

Complaint

Ms T has complained about the overdraft charges TSB Bank plc ("TSB") applied to her two current accounts. She's effectively said the charges applied to her accounts were excessive and unfair and as she had to borrow further to repay them, they led to ongoing difficulty going forward.

Background

Ms T first applied for an overdraft with TSB on her first account in January 2007 and the limit on it was last increased to £700 in June 2016. Her second account had an overdraft added in June 2011 and the limit was last increased to £1,550.00 in December 2013.

In July 2023, Ms T complained to TSB saying that the fees applied to her accounts were excessive and unfair and as she had to borrow further to repay them, they led to ongoing difficulty going forward.

TSB partially upheld Ms T's complaint. It accepted that it shouldn't have allowed Ms T to continue using her overdrafts from July 2017 onwards as it ought to have realised that they had become unsustainable for her. So TSB agreed to refund the overdraft interest, fees and charges applied to Ms T's accounts after July 2017 onwards. It also agreed to add interest at 8% simple for any periods where Ms T would have had a credit balance, but for the overdraft interest and charges.

Ms T was dissatisfied at TSB's response and referred her complaint to our service. When Ms T's complaint was referred to our service, TSB told us that we couldn't consider parts of it as it was made too late. One of our investigators reviewed what Ms T and TSB had told us. She reached the conclusion that we could look at the entire period Ms T had her overdrafts for but thought that what TSB had already done to put things right for Ms T was fair and reasonable in all the circumstances of her case.

Ms T disagreed with the investigator and asked for an ombudsman's decision.

My findings

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

The time limits for making a complaint to our service

There are time limits for referring a complaint to the Financial Ombudsman Service. TSB has argued that Ms T's complaint was made too late because she complained more than six years after some of the charges on the overdrafts were applied, as well as more than three years after she ought reasonably to have been aware of her cause to make this complaint.

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 the complainant (in this case, Ms T) knew, or should really have known they had reason to complain. Dispute Resolution rule 2.8.2R can be found online.

For the purposes of what I'm left to decide here, Ms T has complained about the overdraft charges that were applied to her accounts up to June 2017 (she has complained about the charges added afterwards but there is no dispute that we're able to look at that part of the complaint). This means Ms T had, at least, six years from the charges in question (in relation to this part of the complaint) January 2007 to June 2023 (on the first account) and June 2011 to June 2023 (on the second account) - in order to complain.

Ms T didn't complain until July 2023. I'm therefore satisfied that Ms T clearly complained more than six years after the charges in question were added to her accounts.

However, 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 considered whether DISP 2.8.2R (2)(b) provides Ms T with longer to complain here.

I want to start by saying that I think that in order for it to be the case that Ms T was aware, or she ought reasonably to have been aware of her 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 charges were excessive and therefore unfair;
- the overdraft charges caused her loss;
- another party's actions (or its failure to act) may have caused the loss; and
- the other party was TSB.

Ms T's statements would have made her aware of the charges she is now complaining about when they were being applied. I appreciate that Ms T says that her complaint isn't just that she was being charged, it is about the charges being excessive and unfair. However, I think that in knowing about the charges themselves Ms T had enough information to decide whether she considered these charges to be excessive and whether she thought TSB applying them in these circumstances was unfair.

I also think that Ms T would have known that these charges were causing her a loss given what she has said about struggling to repay them and borrowing further in order to do so. Equally, as it was TSB that was charging Ms T, I think that she ought reasonably to have realised that TSB might have been responsible for her problem too. I'm therefore satisfied that Ms T ought to have been aware of her cause to complain at the time that these charges were applied.

Three years from each of the respective charges does not provide Ms T with longer (than six years from when the charges were applied) to complain. So I don't think that DISP 2.8.2R (2)(b) does apply in this case and I think that Ms T complained too late.

I can look at a complaint made outside of the time limit if I'm persuaded that this was because of exceptional circumstances. I've seen what Ms T has said about her personal difficulties, her illnesses and the impact this had had on her. I've carefully thought about what Ms T has told us and it's clear that she has gone through an extremely difficult time.

However, it may help for me to explain that I'm only really able to say that exceptional circumstances apply where what I'm told actually prevented the complainant from complaining in time. In this case, Ms T was operating her account during the relevant period.

As Ms T has been operating her finances during this time, while I sympathise with the difficult time she's undoubtedly had, I cannot reasonably say that she was unable to make this complaint in time.

In these circumstances, while I do sympathise with everything that Ms T has told us and it's clear that she has gone through an extremely difficult time, I don't think that exceptional circumstances do apply in this case.

Section 140A of the Consumer Credit Act 1974 and its relevance to this complaint

Our investigator also explained why it was reasonable to interpret Ms T's complaint as being one alleging that the lending relationship between Ms T and TSB was unfair to Ms T as described in s140A of the Consumer Credit Act 1974 ("CCA"). She also explained why this complaint about an allegedly unfair lending relationship had been made in time.

For the sake of completeness, I wish to confirm that I'm in agreement with the investigator that Ms T's complaint should be considered more broadly than just the individual charges or lending decisions. I consider this to be the case as Ms T has not only complained about the circumstances behind the application of the individual charges, but also the fact TSB's failure to act during the periods she alleges it was applying these excessive and unfair charges caused ongoing hardship.

In deciding what is fair and reasonable in all the circumstances of Ms T's case, I am required to take relevant law into account. As I'm satisfied that Ms T's complaint can be reasonably interpreted as being about that her lending relationship with TSB was unfair to her, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (TSB) and the debtor (Ms T), 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. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Application to Ms T's complaint

In this case, TSB accepts that it shouldn't have allowed Ms T to continue using her overdrafts from July 2017 onwards. In my view, and although I'm not required to make a finding to this effect, I nonetheless think that this, at the very least, means that the relationship between Ms T and TSB, is likely to have been unfair from this point onwards.

It is possible that any such unfairness may have existed earlier. However, just because there may have been unfairness in a debtor's relationship with a creditor 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 *Smith v Royal Bank of Scotland Plc*¹, the Supreme Court pointed out that remedies for unfair relationships are at 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 that claim. There is no fixed period of delay that brings this principle into play, but the Supreme Court approved the District Judge's comment in the case that a court would be slow to remedy unfairness in a situation where the claimant delayed more than six years after knowing the facts.

Therefore, in determining a fair and reasonable outcome to Ms T's complaint and what is fair compensation, it's important for me to take this into account as relevant law. I consider that a complainant would have knowledge of the facts that caused any unfairness when they became aware of a problem and that they were suffering a loss.

Where a consumer had knowledge of the relevant facts, our typical approach to cases of this nature is for the respondent firm to refund to them, the interest and charges they paid for the six years before they made their complaint. If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to the consumer, along with 8% simple interest on the overpayments from the date they were made until the date of settlement.

In the section of this decision relating to time limits, I've already explained why I think that Ms T had enough to know whether she considered the overdraft charges excessive and unfair and that she knew she was suffering a loss as TSB continued to charge her and she had to borrow elsewhere in order to pay these charges. I'm satisfied that this is sufficient for Ms T to have knowledge of the relevant facts. However, Ms T didn't do anything about this until she complained in July 2023, so I think it's right that any refund of interest and charges should be limited to the six-year period prior to Ms T making her complaint.

TSB has already refunded the overdraft interest and charges that were added to Ms T accounts in the six years prior to her complaint. It has also added interest on any overpayments (period where Ms T would have had a credit balance had she not been charged the refunded overdraft interest and charges). TSB has therefore compensated Ms T in exactly the way I would award, even if I were to have found that any unfairness began earlier than July 2017. As this is the case, I don't think that it would be fair and reasonable to require TSB to do anything more or anything further.

Overall and having considered everything, while I can understand Ms T's sentiments and appreciate why she remains unhappy, I'm satisfied that what TSB has already done to put things right is fair and reasonable in all the circumstances of this complaint. Therefore, I'm not requiring TSB to do anything more or anything further and I'm not upholding this complaint. I appreciate this will be very disappointing for Ms T. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Ms T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 16 June 2025.

Jeshen Narayanan

¹ *Smith and another v Royal Bank of Scotland plc* [2023] UKSC 34.

Ombudsman