

The complaint

Mr K complains that Nationwide Building Society have unfairly reported a missed payment to the Credit Reference Agencies (CRA's).

What happened

Mr K says that Nationwide recorded a missed payment marker on his basic bank account which he no longer uses, despite the account having no overdraft facility and therefore it is impossible to have missed a payment. He acknowledges the account had a negative balance, but because the account had no overdraft or contract of payment terms, he believes this marker on his credit file is invalid. Mr K made a complaint to Nationwide.

Nationwide did not uphold Mr K's complaint. They said his account did not offer an overdraft facility, therefore entering an unarranged overdraft was against the terms of the account. They said he entered the unarranged overdraft on 19 March 2022 by being overdrawn by £79, then he made a payment of £40 on 14 May 2022, which didn't cover the full overdrawn amount, so Nationwide recorded this as a missed payment, and they were unable to remove this from his credit file. They said he cleared the overdrawn balance on 29 August 2022 and his account was closed in December 2022. Mr K brought his complaint to our service.

Our investigator did not uphold Mr K's complaint. He said based on the terms of the account, Nationwide were within their rights to add the marker to his credit file, as there were long periods when he was overdrawn, and he was not making payments to clear the arrears.

Mr K asked for an ombudsman to review his complaint. He made a number of points. In summary, he said the terms and conditions clearly state that for an account which enters an unarranged overdraft, they will notify the customer within 14 days and again at 28 days stating repayment terms, but this did not happen, so he was not aware of the account status until he went to close the account. He said as no payment terms were set by Nationwide then no terms could be met on his part. Mr K said their terms were not clear and he did not receive his statements as they were sent via online banking which he didn't have access to.

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.

Firstly, I'm aware that I've only summarised Mr K's complaint points. And I'm not going to respond to every single point made by him. No discourtesy is intended by this. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point to be able to reach what I think is a fair outcome.

I've considered the terms of the account and what Mr K has said about Nationwide notifying the customer within 14 days and again at 28 days. But I believe the part that Mr K is referring to regarding the 14 days is regarding them taking money from any other account he has with

them to repay the debt. I say this because the terms say *"If any money you owe us is overdue for payment we may use any money you have in any of your accounts with us to reduce or repay what you owe. We can do this where you have accounts in your name only, as well as with accounts you hold jointly with another person. We'll tell you at least 14 days before the first time we exercise this right."*

So I'm satisfied this doesn't apply here as Nationwide weren't offsetting the debt with money from any of Mr K's other accounts he had with them (if any). As the account has no overdraft facility, then any unarranged overdraft would be overdue for payment, as it would be a breach of the terms to make a payment when there weren't funds available. I say this because the terms have a section which says *"I haven't got enough money in my account to make a payment, can I do it anyway?"*

This section says *"No, you should try and avoid making payments out of your account if you don't have enough money to cover it. You are not allowed to take more money out of your account or spend more money on your card than you have in your account (although there may be some occasions when we cannot prevent the account going into an unarranged overdraft for example if you pay for things and the purchase system used by a merchant does not send us a request for prior authorisation of the payment or we are unable to verify the prior authorisation of the payment)"*.

So as Mr K did not have sufficient funds to make the payment, he should not have used his card to make the payment. The terms also do state *"If your account does go into an unarranged overdraft, we expect you to take reasonable steps to repay that money as soon as you can - going into an unarranged overdraft is a breach of the account terms and conditions"*. But I'm not persuaded the words saying *"we expect you to take reasonable steps to repay that money as soon as you can"* negates Nationwide's obligation to report accurate information to the CRA's.

The terms show that Nationwide will share information with other organisations. And it's noted that holding his account would be documented on his credit file. The terms show where he can find out information about *"How Nationwide uses your Information"*. I've looked at this document. I've considered what Mr K has said about this showing they would send a notice that gives him 28 days to bring his payments up to date. But I'm not persuaded that this section is relevant to Mr K's circumstances here. I say this because this section is regarding *"Information about defaults"*. But Mr K's account did not default, and it was not due to be defaulted at the time the arrears were reported to the CRA's. This is part of a wider section regarding helping Mr K in challenging times, but Nationwide confirmed to our service that Mr K never got in touch regarding his debt, so no payment arrangement was made.

I've considered what Mr K has said about only finding out the account status when he closed the account as he didn't have access to his statements. But it would be Mr K's responsibility to let Nationwide know if he could not access his statements. Nationwide could have changed the statements to be delivered by post if Mr K did not want to use (or was unable to use) online banking as their terms show they can do this (and the terms also show they will still send him certain communication by post).

I can see from Mr K's statement that on 18 March 2022 he credited £33 to his Nationwide account and on the same day he made a payment back in his same name. So as he made the payment from Nationwide, he reasonably ought to have been aware that he had a balance of £1 in his account before he made a payment of £80 the following day on 19 March 2022, which would create an unauthorised overdraft. Looking at Mr K's statements from December 2021 up until that point, his highest balance in his account was £1. So I'm not persuaded that he should have been under the impression he had enough money in his account to make the £80 payment.

I can also see communications that Nationwide have sent to Mr K about the unarranged overdraft. The letter shows the same address as he provided our service and has a date of 11 May 2022 from Nationwide's collections and recoveries team. The letter tells Mr K that *"We need to let Credit Reference Agencies know if your account goes into an unarranged overdraft. This can be bad for your credit rating and might make it hard to get credit in the future"*. The letter also has a section which says *"What does being over my agreed limit mean for my credit rating?"* This section includes the wording *"A credit rating is a tool used by lenders to help them decide if you are eligible for a particular credit product such as an overdraft, credit card, loan or mortgage. Companies use your credit rating to estimate how likely you are to pay back the debt. If you exceed your current account limit, this is reported to the Credit Reference Agencies and means you may be less likely to be offered credit in the future"*.

Mr K did make a payment of £40 on 14 May 2022, which could indicate he did receive Nationwide's letter they sent him, although I accept this could be coincidental, even if this was his first payment into the account since he breached the terms of the account by trying to pay for something he didn't have the money for. And Nationwide sent him a follow up letter on 1 June saying *"We wrote to you recently to let you know your account balance had gone below zero"* and again it said *"We need to let Credit Reference Agencies know if your account goes into an unarranged overdraft."* So as Mr K's overdraft limit was £0 and he exceeded this limit by making a payment which created an unarranged overdraft, then Nationwide reported this to the CRA's. I'm satisfied that Nationwide gave the CRA's information that his account was in an unarranged overdraft as it would be their obligation to report account activity to the CRA's.

Mr K may wish to consider registering a *"notice of correction"* with the CRA's to explain what happened here. This is a short explanatory note that he can add to an entry on his credit file, to explain the background to that entry. So anyone who searches his credit report, would see the notice of correction and take the notice into account if they viewed his credit file. Prospective lenders will each consider a notice like this differently and it isn't a guarantee that they will put the underlying payment information to one side. But given how strongly Mr K feels here - it is an option that is open to him. He would need to contact the CRA's to do this. But as Nationwide are obliged to report the account activity to the CRA's, it follows I don't require Nationwide to do anything further.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 3 October 2023.

Gregory Sloanes
Ombudsman