

## The complaint

Mrs F complains that Nationwide Building Society approved and then unfairly declined her application for a consolidation loan after the contract was signed by both parties, in contravention of contract and finance law and the Financial Conduct Authority's (FCA) rules.

## What happened

Nationwide said it rejected Mrs F's application for a £10,000 loan for *'a number of reasons but mainly due to affordability and over indebtedness'*. It said her *'disposable income wasn't high enough to cover the new loan payments'*, and that, *'she was financially overextended having already taken out a £10,000 loan'*.

Mrs F said membership and affordability criteria are on Nationwide's website - a monthly income of £700 or more and a good credit history – and Nationwide confirmed she met the criteria. But her loan was refused, as only approved in principle pending further checks. Mrs F said Nationwide hadn't said approval was only 'in principle' and although the contract says it may carry out credit checks, it didn't make clear that the loan could be denied after it was signed. She said the contract shows even after checks are carried out, the loan will be paid, and Nationwide's suggestion otherwise is false and a breach of the rules.

Mrs F said to carry out a creditworthiness assessment after the loan contract would amount to a breach of the FCA rules and be unfair. She said she was advised to read the pre-contract information and on acceptance she was given a notice explaining she would be entering into a legally binding agreement with Nationwide. She said Clause 5 a. of the Loan Agreement says: *'When we've received and processed your signed electronic or paper form agreement (which may include carrying out credit checks and verifying your identity and the information you've provided in your application), we'll pay the loan into your chosen account'*.

In a subsequent email Nationwide said a contract existed, but the terms aren't enforceable until the money is in Mrs F's account. But Mrs F said a contract is enforceable as soon as it is signed. Nationwide then said that part of the application process is to offer a loan which is binding, but *'we can only proceed with these checks once an agreement has been signed'*. Mrs F said this is a clear departure from the rules as Nationwide made an offer which she accepted but the term says they can carry out checks to verify accuracy.

Mrs F said her application was denied on the grounds of being a non-member, but she is a member of Nationwide. She said she made three applications for loans, in her maiden and married names. She requested her name be changed back and a change of address, but Nationwide didn't carry this out. Mrs F said she hadn't noticed this when she made the first application, and used her maiden name and current address. She said on Nationwide's advice she updated her account and made a new loan application, but it was still rejected.

Nationwide rejected Mrs F's complaint saying its 'Personal Loan Terms and Conditions (Fixed Sum Loan Agreement regulated by the Consumer Credit Act 1974)' state a loan may be offered, which once signed is legally-binding, but doesn't confirm funds will be released. The terms state, *'when we've received and processed your signed electronic or paper form*

agreement (which may include carrying out credit checks and verifying your identity and the information you've provided in your application), we'll pay the loan into your chosen account'.

Nationwide said section 67 of the Consumer Credit Act 1974, 'shows that both the debtor or the lender can cancel the agreement, as long as the loan isn't secured on land or business'. Mrs F said that under section 67 the lender cannot withdraw. Nationwide also said the FCA rules state, 'A firm must base its creditworthiness assessment on sufficient information:

(1) of which it is aware at the time the creditworthiness assessment is carried out;  
(2) obtained, where appropriate, from the customer, and where necessary from a credit reference agency, and the information must enable the firm to carry out a reasonable creditworthiness assessment.

Nationwide said a credit check is performed by cross referencing names and addresses, but Mrs F's details didn't match her previous current account and so her full credit history wasn't shown. Taken together, Mrs F's loan applications were declined primarily on the grounds that Nationwide considered it unaffordable to her.

Mrs F was dissatisfied with Nationwide's response to her complaint and referred it to us. Our investigator didn't recommend it be upheld. She said Mrs F's name on the loan application didn't match Nationwide's records and so it was rejected, and it rejected her next application as unaffordable under its commercial discretion. She said Nationwide can make preliminary checks before an application is finalised as its only at the agreement-in-principle stage and it retains the right to reject an application after conducting sufficient credit checks.

The investigator said its Nationwide's usual practice to request agreement to its terms before completing the checks and this is set out in the 'Personal loan Terms and Conditions' which Mrs F would have reviewed prior to completing her application. And so she couldn't say that Nationwide acted unreasonably or unfairly towards Mrs F.

Mrs F disagreed and requested an ombudsman review her complaint. She said her loan application matched the name Nationwide held and so the investigator was wrong to say it couldn't identify her as a customer. Mrs F asked if the investigator had reviewed her wage slips to check Nationwide's affordability decision. She said it wasn't typical for a bank to ask for an agreement prior to completing the checks and the investigator was wrong as this is a violation of the FCA's rules which she will report. Mrs F said she couldn't see the term the investigator had referred to stating that Nationwide's loan agreement is only in principle until checks are complete. She said such a term would be unfair and will check this with the FCA.

### **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.

I was sorry to see that Mrs F's intention for the loan application was frustrated and I can understand her disappointment. I have focussed on the rejection of Mrs F's loan application as unaffordable by Nationwide as this is the primary reason for its decline. I can see that she considers the agreement she entered into to be legally binding, and that Nationwide is in breach of the law of contract by not paying the loan into her account.

It should be noted that we are an informal dispute resolution service, and it isn't our role to provide decisions on the law – that is the role of the courts. And so although I have considered the law, I haven't provided a legal opinion. This means on contract law for example, I haven't commented on a court case to which Mrs F refers about the signing of a contract, or commented on whether the essential elements of a contract - offer, acceptance

and the passing of consideration – were present before the loan funds were due to be paid to Mrs F.

In line with our service's responsibility I have considered whether or not Nationwide acted within the terms and conditions of the loan agreement and the FCA rules and I've looked to see if it has treated Mrs F fairly.

Mrs F believes she met Nationwide's affordability criteria; the business has explained that she does not meet its internal lending criteria as it considers the loan unaffordable for her. Over the last few years lenders have been heavily criticised for providing customers with lending that is unaffordable to them and in response they have developed tighter criteria to help prevent customers from over-borrowing and getting into difficulties. In common with all lenders, Nationwide has had to put lending procedures and criteria in place that follow the rules to protect borrowers. From what I have seen Nationwide handled Mrs F's application via its website as it would many other applications and followed the same process and contract terms.

It should also be noted that in meeting its regulatory responsibilities, Nationwide's lending criteria is part of its commercial discretion, and in the absence of unfairness it is not in our power to require it to change this. This means Nationwide can reflect its appetite for risk within the criteria that it sets.

Mrs F said that the investigator hadn't reviewed Nationwide's lending criteria and had been unfair to her. It's not our role to reassess a customer's eligibility for a loan. We can only look at what a lender has done in this regard to see if it has followed its own terms and conditions and acted within the rules. These require Nationwide to make assessments with due diligence. From what I have seen, Nationwide has considered Mrs F's application in similar fashion to other customers applying for a loan and applied its usual lending criteria according to its risk-based approach for unsecured loans. And its records show it has considered her income as part of its assessment. Contrary to Mrs F's view, I haven't found Nationwide's actions in rejecting her application to be unfair and disproportionate towards her.

Mrs F said Nationwide and our investigator failed to take into account the loan terms and conditions. She believes that the signed loan agreement commits Nationwide to paying her the loan,. She said that in particular clause 5 of the contract states that Nationwide would carry out further checks and then pay the loan, and its refusal is unfair. The key part of the terms of the loan agreement is that an application may be declined after Nationwide has completed further checks, and it will only proceed with these checks once an agreement has been signed. The reference to 'checks' and 'verifying' within clause 5 indicates the conditional nature of the payment of the loan, though I think this dependency could be worded more specifically on the contract.

Although this may sound rather circular, the reason why many lenders follow the agreement-in-principle approach before committing to paying a loan is because it ensures full credit checks are required for the customer (they can affect a customer's credit rating and so shouldn't be undertaken lightly) and this approach reduces the risk of incurring the cost of unnecessary checks. At this point an application may pass or fail and Mrs F's application failed as Nationwide thought she was over-indebted as she had other loans, and the loan was unaffordable.

Mrs F is correct to say that firms carrying on consumer credit-related activity must comply with the FCA rules. Firms are required to ensure that their assessment of affordability is based on sufficient information that the firm is aware of at the time of the assessment. The rules state that banks shouldn't enter an agreement before carrying out checks and that their communications or financial promotions are clear, fair, and not misleading.

It's unfortunate that Nationwide's system generated a message to Mrs F that her application had been approved, but this also stated, '*We need to carry out a few more checks before we can offer you a loan*'. From what I have seen of Nationwide's approach to the assessment of loan applications, its terms and conditions and communications, it has met all of these requirements in Mrs F's case.

I'm satisfied Nationwide has followed the rules set by the FCA and the contract in that Mrs F signed a loan agreement, which allowed Nationwide to carry out credit and other checks, and verify the information provided. Having considered Nationwide's actions in relation to the Consumer Credit Act 1974, it appears to have carried out a reasonable assessment of Mrs F's creditworthiness and was permitted to withdraw from the signed agreement.

Having reached these conclusions it is my view that Nationwide has treated Mrs F fairly throughout its dealings with her. I also think the investigator conducted a reasonable and proportionate review of Mrs F's complaint and I agree with the outcome.

### **My final decision**

For the reasons I have given it is my final decision that the complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 6 December 2023.

Andrew Fraser  
**Ombudsman**