

The complaint

Mr M complains Nationwide Building Society discriminated against him because it wouldn't allow him to apply for an unsecured personal loan as he was 80 years old. He also complains Nationwide Building Society should have considered his application on the merits, including data he'd provided about average life expectancy when compared to the term of the loan he'd applied for.

What happened

Mr M took out a Nationwide loan in September 2019 part of which was used to repay an existing loan. He was 78 at the time and would have been repaying the loan he took out until he was 83 had he repaid it over the intended five years. In fact, he decided to make overpayments meaning that by September 2021 he was on track to repay the loan in three years rather than five years.

In October 2021, Mr M moved house and decided it would be helpful to take out a loan to cover expected and unexpected costs. He tried to apply for another Nationwide loan – he did so online – but wasn't able to submit an application. He says an error message appeared stating applicants must be between 18 and 80. He was 80 at the time of the application.

Mr M contacted Nationwide saying that its website said applicants for loans needed to be aged "between 18 and 80" which he was. So, he thought there'd been a mistake and asked to be accepted on the basis that he was 80. Nationwide said that there hadn't been a mistake, and that applicants must be aged 18 to 79. Nationwide said that it couldn't offer a loan to anyone aged 80 or above.

Unhappy with Nationwide's response, Mr M complained saying that he thought it was discriminating against him based on his age. He's told us that he's aware other banks lend to people who are over 80, presumably those with good records. He said that Nationwide ought to consider his circumstances – including the fact that he'd been a customer for over 20 years with an exemplary credit file. He said he thought Nationwide was more likely to have problems with younger, employed people making repayments than retired people with guaranteed income.

Nationwide investigated Mr M's complaint and said that it wasn't able to offer a loan to anyone who was 80 or over and that there was nothing more it could do to assist him. Mr M remained unhappy, so he complained to us. He said that if he'd not made the overpayments he'd made, he would have had spare funds to cover the expected and unexpected costs of moving house. So, he proposed that Nationwide reverse the overpayments he'd made as an alternative to giving him a new loan.

One of our investigators looked into Mr M's complaint and asked Nationwide to provide evidence in confidence that it had carried out a risk assessment that would justify taking a blanket approach to lending to applicants over a certain age. Nationwide did so. Having considered everything, including evidence shared with us in confidence, our investigator said that they didn't think what had happened was fair and reasonable in Mr M's particular case. So, our investigator recommended that Nationwide consider a loan application, effectively

putting him back into the position he would have been had he not made overpayments. Our investigator didn't think Nationwide had applied its age limits incorrectly, and that saying applicants had to be between 18 and 80 was the same as saying applicants had to be aged 18 to 79.

Mr M thought the outcome recommended by our investigator was fair even though he didn't agree with all of their findings – including their findings about whether or not Nationwide had applied its age limits correctly. He said that statistics showed he has a life expectancy of 89 – considerably longer than the five-year loan he'd applied for – and that he was fit and active and had all his faculties. He also said both he and his wife had very good credit ratings. So, he thought Nationwide should have considered his application on that basis.

Nationwide didn't agree with our investigator's recommendations saying that the previous loan Mr M had taken out was in line with its lending policy and that the recommendation our investigator had made was outside of its systems' capabilities and lending policy. Nationwide also said that its systems have no workarounds to allow for what our investigator had recommended. In addition, Nationwide said that its policy had been in place for several years so Mr M could have checked this when he decided to repay their original loan early.

Finally, Nationwide said that the restriction in its policy had been arrived at through a thorough assessment of the customer outcomes and credit risks of lending to individuals over the cap. As Nationwide didn't agree with our investigator's recommendations, this complaint was passed to an ombudsman to look into. So, that's what I've done.

I issued a provisional decision last month in which it said I didn't think Nationwide hadn't acted fairly and reasonably. I said that I thought Nationwide should pay Mr M £500 in compensation and should consider an application from Mr M for lending, should he wish to make one, and that it should disregard his age when considering that application. Alternatively, I said that Nationwide might decide to reverse the overpayments he'd made as an alternative to giving him a new loan.

Mr M was happy with my provisional decision and accepted it. Nationwide didn't agree with my provisional decision or my reasoning. It said that although the data it had used was from some time ago, it was the most recent data it has because it hasn't permitted personal loan applicants aged 80 and over since 2010. And it clearly showed a higher default risk among applicants aged 80 and over. Nationwide said that this was, therefore, the best data available and that the conclusions it had drawn were broadly consistent with other lenders. And that the passage of time is no reason to doubt the probity of the data, particularly when aligned to national mortality data. Nationwide said, in particular, that for applicants aged 80 and over there is a heightened risk of the term of the loan not being sustainable given life expectancy, affordability varying significantly over the entire term of the loan and the applicant being affected (or more affected) by age related conditions. Nationwide also said that there are a number of other lending criteria it applies, and that if I said it should consider a further application from Mr M then I should make it clear that I did not intend to override any other aspect of its lending criteria unrelated to age or compel it to lend to Mr M. Nationwide also said it wasn't willing to refund the overpayments Mr M had made – as an alternative to considering a further application from him. I know this is Mr M's preferred solution, but it's not something I'm going to ask Nationwide to do in light of its response to this provisional decision.

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.

Last month I issued a provisional decision saying as follows:

“This complaint isn’t about whether or not Nationwide should have ultimately lent to Mr M. Banks and building societies can and do decide whether or not they want to lend to people who apply for borrowing, and they do so based on criteria that, amongst other things, look at whether or not the lending would be affordable and responsible. This complaint is, as far as I see it, that Nationwide didn’t even get to that stage with Mr M – it didn’t consider his individual circumstances at all. That’s because it wouldn’t even consider an application from him as he was 80 when he applied for the loan.

Mr M accepts that sometimes people are “discriminated” against because of their age – and that many businesses won’t lend to customers who are over 80. But he believes he wasn’t outside the age range of customers to whom Nationwide has said it will lend – because he was 80 at the time and not over 80 – and he sent us a screenshot of Nationwide’s website at the time that says applicants must be between 18 and 80.

On the question of whether or not Nationwide applied its age limits correctly, I don’t agree with Mr M. I say that because I’m satisfied Nationwide’s policy is that it will only lend to people between the age of 18 and 80. Nationwide has told us that the application system will allow applicants from the day of turning 18 until the day before turning 80 – as this reflects their 18 to 79 eligibility criteria – and that applications from anyone who applies on their 80th birthday or later will error as they’d be outside of the eligibility range. Nationwide has told us that this is also the case for under 18s. Mr M does, however, have a second argument, namely that his application wasn’t considered on its merits. Or, to put it another way, that Nationwide has a blanket policy of not lending to customers who are 80 or over and one on the face of it that “discriminates” against him because of his age.

“Age discrimination” isn’t necessarily “wrong” or “unfair” in itself. Nationwide won’t, for example, lend to anyone who is under the age of 18. But as entering / attempting to enter into a contract with a minor – in other words, someone under the age of 18 – is problematic in a number of ways, many might not see refusing to lend to someone who is under the age of 18 as “wrong” or “unfair”. So, are there reasons why it might not have been unfair or unreasonable of Nationwide to say it wouldn’t lend to Mr M simply because he was already 80?

In this case, one thing I have to take into account when deciding what is fair and reasonable is relevant law. And in this case that means taking into account, amongst other things, the Equality Act 2010, so I think it’d be helpful to set out what that says.

Section 29 of the Equality Act 2010 says a service provider must not discriminate against someone based on a protected characteristic – age is one of nine protected characteristics given – such discrimination is unlawful. There are, however, exceptions applicable to this particular case, and they are contained in schedule 3 – part 5 – paragraph 20A. This is what paragraph 20A says:

- (1) A person (A) does not contravene section 29, so far as relating to age discrimination, by doing anything in connection with the provision of a financial service.*
- (2) Where A conducts an assessment of risk for the purposes of providing the financial service to another person (B), A may rely on sub-paragraph (1) only if the assessment of risk, so far as it involves a consideration of B’s age, is carried out by reference to information which is relevant to the assessment of risk and from a source on which it is reasonable to rely.*
- (3) In this paragraph, “financial service” includes a service of a banking, credit,*

insurance, personal pension, investment or payment nature.

Even if Nationwide cannot show that it can rely on the exception, it could still show that its decision not to lend to customers aged 80 and over is not unlawful discrimination if it can show it is a proportionate means of achieving a legitimate aim (section 13(2) of the Act, assuming it's direct discrimination, which this must otherwise be).

Nationwide isn't disputing that it has a policy that it won't lend to customers who are 80 or over when they apply for a loan. So, I agree with our investigator that in order to decide whether or not it was fair and reasonable of Nationwide to not even consider Mr M's application that it's important to know whether or not this policy is based on the type of risk assessment mentioned in (2) above. Nationwide has shared the assessment it says it did before adopting this policy – in confidence at our suggestion – which has been very helpful.

Under our rules, I have the power to accept evidence in confidence so that only a summary of it is disclosed – where, for example, that evidence is commercially sensitive. I'm satisfied that it's appropriate for me to do so in this case. The evidence Nationwide has provided shows that it analysed lending granted before 2010, and its analysis shows an increased rate of default in customers aged 80 and above but not necessarily when compared to customers under the age of 60. This is the risk assessment it carried out. It went on to explain that it was concerned that there was a greater risk of default for borrowers in this age group because of affordability, life expectancy and health factors.

The reasons Nationwide have given for its policy would, in my opinion, be enough to show that a policy of not lending to someone who is 80 or over isn't unfair or unreasonable. I agree with our investigator, however, that the assessment Nationwide has sent us doesn't back up the reasons it's given us for its policy. I say that because the data in the risk assessment is old, and the number of borrowers aged 80 or over included in the sample is likely to be too small to be statistically significant.

In other words, I agree that Nationwide appears to be making assumptions about someone's ability to repay and the risk of lending without showing that it has done a risk assessment based on information relevant to the risk from a source on which it is reasonable to rely. I also agree with our investigator in this case that without more Nationwide appears to be making assumptions about someone's ability to repay and the risk of lending simply based on that person's age.

Nationwide might have a legitimate aim here, but it hasn't provided us with information to support its argument that its blanket approach of not allowing potential customers to apply for a loan because they're 80 or over when they apply for a loan is a proportionate means of achieving that aim. It doesn't follow that Nationwide has discriminated on the grounds of age just because the exception might not apply. I should add that we can't make a finding that Nationwide has breached the Equality Act 2010 – that's the role of the Courts. But given what I've just said, and based on everything I've seen, I agree with our investigator that Nationwide didn't act fairly or reasonably when it refused to even consider Mr M's application because he was already 80.

In this particular case, the rigour of the assessment isn't the only reason why I think Nationwide hasn't acted fairly or reasonably. In this case, Mr M was able to take out a Nationwide loan which – had he not made overpayments – he would have carried on repaying until he was over 83 because he was under 80 at the time of the application. That loan was taken out in line with Nationwide's lending policy – which hasn't according to Nationwide changed since then. Nationwide's policy, in other words, focusses on how old the applicant is at the time they take out the loan rather than how old they'll be when the loan ends. It means a 79 year old could take out a 7 year loan that they would be paying back

until they were 86 but an 80 year old couldn't take out a 3 year loan that they would be paying back until they were 83 even if all of their other circumstances were absolutely identical. Yet Nationwide's analysis would suggest there'd be greater risk of the first applicant (who'd be able to get a loan) defaulting than the second applicant (who wouldn't be able to get a loan). It also means that Nationwide decided three years ago that it was fine from an affordability and responsibility point of view to agree to Mr M taking out a loan that he'd continue to repay until he was 83. Mr M has asked to be put back into that position – in other words, has asked Nationwide to take on a level of lending it was previously happy to take on. I don't think that's unfair or unreasonable, in this particular case.

Nationwide has made the point that a decision to lend is never guaranteed, and the fact that it was prepared to lend to Mr M until he was 83 three years ago doesn't mean it would do so now. I agree entirely with Nationwide on this point. And I'm not saying Nationwide has to now lend to Mr M. As I mentioned above, this complaint isn't about whether or not Nationwide should have ultimately lent to Mr M. Banks and building societies can and do decide whether or not they want to lend to people who apply for borrowing, and they do so based on criteria that, amongst other things, look at whether or not the lending would be affordable and responsible. This complaint is about the fact that Nationwide didn't even consider his application.

Mr M says that he moved house despite not getting the loan and that although the higher rent they ended up paying was offset by a huge reduction in heating costs, it meant that finances were tighter than they might otherwise have been. He's told us that he was able to move thanks to family and that he wanted and planned to pay them back within months. He's also told us that he's paying another company a regular amount each month having done a balance transfer. His circumstances might, therefore, have changed and it's possible that Nationwide wouldn't be willing to lend to him anymore. But that's for Nationwide to determine should Mr M decide to go ahead and apply for a loan.

In this particular case, I do think Nationwide has caused Mr M distress and inconvenience. And for that I feel an award of £500 is appropriate. I also think it's fair and reasonable that Nationwide should consider an application from Mr M for lending, should he wish to make one, and that it should disregard his age when considering that application. Nationwide might, in light of Mr M's circumstances, decline that loan on the grounds of affordability or responsibility. To be clear, I'm not telling Nationwide to lend money to Mr M, and I'm only telling Nationwide to consider an application from Mr M (should he wish to make one) because of the unusual facts of this case. That application might, given what Nationwide has told us about its systems, have to be done manually. Alternatively, Nationwide might decide to reverse the overpayments he'd made as an alternative to giving him a new loan."

Nationwide in its response to my provisional decision said that it wanted me to make it clear that I wasn't intending to override any aspect of its lending criteria unrelated to age or to compel Nationwide to lend to Mr M. I thought I'd made that clear in the following two paragraphs of my provisional decision:

"Nationwide has made the point that a decision to lend is never guaranteed, and the fact that it was prepared to lend to Mr M until he was 83 three years ago doesn't mean it would do so now. I agree entirely with Nationwide on this point. And I'm not saying Nationwide has to now lend to Mr M. As I mentioned above, this complaint isn't about whether or not Nationwide should have ultimately lent to Mr M. Banks and building societies can and do decide whether or not they want to lend to people who apply for borrowing, and they do so based on criteria that, amongst other things, look at whether or not the lending would be affordable and responsible. This complaint is about the fact that Nationwide didn't even consider his application."

And:

“Mr M says that he moved house despite not getting the loan and that although the higher rent they ended up paying was offset by a huge reduction in heating costs, it meant that finances were tighter than they might otherwise have been. He’s told us that he was able to move thanks to family and that he wanted and planned to pay them back within months. He’s also told us that he’s paying another company a regular amount each month having done a balance transfer. His circumstances might, therefore, have changed and it’s possible that Nationwide wouldn’t be willing to lend to him anymore. But that’s for Nationwide to determine should Mr M decide to go ahead and apply for a loan.”

But I’m happy to make it clear that this decision does not intend to override any aspect of Nationwide’s lending criteria unrelated to age or to compel Nationwide to lend to Mr M.

As I said in my provisional decision, I think it’s fair and reasonable that Nationwide should consider an application from Mr M for lending, should he wish to make one, and that it should disregard his age when considering that application. And, as I also said, Nationwide might, in light of Mr M’s circumstances, decline that loan on the grounds of affordability or responsibility. Also, as I said in my provisional decision, and again to be clear, I’m not telling Nationwide to lend money to Mr M, and I’m only telling Nationwide to consider an application from Mr M (should he wish to make one) because of the unusual facts of this case. And finally, again as I said in my provisional decision, that application might, given what Nationwide has told us about its systems, have to be done manually.

As should be obvious by now, I’ve come to the same conclusion as I did in my provisional decision having considered everything Nationwide has said. But I’ve started by making it clear that although I’ve come to the same conclusion that doesn’t mean – as Nationwide clearly was worried I might have meant – that I’m telling it to lend to Mr M. Quite the opposite. I’m simply asking Nationwide to consider an application from Mr M (should he wish to make one).

As I said in my provisional decision, Nationwide said that in addition to carrying out a risk assessment it was concerned that there was a greater risk of default for borrowers aged 80 and above because of affordability, life expectancy and health factors. And I agree that those reasons would, in my opinion, be enough to show that a policy of not lending to someone who is 80 and above isn’t unfair or unreasonable. But the risk assessment we’ve been sent in confidence doesn’t back this up. It shows, for example, an increased rate of default in customers aged 80 and above – as Nationwide says – but not when compared to customers under the age of 60. Nothing Nationwide has added since my provisional decision suggests to me that I was wrong to say that the assessment Nationwide has sent us doesn’t back up the reasons it’s given us for its policy.

Given the above, I remain of the view that Nationwide appears to be making assumptions about someone’s ability to repay and the risk of lending without showing that it has done a risk assessment based on information relevant to the risk from a source on which it is reasonable to rely. And that without more Nationwide appears to be making assumptions about someone’s ability to repay and the risk of lending simply based on that person’s age. I also remain of the view that Nationwide might have a legitimate aim here, but it hasn’t provided us with information to support its argument that its blanket approach of not allowing potential customers to apply for a loan because they’re 80 or over when they apply for a loan is a proportionate means of achieving that aim. It doesn’t follow that Nationwide has discriminated on the grounds of age just because the exception might not apply. And, in any event, as I said in my provisional decision, we can’t make a finding that Nationwide has breached the Equality Act 2010 – that’s the role of the Courts. But given what I’ve just said,

and based on everything I've seen, I agree with our investigator that Nationwide didn't act fairly or reasonably when it refused to even consider Mr M's application because he was already 80.

Putting things right

In my provisional decision, I said I was minded to award Mr M £500 in compensation for the distress and inconvenience he's been caused. I remain of the view that this is fair and reasonable. So that's the award I'm going to make in addition to requiring Nationwide to consider an application from Mr M for lending, should he wish to make one, and disregarding his age when considering that application.

My final decision

My final decision is that Nationwide Building Society should pay Mr M £500 in compensation for the distress and inconvenience he's been caused. In addition, Nationwide Building Society should consider an application from Mr M for lending, should he wish to make one, and should disregard his age when considering that application.

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

Nicolas Atkinson
Ombudsman