

The complaint

Ms B complains that Nationwide Building Society irresponsibly gave her two fixed sum loan agreements she couldn't afford.

Ms B is represented in this complaint, but for ease I'll refer only to Ms B throughout.

What happened

In September 2021, Ms B applied for a fixed sum loan with Nationwide. The loan was for £10,000 and Ms B was required to pay 60 monthly repayments of £198.77. She then applied for another loan with Nationwide around eight weeks later, in November 2021. The second loan was for an additional £10,000 which was repayable in 60 monthly instalments of £230.25.

Ms B complained to Nationwide to say that she could never afford to repay the loans. She said her income was made up of benefits and that this was unlikely to change given her circumstances. She said that Nationwide should have questioned the purpose of the first loan as it was recorded as being for home improvements. However, as she lived in council rented accommodation, she had no reason to take out a home improvement loan. She said that no checks were done on how she spent the money under the first loan and that insufficient affordability checks were completed for both loans. She said that she was vulnerable and that Nationwide ought to take that into consideration when putting things right.

Nationwide didn't think it had acted unfairly. It said that it had completed appropriate checks and that these didn't show any affordability concerns.

I sent Ms B and Nationwide my provisional decision on 19 October 2023. I explained why I thought the complaint should be upheld in part. I said:

Before lending to Ms B, Nationwide needed to carry out proportionate affordability checks to ensure she could afford to repay what was borrowed. What is considered proportionate will vary with each lending decision as there is no set list of checks that were required to be completed every time. In deciding what would be proportionate Nationwide had to take into account things such as (but not limited to): the amount borrowed, the size of the monthly repayment, the purpose of the loan, the cost, the term and the consumer's circumstances.

Ms B applied for both loans over the phone. Nationwide therefore had an opportunity to gain more insight and information from Ms B than if she had applied online. As part of each application, it asked Ms B what her income was, some basic questions about her expenditure (such as the amount of rent she paid) and it completed a credit check.

For the first loan, Ms B declared her monthly income to be around £1,700 and her monthly rental commitment to be around £380. The credit check revealed that Ms B had no existing credit commitments. Nationwide used statistical data to estimate her

likely essential living costs and information from credit reference agencies to check the income figure Ms B had declared. After doing all of this it concluded that the loan repayments were likely to be affordable.

I don't think there was anything within these checks that ought to have concerned Nationwide about the affordability or sustainability of the loan. I think given what it had established about Ms B's circumstances I think it completed reasonable and proportionate affordability checks. From what it could see about Ms B's circumstances, the loan appeared to be affordable. This is because she had a reasonable regular income (which a credit check demonstrated to be broadly accurate), no existing credit commitments and her rent wasn't a significant when compared to that income. In short, there were no signs of possible financial stress.

I note Ms B has said that Nationwide ought to have questioned the purpose of the loan. Ms B had declared the loan was for home improvements, but she was in rented council accommodation. Having listened to the call where Ms B applied for the loan, I'm satisfied this wouldn't have caused Nationwide any concern. This is because Ms B explains that she needed the loan to buy new furniture, furnishings and electrical appliances for her home. It appears 'home improvements' was the nearest match that the Nationwide representative could select from a pre-determined list to denote the loan purpose. I don't think there was anything in what Ms B had said during the call that ought to have reasonably caused Nationwide to question Ms B's need for the loan.

There was someone else on the call with Ms B who appeared to be a friend assisting her with her loan application. I don't think there was anything within the call or their interactions that ought to have concerned Nationwide that Ms B might have been coerced into taking out the loan.

Taking all of the above into account, I don't think Nationwide made an unfair lending decision when it granted Ms B the first loan. However, I think it did act unfairly when it gave her the second loan.

I've listened to the telephone call when Ms B applied for the second loan. I think there were a number of things within this call (in conjunction with what it already knew about her circumstances) that ought to have caused Nationwide concerns about lending more money. Firstly, I think it ought to have been clear Ms B was vulnerable and secondly, that there was a high possibility the loan repayments were likely to be unaffordable and/or unsustainable for her.

During the call Ms B had disclosed to Nationwide that she had a carer and that the carer had written important information down for her. She also told the representative that she had lost all of her money because she had been scammed by an ex-partner. She said this resulted in her losing her home and forced her into council rental accommodation. I think this ought to have put Nationwide on notice that Ms B was likely to be vulnerable.

It was apparent from the beginning of the call that Ms B had no idea how long ago she had entered into the previous loan agreement with Nationwide, despite that application having happened only around eight weeks earlier. This in itself wasn't necessarily a cause for concern. However, when taken in the context of everything else that happened during that call and what Ms B disclosed, Nationwide arguably ought to have been concerned about lending her further money.

Ms B was evidently confused about the impact further borrowing was likely to have

on her financial circumstances. She was surprised to learn that borrowing an additional £10,000 on top of the £10,000 she already had was going to cost her more. She appeared to be under the impression it would cost her less overall.

I accept that the representative from Nationwide spent a considerable period of time explaining the correct position to her, including the various options such as having two loans running concurrently or having one large, consolidated loan and their associated costs. It does appear Ms B understood the overall costs after this explanation. However, she was clearly concerned about whether she could afford it.

Towards the beginning of the call the representative asked her how much she had budgeted for the new loan. Ms B said: "I haven't thought about that". When the representative gave her the monthly repayment figures Ms B indicated "I could just do that" when referring to being able to afford repayments towards the cheaper (when considering the monthly repayment) of the two options. Ms B's tone and from everything she'd said before ought to have concerned Nationwide that a new loan might not be affordable or sustainable for her. Or at the very least, it needed to do more than rely on statistical estimates of her expenditure to satisfy itself that it would be affordable.

After this, it became clear that Ms B hadn't actually considered how much money she needed to borrow. She had incorrectly assumed that borrowing more money automatically resulted in a cheaper loan and said this to the representative. The representative asked whether she'd researched how much she needed to borrow for the various purchases Ms B had said she needed to make. Ms B said she hadn't.

The representative then suggested it might be better for Ms B to do that first before committing to such a large loan. At this point Ms B began to become more insistent that she just wanted to go ahead with the new £10,000 loan.

I've also considered that throughout the call Ms B was unclear about what exactly the loan would be used for. She said that she needed it for a car, a plot of land at a graveyard and "electrical bits and pieces and DIY". Given it was clear Ms B had given no consideration at all as to how much a car and the plot of land or the other electrical items would actually cost her to purchase, it ought to have caused Nationwide to question the true purpose of this loan, especially when she had very recently taken out a similar loan, also for miscellaneous purchases.

It is arguable whether Nationwide should have proceeded with the application at all, given how the conversation went. However, at the very least, I think it would have been reasonable and proportionate for Nationwide to have completed a much more detailed affordability assessment before lending the second loan. This ought to have included verifying Ms B's income and expenditure.

I can't be certain what evidence and information Nationwide would have seen had it carried out proportionate affordability checks. In the absence of anything Nationwide did, I've relied on copies of Ms B's bank statements from around the time of the application. I think these give a good indication of what Nationwide would likely have discovered about her financial circumstances.

Ms B's income was made up of benefits, around a third of which were disability benefit. In total, she received around £1,700 per month. Her rent was around £380 per month, she was already paying around £200 per month to Nationwide for the first loan, and around £230 per month for other essential bills. This left her with around £890 for her essential living costs.

Ms B has provided an income and expenditure analysis which demonstrates that she had insufficient funds to be able to afford the repayments. I can't however see a number of those costs on her bank statements, or for the amounts that have been listed. It appears, when taking into account her essential living costs (that I can see from her statements) and income that the second loan might have been affordable.

However, its also clear from Ms B's bank statements (as well as medical reports she's provided us with) that she had a compulsive spending problem. Ms B had told Nationwide that the first loan was needed to buy furniture and expensive appliances for her home. I can see from Ms B's bank statements that this is not what she used the loan proceeds for.

She made a significant number of low to medium value purchases with television shopping companies over a very short period of time. I think it would have been clear to Nationwide (had it done appropriate affordability checks), that Ms B had not used the money for the purpose she'd stated, that she had a compulsive spending problem and that giving her further credit was likely to cause her unnecessary financial difficulty. This coupled with the other concerns I've noted earlier in the decision that became apparent during the application call means that I don't think Nationwide made a fair lending decision with the second loan.

Ms B responded to say that she had no new information to provide other than an updated income and expenditure assessment. She said that the second loan should not have been given to her as it was clearly unaffordable. She didn't agree with my conclusion that the second loan appeared affordable.

Nationwide disagreed with my provisional decision. It provided a comprehensive response. In summary, it said:

- During the application process for the second loan, Nationwide did carry out an income and expenditure statement with Ms B and based on the information she provided, the loan was affordable.
- The conclusion in the provisional decision isn't within the spirit of the Consumer Credit Sourcebook ("CONC"). This is because I've suggested that Nationwide needed to step far away from the requirements of the regulatory rules and guidance in place. It said that as a responsible lender, it needed to balance customer service and keep lending available without putting undue hurdles for applicants to obtain credit. Examining, in detail, someone's bank statements without due reason would do this.
- Given the number of loan applications Nationwide receives it wouldn't be possible to manually check each application, nor was there any plausible reason to do so for Ms B's application. Even if Nationwide had done manual checks for Ms B and reviewed her Nationwide current account, there was no compulsive spending apparent on her statements nor did she disclose any issues with compulsive spending during the application call. Unless a customer's spending was untenable, it wouldn't decline a loan application.
- It calculated that Ms B would have over £230 in disposable income each month after the second loan was taken out and it considers this demonstrates it lent responsibly. Its calculations of Ms B's expenditure included estimates (based on statistical data) of her likely living costs and her council tax. Ms B provided the cost of her rent during the call. It took her existing credit commitments into account from her credit file.

- It said it's not unusual for someone to ask for further lending soon after an initial loan and there are a number of plausible reasons why that might be necessary.
- It didn't agree with my conclusions that Ms B was unclear about what she wanted to borrow money for. It said that by the end of the call, Ms B appeared to understand the costs involved and she was happy to proceed on that basis. Nationwide therefore considers it followed the correct and fair process by continuing with the loan application.

What I've decided – and why

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 outcome I reached in my provisional decision and for broadly the same reasons. However, I'll address the additional points raised by both Ms B and Nationwide and explain why these don't change my view on what a fair outcome should be.

Both parties appear to have accepted what I said concerning the first loan. So, I've seen no reason to make any further comment except to confirm I'm satisfied Nationwide acted fairly when it approved that loan for Ms B.

Nationwide says that what I've suggested they should have done in relation to the second loan goes far beyond the expectations in CONC. I disagree, and it concerns me that Nationwide thinks that's the case. For clarity, I haven't suggested that Nationwide were required in every lending decision to complete manual checks on every customer. Only that I think in the specific circumstances of Ms B's second loan it should have. I remind Nationwide that I didn't suggest this was necessary for the first loan, so I'm surprised it thinks I've suggested otherwise.

While I agree that Nationwide weren't required to *always* complete manual checks on lending applications, that doesn't mean it would *never* be appropriate or reasonable to do so. CONC 5.2A.17R(2) sets out that Nationwide "*must take reasonable steps to determine the amount, or make a reasonable estimate, of the customer's current non-discretionary expenditure.*" In this case, Nationwide asked Ms B what she paid towards rent, used a credit check to determine her credit commitments and then estimated her other non-discretionary expenditure using statistical data.

CONC 5.2A19G(1) provides a guidance note to estimating non-discretionary expenditure. It sets out that Nationwide may use statistical data to estimate non-discretionary expenditure unless it knows or has reasonable grounds to suspect that using statistical data is unlikely to be representative of the applicant's circumstances.

I've set out in detail in my provisional decision why during the application call for the second loan I think Nationwide ought to have been on notice that Ms B was likely to be vulnerable. She also alluded to the possibility that the second loan was likely to be a stretch for her from an affordability perspective. All of this ought to have highlighted to Nationwide that Ms B's circumstances were unlikely to be representative of the average customer. Therefore, relying on statistical averages to estimate her non-discretionary expenditure was inappropriate. This is particularly the case where during the call she initially disclosed she hadn't given any consideration to what she could afford to repay and later, that she could "*just*" afford it. This went against what Nationwide's statistical data estimated and ought to have caused it to carry out more detailed enquiries about her financial circumstances before lending.

As I said in my provisional decision, arguably Nationwide shouldn't have proceeded with the second loan at all given the number of concerning disclosures Ms B made during the application call. But giving Nationwide the benefit of doubt, at the very least it would have been proportionate and reasonable for it to have carried out more detailed affordability checks. Which, in this case I think ought to have included a thorough review of her actual expenditure, rather than estimating it. As I've set out above, and contrary to what Nationwide has sought to argue, CONC envisages that this level of checking might be appropriate in certain circumstances. I think those circumstances apply here for the reasons I've previously given.

Nationwide says that Ms B's Nationwide current account had no compulsive spending activity. I agree. But there was barely any activity at all on that account at the relevant time. The proceeds from loan one were paid into it and then over time transferred out into another account. Ms B's income nor any of her regular expenditure was visible on the Nationwide statements. So, it would have been reasonable and proportionate for Nationwide to have verified this information using the bank statements from the account where this activity was happening.

Having reviewed those statements, I think it would have been clear to Nationwide that Ms B was compulsively spending. As an example, in one week in October (a few weeks before the second loan was applied for) Ms B made almost 50 separate transactions to television shopping companies spending in excess of £1,500. This was all funded by the first Nationwide loan. A similar pattern of spending is apparent from when the loan proceeds first credited her account to just before the second loan was applied for. The second application coincided with when she had spent all the loan proceeds from the first loan. I think this demonstrated that Ms B's spending was unsustainable and she was unlikely to be using the loan proceeds for the purposes she had said in the application call. Granting her further credit was likely to cause her financial harm. I therefore think Nationwide acted unfairly when it granted the second loan.

Ms B says that the second loan was unaffordable for her even if the compulsive spending wasn't taken into account. She's provided an income and expenditure statement to demonstrate this. However, even if I agree the second loan was unaffordable without the compulsive spending, this wouldn't change the overall outcome I've reached. This is because I've already found that Nationwide shouldn't have granted the second loan. I think the redress I set out in my provisional decision is a fair way to put things right irrespective of the reason Nationwide shouldn't have lent to Ms B. As Ms B has spent the money she borrowed, I consider it fair and reasonable that she pays that back. Her income and expenditure assessment demonstrates that she has some funds each month from which she can do that (although I accept these may not be enough to cover the contractual amounts), so I don't consider it unreasonable.

My final decision

For the reasons given above, I uphold this complaint and direct Nationwide Building Society to:

- Remove all interest, fees and charges applied to loan two.
- As there will still be a capital balance outstanding, Nationwide should set up an affordable repayment plan for the remaining amount. Once Ms B has repaid all the capital under loan two, Nationwide should remove any adverse information it may have recorded in relation to that loan on her credit file.

If Nationwide has sold the debt to a third party it should either buy back the debt to carry out

these directions or ensure that the third party complies with them promptly on Nationwide's behalf.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 18 December 2023.

Tero Hiltunen
Ombudsman