mrs I's complaint. Given the reasons for this, I'm satisfied that whether Mrs I's complaint about some of the specific charges applied was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mrs I's complaint should be considered more broadly than just the individual charges or lending decisions. I consider this to be the case as Mrs I has not only complained about the circumstances behind the application of the individual charges, but also the fact Nationwide's failure to act during the periods she alleges it ought to have seen she was experiencing difficulty caused ongoing hardship.

I'm therefore satisfied that Mrs I's complaint is a complaint alleging that the lending relationship between herself and Nationwide was unfair to her. I acknowledge the possibility that Nationwide may still disagree that we are able to look at the whole of Mrs I'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 Mrs I's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mrs I's complaint can be reasonably interpreted as being about that her lending relationship with Nationwide was unfair to her, 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 (Mrs I), 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 Mrs I's complaint, I therefore need to think about whether Nationwide's allowing Mrs I to use her overdraft in the way that it did, resulted in the lending relationship between Mrs I and Nationwide being unfair to Mrs I, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove any such unfairness.

Mrs I's relationship with Nationwide is therefore likely to be unfair if it allowed Mrs I to continue using her overdraft in circumstances where it ought reasonably to have realised that the facility had become unsustainable or otherwise harmful for her. And if this was the case, Nationwide didn't then remove the unfairness this created somehow.

Did Nationwide unfairly allow Mrs I to continue using her overdraft in a way that was unsustainable or otherwise harmful for her?

Before I go any further, as this essentially boils down to a complaint that Mrs I was unfairly charged as a result of being allowed to continue using her 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 Mrs I if it applied this interest, fees and charges to Mrs I's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mrs I was experiencing financial difficulty. So I've considered whether there was an instance, or there were instances, where Nationwide didn't treat Mrs I fairly and reasonably.

In other words, I've considered whether there were periods where Nationwide continued charging Mrs I 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 she was in financial difficulty.

Having looked through Mrs I's account statements throughout the period concerned, I can't see that Nationwide ought reasonably to have unilaterally taken corrective measures in relation to Mrs I's overdraft. I accept that Mrs I used her overdraft and there is no dispute over that. The representative's arguments appear to suggest that this in itself means that Mrs I was experiencing financial difficulty and therefore the complaint should be upheld.

However, 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 had an agreement to use and which 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.

But 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. Indeed if that were automatically the case, there would be an outright prohibition on revolving credit accounts being open ended, rather than there being a requirement for a lender to review how the facility is being used.

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 Mrs I's incomings and outgoings as well as any overdrawn balances and thought about whether it was possible for her to have stopped using her overdraft, based on this.

I think that if Mrs I was locked into paying charges in circumstances where there was no reasonable prospect of her exiting her overdraft then her facility would have been unsustainable for her. So I've carefully considered whether this was the case. In considering this matter, I'm mindful that Mrs I's account received regular credits which had the ability to substantially reduce her overall indebtedness. So I don't think that this is a case where Mrs I was marooned in her overdraft without any hope of being able to clear the balance.

Although I do accept that there were periods where Mrs I would have met the criteria of someone who displayed a pattern of repeat use of their overdraft. For the avoidance of doubt, I accept that there is a section of CONC (CONC 5D) which came into force in December 2019 which specifically 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 Mrs I lost out as a result of any potential failing. I've also therefore considered whether Mrs I's use of her overdraft (and Nationwide

continuing to allow her to use it) was causing her to incur high cumulative charges that were harmful to her. 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 Mrs I expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Mrs I's account.

Indeed, there was significant discretionary spend monthly and Mrs I also appears to be transferring funds to and from another account of hers. It could be said that in reality Mrs I was using her overdraft because she regularly transferred funds to other accounts. To be clear, I don't think that Nationwide had to request bank statements for accounts from other providers to see check how and why these funds were being transferred.

Given the repeat usage letters Mrs I is likely to have been sent by Nationwide, I think that she ought to have realised that how much she was paying as a result of using her account in this way. It's also worth noting that Mrs I did get into contact to ask for a repayment plan during the pandemic. So it's fair to say that her actions suggest that she knew that she could have requested help to repay her overdraft if she felt she needed support.

I also think that it is fair to say that Mrs I's salary together with her other credits was more than sufficient to have cleared the overdraft within a reasonable period of time had she wished to do so. Equally, while I've noted what the representative has said about Mrs I borrowing elsewhere, I can't see anything in the account transactions which ought to have alerted Nationwide to the possibility that Mrs I was borrowing unsustainably, or that the charges she was incurring were causing her harm either. Mrs I did have other credit commitments but this in itself does not mean that she was reliant on credit to meet her essential expenditure.

I accept neither of these things in themselves (or when taken together) mean that Mrs I wasn't experiencing difficulty. But I don't agree that Mrs I was reliant on credit. She was able to make any essential commitments without using her overdraft. However, Nationwide was reasonably entitled to conclude that she was choosing to use her overdraft to make discretionary transactions and in periods where she had increased funds her discretionary expenditure increased.

Given the representative's reference to CONC 5D, 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. Given the amount of funds that Mrs I was in receipt of, I'm not persuaded that Nationwide ought reasonably to have realised that Mrs I's overdraft usage was causing her harm.

I've also seen what the representative has said regarding CONC 5D.3.2R (3). However, CONC 5D.3.2 R (1) makes it clear that CONC 5D.3.2R only applies to customers who have a pattern of repeat use *AND* there are signs of the customer being in actual or potential difficulty.

In the first instance, it's worth noting that there isn't any suggestion that Mrs I contacted Nationwide to explain that she was experiencing difficulty, or that she needed help in repaying her overdraft, prior to her complaint. Furthermore, given I've not seen anything in Mrs I's statements, indicating that there were any of the signs highlighted in CONC 1.3, I'm satisfied that this isn't a case where there were signs of Mrs I potentially, or actually being in financial difficulty.

As this is the case, I'm satisfied that the applicable section of CONC 5D, to Mrs I's circumstances, is CONC 5D.3.1, rather than CONC 5D.3.2. CONC 5D.3.1 permits a firm to employ more subtle techniques such as sending a customer a further letter. As this is the case, I don't think that Nationwide was under an obligation to call Mrs I in the way that the representative has suggested.

Overall and having considered everything, I don't think that it was unreasonable for Nationwide to have proceeded adding the charges that it did. 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 Mrs I immediately repay her overdraft and if not defaulting her account, in circumstances where there was a realistic prospect of Mrs I clearing what she owed in a reasonable period of time.

Therefore, I don't find that the relationship between Mrs I and Nationwide was unfair to Mrs I. I've not been persuaded that Nationwide created unfairness in its relationship with Mrs I by allowing her to use her overdraft in the way that she did. Based on what I've seen, I don't find Nationwide treated Mrs I unfairly in any other way either.

In reaching my conclusions, I've noted that the representative has referred to the fact that Mrs I has had a similar complaint upheld about an account with a different bank. In effect it argues that this complaint should also be upheld as a result. However, having looked at the circumstances, it appears to me that the bank in Mrs I's other complaint proactively decided to refund the overdraft charges that Mrs I paid on that account as a gesture of goodwill.

It doesn't automatically follow that we would necessarily have reached the same conclusion had we looked at that complaint on its merits. Furthermore, I think it's also worth me stating as the compensation Mrs I has received on her other complaint, has effectively placed her in the position she would be had she not been allowed to continue using that overdraft in the first place.

As this correction has been made and that is effectively the position that Mrs I is now in, it would not be fair and reasonable for me to now 'double count' this, by considering whether she was able to sustain this overdraft alongside her other one. To do so would seek to place Mrs I in the position she would be in had she not been allowed any overdraft at all, because Mrs I was in a position where she couldn't afford to maintain one.

For the reasons I've explained, particularly in light of the information Mrs I has herself provided, I don't think that this is the position that this was the position that Mrs I was

actually in, let alone what Nationwide ought to have concluded bearing in mind what it saw on this overdraft.

So overall and having considered everything, while I can understand Mrs I's sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Mrs I. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

Although I'm not upholding Mrs I's complaint, I would remind Nationwide of its continuing obligation to exercise forbearance and due consideration, given what Mrs I has said about her financial situation and it appears to me that her position may well have worsened since she initially made her complaint.

I would also encourage Mrs I to get in contact with and co-operate with any steps that may be needed to review what she might, if anything, be able to repay going forward. Mrs I may be able to complain to us – subject to any jurisdiction concerns – should she be unhappy with Nationwide's actions in relation to exercising forbearance on her outstanding overdraft balance.

My final decision

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

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

Jeshen Narayanan
Ombudsman