

The complaint

Miss M, who is represented by her son, has complained that TSB Bank plc ('TSB') irresponsibly provided her with an overdraft that she couldn't afford to repay and so worsened her financial situation.

What happened

In February 2010 TSB agreed to provide Miss M with an overdraft facility and then increased it in January 2013.

Miss M, who started her complaint with TSB in or around November 2023, says TSB acted unfairly in providing her with the overdraft facility. She says she has constantly been in her overdraft since it was opened, it has affected her financial circumstances and it has also had a long-term impact on her financial welfare.

TSB looked into the complaint and said Miss M's complaint about the decision to grant the overdraft and the increase had been made too late under the time limits set by the Financial Conduct Authority's complaint handling rules.

However, having reviewed the complaint, TSB agreed it ought to have done more to support Miss M with managing her overdraft. It therefore offered to refund all interest and charges for the period from December 2017 to December 2023. No account fees had been incurred since then due to the account being passed to TSB's recoveries department in October 2023. TSB had previously refunded some fees to Miss M in July 2023 as part of its overdraft remediation programme.

Our investigator agreed that Miss M had brought part of her complaint too late under the time limit rules. But he disagreed with TSB on the question of there being an unfair relationship between Miss M and TSB, finding that we could consider the whole of the complaint as being about an unfair relationship as described in Section 140A of the Consumer Credit Act 1974 (s140). And, having looked into the merits of the complaint, he thought TSB's offer to compensate Miss M was fair and in line with our approach in similar cases. He therefore recommended that Miss M accept the offer.

As Miss M didn't agree with our investigator's finding, her complaint has been passed to me for a final 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.

First, I'd like to reassure both Miss M and her son that I've looked at Miss M's complaint afresh and independently reviewed all the available evidence and information, including what's been said in response to our investigator's view. Having done so, I've reached the same finding as our investigator, namely that the offer TSB has made to refund interest and

charges paid on the account for the six years before Miss M made her complaint is a fair and reasonable way to settle the complaint. I'll explain why.

The rules I must apply say that, where a business doesn't agree, I can't look at a complaint made more than six years after what's been complained about, or if later, more than three years after a complainant (in this case, Miss M) knew, or should really have known they had reason to complain. Dispute Resolution rule 2.8.2R can be found online.

On that basis, it's fair to say that Miss M had six years from the granting of the overdraft and six years from the overdraft increase in which to start her complaint. But she didn't do so until November 2023. So she has clearly complained more than six years after both lending decisions.

But DISP 2.8.2R (2)(b) can potentially provide a consumer with longer than six years to complain, as long as they complained within three years of when they were aware, or they ought reasonably to have been aware, they had cause to. So I've also considered whether DISP 2.8.2R (2)(b) provides Miss M with longer to complain here.

I want to start by saying that I think that in order for it to be the case that Miss M was aware, or ought reasonably to have been aware of having cause for complaint, it would have to be the case that she was aware or ought reasonably to have been aware that:

- there was a problem – in this case her overdraft and the subsequent charges;
- were unaffordable;
- the overdraft and the charges caused her loss;
- another party's actions (or its failure to act) may have caused the loss; and
- that other party was TSB.

Miss M said that for several years it was normal for her to be constantly dealing with fees and charges applied to her account by TSB, whilst she was trying to manage finances for herself and her family.

Our investigator thought that Miss M could have told TSB she was struggling with her financial situation earlier than she did, and that the time for doing so was from around January 2013, when the first of the fees and charges started to be applied. I agree. I think that from then Miss M was or ought to have been aware that something had gone wrong for which TSB might be at least partly to blame.

Our investigator went on to explain why there aren't any exceptional circumstances that apply to this complaint that would explain why the complaint has been made too late. I would like to add here that I am sorry to hear of the many difficulties that Miss M and her son have been through over the years. Whilst not meaning to diminish the unfortunate impact of those difficulties in any way, they are not something I'm able to treat as being exceptional circumstances under the rules I must apply.

In any event, our investigator thought that Miss M's complaint was also about the fairness of her relationship with TSB. He explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in Section 140A of the Consumer Credit Act 1974, and why this complaint about an allegedly unfair lending relationship had been referred to us in time. I agree that we are able to consider the complaint on this basis.

I therefore think Miss M's complaint should be considered more broadly than just the decision to grant the credit, seeing as she has complained not just about the decision to lend but also the impact this had on her over the course of her relationship with TSB. Miss M's

complaint in this respect can therefore reasonably be interpreted as being about the fairness of her relationship with TSB. I acknowledge that TSB may not agree we can look at the complaint but given that I consider that TSB has made a fair offer that is enough to resolve this complaint, I don't need to comment further on TSB's objection.

In deciding what is fair and reasonable, I am required to take relevant law into account. Because Miss M's complaint can be reasonably interpreted as being about the fairness of her relationship with TSB, the relevant law in this case includes Sections 140A to 140C of the Consumer Credit Act 1974 ("CCA").

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (TSB) and the debtor (Miss M), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement.
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. However, just because there may have been unfairness in a debtor's relationship with a creditor, that doesn't automatically mean it would be fair to refund all of the interest and charges on the account from when that unfairness began.

In the case of *Smith v Bank of Scotland Plc* [2023], the Supreme Court pointed out that remedies for unfair relationships are in the court's discretion and the court may deny a remedy where the claimant had knowledge of the facts relevant to their claim, but substantially delayed making the claim. There is no fixed period of delays that brings this principle into play, but the Supreme Court approved the comment made by a judge from a lower court where the case was heard to the effect that a court would be slow to remedy unfairness in a situation where the claimant delayed more than six years after knowing the facts.

When deciding a fair and reasonable outcome to this complaint and fair redress, it's important that I take relevant law into account. This service considers that a complainant will have knowledge of the facts that caused any unfairness when they become aware of a problem and know that they are suffering a loss. That means, where a consumer had knowledge of the facts, our approach for cases of this nature will be that a business needs to refund the charges and interest they've paid for the six years before they raised their complaint.

From all the evidence and information I've seen, I think Miss M had knowledge of the facts given that she was likely to have known there was a problem as soon as she started making regular use of her overdraft and as a result incurred fees and charges. But she didn't do anything about this until she complained to TSB in November 2023.

I therefore agree it's right that any refund of interest and charges should be limited to the six-year period prior to Miss M raising her complaint. And TSB has confirmed that its offer provides compensation on this basis. Miss M will therefore not have lost out on any of the interest and charges being refunded in accordance with its offer.

If the effect of removing all interest, fees and charges for this period results in there no longer being an outstanding balance, then any extra should be treated as an overpayment and returned to the consumer, along with 8% simple interest on the overpayments from the date they were made until the date of settlement. TSB will also remove the default marker from Miss M's credit file.

I realise my decision will come as a disappointment to Miss M, especially given that both Miss M and her son are aware of this offer and have previously rejected it. But for the reasons I've given, I think TSB's offer is a fair way to settle the complaint and is in line with our approach to this type of complaint.

My final decision

For the reasons given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 8 May 2025.

Michael Goldberg

Ombudsman