

The complaint

Miss M complains that First Direct acted irresponsibly when it granted her a current account overdraft limit of £500.

What happened

Miss M opened a current account with First Direct in April 2019 and was provided with an overdraft limit of £500, a limit that was never increased.

In March 2024 Miss M complained to First Direct that it had been irresponsible in granting her an overdraft and that it had failed to assess the affordability of that overdraft at each annual overdraft limit review.

On 23 April 2024 First Direct issued Miss M with a final response letter ("FRL"). Under cover of this FRL First Direct said it was satisfied it hadn't done anything wrong.

In May 2024 Miss M contacted First Direct again and disclosed vulnerabilities that were affecting her ability to repay. Breathing space was granted to Miss M and a repayment plan set up for her.

Miss M subsequently paid off her overdraft debt and her current account was closed.

In August 2024 and unhappy with First Direct's FRL, Miss M brought her complaint to us.

Miss M's complaint was considered by one of our investigators who didn't uphold it.

Miss M didn't agree and so her complaint has been passed to me for review and decision.

On 19 March 2025 I issued a provisional decision on this case. In summary I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I can confirm that I've reached a different conclusion as to the investigator.

I'm aware that I've summarised this complaint above in less detail than it may merit. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact my decision.

Lastly, I would add that where the information I've got is incomplete, unclear or contradictory, I've to base my decision on the balance of probabilities.

The rules lenders must follow are set out by the industry regulator, the Financial Conduct Authority, in its Consumer Credit Sourcebook (CONC). CONC 5D.2 and 5D.3 set out what a business must do to intervene where a customer is repeatedly using their overdraft.

CONC 5D.2 sets out a business' obligation to identify and monitor repeat use of overdrafts and its obligation to identify customers in actual or potential financial difficulty. Some examples of things that might indicate financial difficulties are given here. For instance, use of other products which may indicate a fall in disposable income, an upward trend in a customer's use of the overdraft over time or where a customer has become or remained overdrawn in every month over a 12-month period.

CONC 5D.3 sets out what interventions the business should take in cases of repeat overdraft users.

Where there are signs that a customer is (or might potentially be) suffering financial difficulties, CONC 5D.3 sets out that the business must:

- Communicate with the customer highlighting the pattern of use and whether this is resulting in high avoidable costs AND encourage the customer to contact them about their situation AND provide contact details of debt advice charities.*
- If after a reasonable period of time the pattern continues and the customer hasn't made contact, the business must take reasonable steps to contact the customer to set out suitable options designed to help the customer.*
- If the customer still doesn't engage with the business the business must after a reasonable period, consider whether to continue offering the overdraft facility and whether to reduce it, so long as this doesn't cause the customer financial hardship.*

Given this, I've considered whether First Direct has acted fairly and in line with its obligations under CONC.

First Direct's decision to initially grant Miss M an overdraft limit of £500 in April 2019.

Before authorising the initial overdraft limit of £500 in February 2019, First Direct was required to complete proportionate affordability checks to ensure the credit was affordable and sustainable. What is considered proportionate will vary depending on the specific circumstances of each case, as there isn't a set list of checks that had to be completed.

First Direct told us that when they conducted their affordability checks, it found there were no defaults or arrears or notices of correction on Miss M's credit file. It confirmed Miss M had a declared income of about £44,000 per year and had existing debts of £11,784.

Miss M told us that at the time of application she was taking home about £2,300 and was paying £725 in rent, £600 towards living costs (although this did not include toiletries, household maintenance or goods or other normal living costs), £532 towards other debts and was left with about £443 a month. Miss M didn't consider that this was enough to afford a £500 overdraft limit. The investigator however felt that this would have been sufficient over a reasonable period of time to repay any outstanding overdraft up to the agreed limit. And on balance I agree. I think the checks conducted were proportionate to the amount of the agreed overdraft and could be repaid over a reasonable period of time.

I will now go on to consider whether First Direct continued their obligation to review and monitor Miss M's account in accordance with CONC 5D.3

First Direct's decision to continue the overdraft upon review

As highlighted above, the CONC regulations puts the onus on lenders that an overdraft is not generally suitable for long term use. So as well as needing to act responsibly when it took its decision to grant Miss M an initial overdraft limit of £500 – ensuring that the overdraft was sustainably affordable without the need for Miss M to borrow more – First Direct also needed to monitor and review her overdraft usage. And where it identified a pattern of repeat usage, as with Miss M's account, it needed to take steps to try and reduce it. And on balance, I'm not satisfied First Direct did this. I say this as from the statements I've seen from 2019 onwards, Miss M was in the main constantly overdrawn and at times exceeded the agreed overdraft limit.

First Direct said it wrote to Miss M on 5 June 2021, 7 December 2021 and 8 March 2022 about her overdraft. I've read these letters and I can see that it made Miss M aware of the cost of using her overdraft, offered to discuss her finances if she wished and provided details of debt advice charities. First Direct also acknowledged in their 7 December 2021 letter that Miss M maybe facing financial difficulties.

Looking at the account statement I can see that Miss M consistently used her overdraft from the time the £500 limit was granted. And within the same month that the overdraft was granted, Miss M had exceeded the limit. First Direct told us that it had tried to contact Miss M on her mobile but without success and sent her a contact email and secure message to her online banking portal and also a letter but it hasn't been able to provide us with a copy of this.

I can see that the overdraft was cleared each month but the account quickly became overdrawn again. In 2019 the limit was exceeded for four months, in 2020 the limit was exceeded for eight months and in 2021, the agreed limit was exceeded every month.

First Direct told us, and I've seen this corroborated in the evidence it has provided to us, that since 2019, Miss M has applied for numerous credit cards and loans from it, but each time these were declined. First Direct told us that these applications were either declined automatically or after a manual review due to credit scoring and there being no evidence of affordability. In March 2020 it was noted by First Direct that it recognised that Miss M was heavily reliant on her overdraft but that due to Covid, it didn't consider it was appropriate to be discussing overdraft reductions with consumers. But Covid didn't absolve First Direct of its responsibilities under CONC as it was obvious that Miss M was facing financial difficulties. But it didn't reach out to Miss M until June 2021.

So by the time of the first annual review, in April 2020 First Direct should have been aware that Miss M was facing financial difficulty. It's clear from her transactions that she was paying other debts from this account as well as using it for essential spending. So, I think from the information available to it First Direct should have identified that Miss M was in financial difficulty by the time the first annual review was due in April 2020.

I understand First Direct's reluctance to cause detriment to Miss M by taking any drastic action. However, taking into consideration First Direct's obligations under CONC, I'm not satisfied it did enough to support Miss M by sending the letters in 2021 and 2022. I've seen no evidence that First Direct took any steps to contact Miss M with suitable options to help her reduce her reliance on the overdraft. So, it follows I don't think First Direct have acted fairly.

I say this because I think Miss M was showing signs of financial difficulty and First Direct should have done more to help her to explore different options to reduce the debt. Because of this, I uphold this complaint from the date of the first annual review in April 2020.

Did First Direct act unfairly in any other way

Miss M also told us that she felt pressured in paying the outstanding balance off instead of using a repayment plan. I've listened to the call recordings where this was discussed and I agree with the findings of our investigator and can't find any evidence to support Miss M's claim. The call handler was professional and explained the options available to Miss M but ultimately, Miss M made the decision to pay off the whole balance. So I don't uphold this aspect of Miss M's complaint.

I've also considered whether First Direct have acted unfairly or unreasonably in any other way and if an unfair relationship existed between First Direct and Miss M, as defined by section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I've Directed above results in fair compensation for Miss M in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

I then explained what First Direct should do to fairly and reasonably compensate Miss M.

Miss M agreed with my provisional findings but First Direct disagreed with them. In its response to my provisional decision First Direct said, in summary, that during Covid, it's processes changed and they referred customers in financial difficulty to Step Change. First Direct said it was doubtful that Mrs M would have contacted Step Change during or after Covid as she had applied for loans during this time and it did not believe these were the actions of someone who was prepared to seek help with debt.

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.

In my provisional decision, I said that Covid didn't absolve First Direct of its responsibilities under CONC as it was obvious that Miss M was facing financial difficulties by March 2020. And as such, it should have reached out to Miss M at that time and at the very least, adhered to their process during Covid for customers in financial difficulties and signposted Miss M to Step Change. I'm not convinced either by First Direct's argument that it was doubtful Miss M would have contacted it, as this is conjecture.

So with the above in mind and given that Miss M accepted my provisional findings I can confirm that I no reason to depart from them and I now confirm them as final.

My final decision

My final decision is I uphold this complaint.

As the outstanding balance has already been paid, First Direct must:

- Re-work Ms M's overdraft account to remove any interest, fees and charges applied from April 2020. This means that from April 2020 onwards no interest or charges should be applied.

AND

- This will result in a credit balance for the overdraft account and should be refunded to Ms M plus 8% simple interest* from the date the credit balance would have accrued, to the date of settlement.
- First Direct should remove any adverse information from Ms M's credit file recorded after April 2020.

*HM Revenue & Customs requires First Direct to take off tax from this interest. First Direct must give Ms M a certificate showing how much tax it's taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 1 May 2025.

Paul Hamber
Ombudsman