Financial Ombudsman Service

The complaint

Miss J complains that Nationwide Building Society was irresponsible when it offered her two credit card accounts.

What happened

Nationwide opened a credit card account for Miss J on 14 February 2019 with a credit limit of £750. It increased her credit limit to £1,200 in September 2019. I understand the account was fully repaid and closed in February 2020.

Nationwide opened a second credit card account for Miss J on 28 April 2020 with a credit limit of £500, which was never increased. The account was reported as defaulted in July 2022, and was then repaid in full and closed that September.

Miss J complained to Nationwide in November 2023 that it had been irresponsible to provide her with the accounts. Miss J said that her outgoings were higher than the low income she received at the time. She said she opened several other credit cards to meet the repayments on her accounts and to transfer balances. Miss J shared that she was a frequent gambler.

Nationwide didn't uphold Miss J's complaint. It said it completed all of the necessary checks to make sure the credit card accounts would be affordable before approving Miss J's applications and when it increased her credit limit on her first card. However, it found that Miss J was having difficulties with her 2020 credit card account from October 2022 and refunded all charges incurred on one of her Nationwide current accounts from October 2022 to date, totalling £235.67.

Miss J was unhappy with this resolution and referred her complaint to us. Our investigator assessed the complaint and recommended that it be upheld in part. They found that Nationwide should have carried out further checks before opening an account for Miss J in 2020, and such checks would likely have shown the account to be unaffordable.

Nationwide didn't agree with this recommendation and asked for the complaint to come to an ombudsman to decide. I sent out a provisional decision on the 20 May 2024 explaining why I thought Miss J's complaint should succeed in relation to both her accounts. I shared the information I'd relied on with both parties and allowed time for any comments or new information. Miss J agreed with my provisional decision but Nationwide disagreed.

Miss J has also referred complaints to us about the overdrafts she held on two Nationwide current accounts opened in April and July 2019. These are being looked into under other references and I won't consider these here. My decision deals solely with Miss J's complaint about her two credit cards referred to above.

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 reviewed everything again, including what Nationwide said in response to my provisional decision, I remain of the view that Miss J's complaint should succeed in full. I appreciate that will be very disappointing for Nationwide. I'll explain my reasons for upholding Miss J's complaint again in this final decision and address Nationwide's response where appropriate.

As before, I've had regard to the regulator's rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as Nationwide, need to abide by. Nationwide will be aware of these, and our approach to this type of lending is set out on our website, so I won't refer to the regulations in detail here but will summarise them.

Before entering into a credit agreement or significantly increasing the credit limit, Nationwide needed to check that Miss J could afford to repay the credit out of her usual means, within a reasonable period of time, without having to borrow further and without experiencing financial difficulty or other adverse consequences. The checks needed to be proportionate to the nature of the credit, for example the amount offered, and to Miss J's particular circumstances, and bear in mind that certain factors might point towards a more rigorous assessment.

After entering into the agreement, Nationwide needed to monitor Miss J's repayment record and other relevant information and take appropriate action where there were signs of actual or possible financial difficulties. The overarching requirement was that Nationwide needed to pay due regard to Miss J's interests and treat her fairly. CONC 2.2.2G gave an example of contravening this as 'targeting customers with regulated credit agreements which are unsuitable for them by virtue of their indebtedness, poor credit history, age, health, disability or any other reason.'

With this in mind, my main considerations are did Nationwide complete reasonable and proportionate checks when it opened the accounts for Miss J and later when it increased her limit to satisfy itself that she would be able to repay the credit offered within a reasonable period of time? If it didn't do this, what would reasonable and proportionate checks have shown? Did the checks reveal anything of concern and, ultimately, did Nationwide make fair lending decisions?

<u>The 2019 account</u>

I said the following in my provisional decision:

"Nationwide said that Miss J gave her income as £7,000 and said she was working part-time when she applied for her credit card. It checked Miss J's credit file and it showed that she had less than £100 of existing debt.

Nationwide said that because of the number of applications it receives daily it wouldn't be possible to carry out manual checks on all of them. Instead it verifies an applicant's income and their credit commitments and reviews any adverse/negative credit file markers from the respective bureaus.

I appreciate that Nationwide checked Miss J's credit file but I don't think it could draw any reassurance from this about her ability to manage future debt, given she had little existing debt. I also appreciate that the repayments for the credit wouldn't take up a significant proportion of Miss J's stated income. However, Miss J's income was relatively low and, altogether, I think Nationwide should have taken steps to understand her specific circumstances, including what her usual expenses were, in order check she would be able to repay credit of £750 within a reasonable period of time.

Miss J's held an existing fee-free account with Nationwide when she applied for this credit card, so it already held some information relating to her income and expenditure. Miss J has provided us with statements for this account covering the period 17 December 2018 to 16 February 2019. These show wage deposits in December 2018 and January 2019 of less than £800. They also show at least £300 of identifiable gambling transactions in January 2019, and many more which Miss J identified as scratch card purchases in local supermarkets.

CONC 5.2A.25G states that potential indicators that the level of affordability risk arising out of an agreement may be high include circumstances where there is a high likelihood that the customer will not make repayments under the agreement by their due dates. Had Nationwide carried out a proportionate check, it's likely to have found out that Miss J was spending a large portion of her earnings on gambling, leaving her at times with less than 60% of her income to meet her usual living costs and debt repayments. I think Nationwide would have declined Miss J's application because of the high level of affordability risk and because the account might not be suitable for her given her pattern of spending. I've concluded that Nationwide didn't treat Miss J fairly and with due regard to her interests when it opened this account for her.

Nationwide provided statements for this credit card account and I can see from these that Miss J immediately used the card for gambling, spending around £500 on identifiable gambling transactions and incurring £90 cash advance fees (as shown on her March 2019 statement). Miss J continued to use her card in this way spending, for example, over £600 on gambling in May 2019 and incurring a further £150 in fees by September 2019. I've also noted that Miss J was declined for a credit limit increase in July 2019 because of a 'low behaviour score'.

Nationwide had an obligation to monitor Miss J's repayment record and any other relevant information it held (CONC 6.7.3A-R). So it would, or should, have been aware of these transactions and associated fees before offering her further credit in September 2019. I don't think Nationwide treated Miss J fairly and with due regard to her interests when it increased her credit limit at this time because it should have seen that her spending pattern was causing her financial harm."

In response to my provisional decision, Nationwide said that I had called into question the validity and efficacy of the industrywide practice of completing a credit search as a method of understanding an applicant's ability to manage past and existing credit commitments. It said that Miss J had no evidence of bad debt on her credit file, which would have increased the chances of her application being declined. It also said that applying a higher level of scrutiny across its unsecured lending products would render them unavailable for a far higher number of applicants and wouldn't be financially viable.

Let me reassure Nationwide that I have drawn no general conclusions about its creditworthiness assessments, bearing in mind that the regulations aren't prescriptive about what a lender should do to conduct these. The regulations do say that certain factors may point towards a more rigorous assessment and others towards a less rigorous one, and lenders should weigh up the factors before deciding what type of creditworthiness assessment is required.

In Miss J's case, there was little history of her management of credit and her income was relatively low. I concluded that it would have been proportionate for Nationwide to have carried out a more rigorous check than it might usually have done before offering Miss J this level of credit so that it could reasonably assess her ability to meet her repayments without them adversely impacting her financial situation. As I explained in my provisional decision, a proportionate check would likely have resulted in a decline and my conclusions about this account remain unchanged.

The 2020 account

I said the following in my provisional decision:

"Miss J gave her income as £19,000 (or less than £1,400 a month net) when she applied for her second credit card in April 2020. Nationwide checked her credit file which showed that she had £11,451 of unsecured lending, which I understand was mainly through revolving credit accounts. This was a considerable increase on the £600 or so Miss J owed when she applied for the credit increase on her first account in September 2019.

Nationwide completed the same checks as before, which it said includes verifying an applicant's income, reviewing their credit commitments and considering any adverse or negative credit file markers. Nationwide said that if any information declared in an application is unusual, or aspects of an applicant's circumstances trigger anything that required it to review the application in detail, it might request bank statements, but there was nothing unusual about Miss J's application.

I'm afraid I disagree with Nationwide on this point. Miss J had acquired around £11,000 of debt within six to seven months utilising all her facilities close to their respective limits. She'd also recently closed a credit card with Nationwide and now wished to open a similar facility just two months later. The latest [monthly] statements I've seen for Miss J's previous credit card cover the months of November 2019 to January 2020 and show gambling transactions in the thousands. The annual statement for this account covering February 2019 to February 2020 shows Miss J paid £636 in cash advance fees.

I don't consider that Nationwide took into account these aspects of Miss J's circumstances and it would have been proportionate to have done so. I've concluded that Nationwide ought to have declined to lend to Miss J at that time even without carrying out further checks because the information it had indicated that Miss J was likely to be reliant on credit and that her spending patterns were causing her financial harm. Providing Miss J with credit under these circumstances was irresponsible.

That said, I doubt further checks would have provided Nationwide with any reassurance. Miss J's current account transactions show that she was spending well over her income on gambling at that time, for example she spent over £17,000 on gambling in the first three months of 2020. I understand that Miss J applied for nine credit limit increases on this [second] facility, including five in 2020 which were declined due to a 'low behaviour score'. The account was reported as defaulted in July 2022, and was then repaid in full and closed that September."

In response to my provisional decision, Nationwide said that there was nothing unusual about a customer closing an account and this wouldn't exclude them from applying for a new account at a later stage. Nationwide also said that Miss J did request credit limit increases but these were correctly declined due to a 'Low Behaviour Score', which is an internal measure on how a customer is using their account and could change monthly. Nationwide said the fact that Miss J was able to repay her first credit card demonstrated that it was affordable and shows that its affordability checks were effective.

I accept that holding a previous account with Nationwide wouldn't automatically exclude Miss J from opening another one and I didn't uphold her complaint on this basis. I found that Miss J's management of her previous account combined with her use of external credit should have prompted Nationwide to consider that she was reliant on credit.

Nationwide was not only obliged to check that Miss J could repay the credit it offered but to check that she could do so out of her income without having to borrow to meet the repayments, without failing to make any existing financial commitments and without the repayments having a significant adverse impact on her financial situation. Miss J may have successfully repaid the credit she borrowed on her first account but it doesn't seem likely to me that she managed to do so without consequence.

Given the information Nationwide had and should have considered in its assessment, I remain of the view that it was irresponsible to open this second account for Miss J.

Putting things right

As I don't think Nationwide should have opened these accounts for Miss J, I don't think it's fair that she incurred any interest, fees or charges under the agreements or had her credit file adversely impacted. I understand that the balance has been repaid on both accounts and they are now closed.

In order to put things right for Miss J, Nationwide should:

- Rework each account removing all interest, fees, charges, and insurances (which have not already been refunded) that were applied.
- As the accounts have been settled, the resulting credit balances should be refunded to Miss J along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement.
- Nationwide should also remove any adverse information regarding these accounts from Miss J's credit file.

*HM Revenue & Customs requires Nationwide to deduct tax from any award of interest. It must give Miss J a certificate showing how much tax has been taken off if she asks for one.

My final decision

For the reasons I've explained above, I am upholding Miss J's complaint about Nationwide Building Society and it should now take the steps I've outlined to put things right for her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 29 July 2024.

Michelle Boundy
Ombudsman