

## Complaint

Ms H complains that Nationwide Building Society are holding her liable for an overdraft which was set up on a joint account she had with her ex-husband. She'd like for Nationwide to stop chasing her for the debt and any record to be removed from her credit file.

## Background

Ms H and her ex-husband had a joint account with Nationwide.

On the 26 February 2018 a phone call was made to Nationwide from someone claiming to be Ms H. The caller passed security and then asked for a £3,000 overdraft – the advisor explained that they couldn't approve this overdraft but they'd put an application through for £2,000, which was then approved. In September 2018 four bank transfers were made totalling £1,870, utilising funds from the overdraft, to an account not in Ms H's name.

Ms H complained to Nationwide that she'd previously asked to be removed from the joint account and for the account to be closed – but this didn't happen. She also explained that she didn't consent to the overdraft being added to the account, and thinks her ex-husband added it without her approval.

Nationwide looked into Ms H's complaint but didn't uphold it. They said that Ms H made the phone call to request the overdraft and any overdraft taken out on a joint account leads to both parties being joint and severally liable.

Ms H wasn't happy with Nationwide's response so complained to our service.

One of our investigator's looked into Ms H's complaint. He didn't think that Ms H should be held liable for the debt. He explained that although a joint account debt was usually joint and several, he'd seen a copy of a Court ordered report in which Ms H's ex-husband accepted he applied for the overdraft without Ms H's consent. For this reason he didn't think Ms H should be held liable for the debt.

Ms H accepted our investigator's opinion.

But Nationwide didn't agree. In summary they said:

- The report is based on Ms H's version of events – which were not taken under oath.
- There's no evidence that the account being referred to is Ms H's joint account held with Nationwide. This includes no date for when the overdraft was taken out and the report indicates an agreement to repay the debt was organised with Nationwide, but at the time of this report that wasn't the case.
- There's no confession from Ms H's ex-husband that he took out the overdraft.
- Any account holder can take out an overdraft on a joint account without getting approval from the other account holder.
- They believe that Ms H made the call to take out the overdraft on the 26 February 2018.
- Whether Ms H had the benefit of the overdraft doesn't impact on the terms and conditions of the account which state that all parties will be joint and severally liable.

As Nationwide didn't agree it's been passed to me for a 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. Having done so I've reached the same conclusion as the investigator for broadly the same reasons. And I'll explain why below.

It's important for me to first consider whether I think Ms H took out the overdraft herself or had knowledge of it being taken out. I've thought about what I think most likely happened here. And I think on balance it's more likely than not that Ms H's husband took out the overdraft without Ms H's consent or knowledge. I say this because:

- I've listened to the call made on the 26 February 2018 when the overdraft was applied for, and it's clear the caller identifies themselves as Ms H before passing security. There's also a discussion about adding an overdraft to the account, and once the bank explains to the caller £2,000 can be added the caller agrees. I've compared this call with those made to the service by Ms H. And on listening to the different calls I'm satisfied the caller's voice seems noticeably different. For this reason on balance I don't think it was Ms H who phoned Nationwide on the 26 February 2019 to apply for the overdraft.
- I've seen a copy of a Court ordered report dated January 2020, in which the report author states that Ms H's ex-husband *accepts 'that he made an application for an overdraft/loan on the joint account ... without Ms H's agreement ... He also accepts that he took all of the money out of the bank account ... leaving Ms H without any monies to pay the rent and buy food'*. I'm satisfied that this official Court report is strong evidence Ms H wasn't aware and didn't consent to the application of the overdraft.
- I've thought about how Ms H's ex-husband could have made the application without Ms H's knowledge. To make the phone call on the 26 February 2018 the caller needed to pass security. I've considered how they could have impersonated Ms H and I think it's highly likely Ms H's ex-husband would have either known or had access to security details to enable the caller to pass security. And then proceed to agree the overdraft.

Nationwide have argued that the Court ordered report doesn't refer to a particular joint account, there's no date as to when the overdraft was taken out and it wasn't taken under oath. Therefore it's not possible for them to be sure the overdraft being referred to is the Nationwide one – or that the account is completely accurate. I've considered Nationwide's points here but overall I'm afraid I don't agree. It's clear some of the points are valid – in that within the report there are no specifics about what account is being referred to or when the overdraft was taken out. But, this doesn't change my overall conclusion. On balance I think it's unlikely Ms H and her ex-husband have another joint account with a disputed overdraft, therefore I think the report likely refers to their joint account with Nationwide. I agree with Nationwide's other point which is the evidence wasn't taken under oath – and hasn't been challenged under cross examination. But, this is something I'd need to reach my conclusions. And I'm unable to see what benefit Ms H's ex-partner would achieve from telling the report author they'd taken out the overdraft without Ms H's consent or knowledge, if this wasn't the case.

Nationwide have also argued that any account holder can take out an overdraft without getting approval from the other account holder. I've thought about Nationwide's point here,

but I don't think it's fair for this term to apply in Ms H's case. I'm satisfied that it's more likely than not Ms H's ex-partner made efforts to apply for the overdraft without Ms H's knowledge and also proceeded to spend the funds without her being aware. I've further seen no evidence to indicate that Ms H benefited from the funds. For these reasons I don't think it's fair or reasonable for Nationwide to pursue Ms H for this debt.

In conclusion for the reasons I've explained above I don't think Nationwide should hold Ms H liable for the overdraft debt – and due to Ms H's lack of knowledge and consent for the application they should remove any reference to the overdraft from her credit file.

### **My final decision**

My final decision is I direct Nationwide Building Society to:

- Remove Ms H's liability for the overdraft debt and stop any debt collection activity.
- Remove any reference to the application and overdraft debt from Ms H's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 8 October 2020.

Jeff Burch  
**ombudsman**