

complaint

Mr S complains that Nationwide Building Society ("Nationwide") shouldn't have given him an overdraft, which he was subsequently allowed to increase the limit on in 2014.

background

I issued a provisional decision, setting out my thoughts on why I thought Mr S' complaint should be partially upheld on 10 January 2018.

I've attached a copy of provisional and it should be read together with this decision. I invited both parties to make any further comments before I reached a final decision.

Following this, Nationwide provided an initial response. It said my provisional decision concluded that it was unreasonable of it to expect Mr S to maintain an overdraft of £4,000 on a salary of £2,000. But Mr S' account had total credits of far in excess of £2,000 in the months leading up to the increases.

It then provided a further response, after the deadline for responding had passed, in which it said Mr S had a maximum lending limit of £4,300 at the time of the increases and he was allowed to flexibly increase his overdraft limit within this. The account was salary fed with a credit turnover of around £3,000 and Mr S had low levels of existing debt and a low indebtedness score at the bureau. So the maximum lending limit was deemed comfortably affordable under the Financial Conduct Authority's ("FCA") Consumer Credit Sourcebook ("CONC").

Mr S also responded to my provisional decision with queries about how I'd asked Nationwide to calculate whether he was due any compensation and asking whether his credit file should be amended to reflect any retrospective changes to his overdraft.

my findings

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

I've given careful thought to Nationwide and Mr S' further points. But I've not been persuaded to alter my conclusions. I'd like to explain the reasons for this.

my thoughts on Nationwide's further points

Nationwide has referred to its obligation to lend responsibly as set out in CONC. I'm pleased to see that it has referred to CONC because while I might not have stated it specifically, the reason I partially upheld Mr S' complaint was because I thought that Nationwide had failed to meet its obligations.

Section 5.2.2R(1) of CONC set out what a lender needed to do before agreeing to give a consumer borrowing of this type. And it says a firm had to consider *"the potential for the commitments under the agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the agreement is to be made."*

CONC 5.2.2G includes some guidance on how a firm should carry out the above. And it says “A firm must consider sufficient information to enable it to make a reasonable creditworthiness assessment or a reasonable assessment required by (1)”. A creditworthiness assessment is defined as being an assessment including as to the affordability of credit by the customer.

Nationwide says Mr S’ account was credited with substantially more than £2,000 in the month leading up to the increase. I accept that this is the case. But Mr S’ statements clearly show these additional credits were coming from gambling. And I don’t think it’s fair or reasonable for Nationwide to include these credits as income yet disregard the source of these funds.

Equally Nationwide had this information (on Mr S’ gambling) and it was aware of it at the time of the increases. So I don’t think it choosing to ignore this information (irrespective of the limitations of its systems) in favour of obtaining information from a third party credit reference agency means that it met his obligations under CONC here.

Nationwide would also have been aware that Mr S had maxed out his initial £2,000 limit within a very short period of time. So I also think that it ought to have been aware that increasing Mr S’ limit again so drastically, in these circumstances, without carrying out any further enquiries into his expenditure had the potential to adversely impact Mr S’ financial situation. And I think that Mr S’ account conduct, in terms of maxing out the facility he was initially granted, is another reason why he shouldn’t have been given the further increases over £2,000.

I’ve also thought about what Nationwide has said about Mr S having a maximum lending limit of £4,300. But Nationwide’s initial business file said Mr S was given a maximum limit of £2,000 in April 2014.

It’s possible that Nationwide thought it was appropriate to increase the maximum amount it was prepared to lend. But it hasn’t provided anything substantive to show what led it to believe that it was reasonable to do this. And given what Nationwide should have been aware of as a result of the transactions on the account and Mr S’ account conduct, I simply don’t agree that there was a reasonable basis for increasing Mr S’ overdraft limit in the way that Nationwide did.

Overall having thought about everything, I remain of the view that Mr S shouldn’t have been given the overdraft limit increases that he was given from 19 May 2014 onwards.

Mr S’ argument regarding his credit file

I understand that Mr S’ queries regarding the proposed method of calculating whether he’s due any compensation have been answered by our adjudicator. So I don’t think there’s any need to repeat that information here and I’ve only thought about the further points Mr S has made about his credit file.

I should start by saying that, even though I didn’t specifically refer to this, I am mindful of our general approach to amending credit files on complaints upheld (or partially upheld) as a result of irresponsible lending. And I did give careful thought to whether Mr S’ credit file should be amended prior to reaching my provisional decision. But I didn’t think that it would be fair to Mr S for me to ask Nationwide to amend his credit file and I still think that this is the case now.

To explain, the basis for Mr S' complaint was and is that his credit file and his statements show that he shouldn't have been given his overdraft because of his gambling addiction. He has essentially argued that Nationwide breached a duty of care to him by lending to him in such circumstances because he wasn't in a position not to use any funds he borrowed to gamble.

I've accepted that this is the case and that's why I've partially upheld Mr S' complaint. I've also seen that Mr S' most recent account statements still show some gambling transactions. And although the amount being gambled is substantially less than the period of time Mr S' overdraft limit increases were given, Mr S is overdrawn right to his limit.

While it's not for me to tell Mr S how he should and shouldn't spend his money, I can't ignore the fact that Mr S has clearly said that being given his overdraft facility made what was already a precarious financial position worse. And, in these circumstances, it seems to me that amending Mr S' credit file to remove adverse information thus increasing the chances of him being able to access further funds would be counterproductive and arguably not in his best interests, or those of any potential lender.

So having carefully thought about everything, while I'm going to ask Nationwide to reconstruct Mr S' account balance (in the way set out below), to ensure he doesn't have to pay the extra interest as a result of being given his overdraft limit increases, I'm not going to ask Nationwide to amend his credit file.

I appreciate that Mr S will find this part of the decision disappointing. But I hope he'll understand the reasons I've reached the conclusion I have.

fair compensation - what Nationwide needs to do to put things right for Mr S.

In my provisional decision, I set out what I intended to ask Nationwide to do to put things right for Mr S. and I also in some detail explained the reasons for this.

Other than what Mr S said about his credit file, which I've already considered above, neither party disputed my proposed resolution. So I still think that Nationwide needs refund the extra interest Mr S paid because of the extra he was allowed to borrow. And it should do this by doing the following:

- A. Mr S still has an outstanding balance on his overdraft. So Nationwide should find out how much Mr S would owe on his overdraft if the limit increases hadn't been approved.

So, it should remove the extra interest Mr S paid as a result of being allowed to borrow more than £2,000 – as well as any extra charges he had to pay as a direct result of being allowed to borrow the extra he shouldn't have been allowed to, from the outstanding balance on the overdraft.

- B. If – when Nationwide works out what Mr S would've owed on his overdraft if he hadn't paid the extra interest for the limit increases he shouldn't have been given – Mr S paid back more than enough to clear his overdraft, Nationwide should also pay simple interest on the extra Mr S paid from the point Mr S' account balance would've been in credit. The interest rate should be 8% a year.[†]

- C. Nationwide should tell Mr S what it's done to work out A and B.
- D. If an outstanding balance remains on Mr S' overdraft after all the extra interest he shouldn't have paid is removed, Nationwide should arrange an appropriate repayment plan for Mr S to repay this.

[†] HM Revenue & Customs requires Nationwide to take off tax from this interest. Nationwide must give Mr S a certificate showing how much tax it's taken off if he asks for one.

my final decision

For the reasons set out above and in my provisional decision of 10 January 2018, I'm partially upholding Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr S to accept or reject my decision before 12 March 2018.

Jeshen Narayanan
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mr S complains that Nationwide Building Society ("Nationwide") shouldn't have given him an overdraft, which he was subsequently allowed to increase the limit on in 2014.

background

Mr S successfully applied for an overdraft on his Flex Account in April 2014. He was granted an initial limit of £1,200 on 22 April 2014.

From what I've seen Mr S' overdraft limit was then increased to the following amounts on the following dates:

- £2,000 – 2 May 2014
- £2,500 – 19 May 2014
- £2,800 – 20 May 2014
- £3,000 – 30 May 2014
- £4,000 – 5 June 2014

Mr S says that it should've been apparent to Nationwide from the information it had that he simply wasn't able to service this overdraft. He has referred to defaults, arrears and arrangements to repay being recorded on his credit file. He's also referred to it being apparent on his statements that he was gambling most of the money in his account.

One of our adjudicators looked at what Nationwide and Mr S had said. He thought that the initial decision to give Mr S an overdraft of £1,200, in April 2014, wasn't unfair or unreasonable. But he also thought that the subsequent decisions to increase the limit on the overdraft were unfair and unreasonable and that Mr S' complaint should be partially upheld as a result. Nationwide disagreed with our adjudicator and asked for an ombudsman to review the complaint.

my provisional findings

I've considered all the available evidence and arguments to provisionally decide what's fair and reasonable in the circumstances of this complaint. I've also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Having given careful thought to everything provided, I'm intending to partially uphold Mr S' complaint. I'd like to explain the reasons for my decision.

Mr S has told us that he'd previously been declined for loans, overdrafts and credit cards, on a number of occasions, prior to successfully applying for this overdraft. He's also said his credit report was full of defaults, arrears, arrangement to pays and notifications of being in debt management. And if Nationwide had carried out reasonable enquiries it would've seen this. Mr S has provided a copy of his credit report and it does appear to support, at least, some of what he's said.

On the other hand, Nationwide says the credit check it carried out didn't show any adverse information. And as a result of this and the good conduct of Mr S' account, it decided to grant Mr S an overdraft with a maximum limit of £2,000. But as Mr S only initially requested a limit

of £1,200 that's what he was given in April 2014. Nationwide also says that for the increases that it approved above £2,000, it continued to rely on the good conduct of Mr S' account. Although it says it didn't look at the individual transactions on Mr S' account.

I've carefully thought about what both parties have said.

I do find it somewhat strange that Nationwide requested information from a credit reference agency instead of using the account transaction information it already had when it decided to give Mr S an overdraft.

But Nationwide was entitled to do this. And as I haven't seen enough here to say that it did most likely see adverse information when it ran a credit check on Mr S, I don't think that its initial decision to give Mr S an overdraft was unfair or unreasonable. This is especially as it wouldn't have known that Mr S would use, or that he was likely to use, the full amount in such a short period of time. Equally as it initially approved Mr S for an overdraft with a £2,000 limit, I don't think that Nationwide agreeing to Mr S' request for a limit increase to £2,000 was unreasonable either.

That said, I do have significant concerns about the increases that took place after that. I say this because Nationwide doubled Mr S' overdraft limit in a period of just over a month. This was despite Mr S having been approved for a *maximum* limit of £2,000. Nationwide says it relied on Mr S' good account conduct to approve these limits. But I can't see how it could've reached that conclusion without having looked at the running of the account.

Even if Nationwide's systems didn't pick up the individual transactions on Mr S' account (I have to say that I find this somewhat concerning), Nationwide would've been aware that Mr S' monthly salary was only around £2,000. So I don't see how Nationwide could've reasonably expected Mr S to be able to service a facility with such a limit – especially as he'd already maxed out the £2,000 facility he'd been given less than a month earlier.

In any event, I also think that the pattern of Mr S' requests merited an even closer look at the conduct of his account. And I think that this would've picked up on the transactions being undertaken and Nationwide would've then seen that most of these funds were being used to gamble.

Taking all of the above together, I think it was unfair and unreasonable for Nationwide to have approved the overdraft limit increases given on and after 19 May 2014.

So overall and having given careful thought to everything provided, I'm intending to say that Mr S lost out because Nationwide unfairly increased Mr S' overdraft limit above £2,000 from 19 May 2014 onwards. And this means I'm intending to tell Nationwide that it needs to put things right.

putting things right - what I think is fair compensation in the circumstances of this case

I've given a great deal of thought to what amounts to fair compensation in this case.

Where I find that a business has done something wrong, I'd normally expect the business to put the consumer in the position they would be in if that wrong hadn't taken place. And in an ideal world, I'd tell the Nationwide to put Mr S in the position he'd now be in if he hadn't been given the overdraft limit increases he shouldn't have.

So, in this case, I'd tell Nationwide to put Mr S in the position he'd now be in if he hadn't been given the overdraft limit increases from 19 May 2014 onwards. But Mr S was given the limit increases and he used the funds. So it's simply not possible to put him back in the position he would be in if he hadn't been given this money in the first place. And I have to look at what else I can do to put things right in a way that's fair to all parties.

In reality it's the extra interest and charges because of the extra Mr S was allowed to borrow, that was the main consequence of Nationwide having given Mr S these overdraft limit increases it shouldn't have.

So I think that Nationwide should refund the extra interest Mr S paid because of the extra he was allowed to borrow. It should do this by doing the following:

- B. Mr S still has an outstanding balance on his overdraft. So Nationwide should find out how much Mr S would owe on his overdraft if the limit increases hadn't been approved.

So, it should remove the extra interest Mr S paid as a result of being allowed to borrow more than £2,000 – as well as any extra charges he had to pay as a direct result of being allowed to borrow the extra he shouldn't have been allowed to, from the outstanding balance on the overdraft.

- B. If – when Nationwide works out what Mr S would've owed on his overdraft if he hadn't paid the extra interest for the limit increases he shouldn't have been given – Mr S paid back more than enough to clear his overdraft, Nationwide should also pay simple interest on the extra Mr S paid from the point Mr S' account balance would've been in credit. The interest rate should be 8% a year.[†]

- E. Nationwide should tell Mr S what it's done to work out A and B.

- F. If an outstanding balance remains on Mr S' overdraft after all the extra interest he shouldn't have paid is removed, Nationwide should arrange an appropriate repayment plan for Mr S to repay this.

[†] HM Revenue & Customs requires Nationwide to take off tax from this interest. Nationwide must give Mr S a certificate showing how much tax it's taken off if he asks for one.

my provisional decision

For the reasons I've explained, I'm intending to partially uphold Mr S' complaint and tell Nationwide Building Society to pay redress as set out above.

So unless the comments and evidence I get by 24 January 2018 change my mind, that's what I'll tell Nationwide to do in my final decision.

Jeshen Narayanan
ombudsman