

Complaint

Ms F has complained about the overdraft charges TSB Bank plc (“TSB”) applied to her current account. She’s effectively said the charges applied to her account were unfair as the overdraft was unaffordable and that this has led to ongoing difficulty going forward.

Background

Ms F first applied for an overdraft with TSB in February 2016. At this point she was given a limit of £250. This limit looks to have been increased to £1,500.00 in April 2018 where it remained until Ms F formally complained in February 2024.

TSB partially upheld Ms F’s complaint. It did not think that it had done anything wrong or treated Ms F unfairly in the period up until February 2018. However, it accepted that it shouldn’t have allowed Ms F to continue using her overdraft from February 2018 onwards as it ought to have realised that it had become unsustainable for her. So TSB agreed to refund the overdraft interest, fees and charges applied to Ms F’s account, which it hadn’t already refunded, from February 2018 onwards.

Ms F was dissatisfied at TSB’s response and referred her complaint to our service. When Ms F’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 F and TSB had told us. He reached the conclusion that we could look at the entire period Ms F had her overdraft for but thought that what TSB had already done to put things right for Ms F was fair and reasonable in all the circumstances of her case.

Ms F 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.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. TSB has argued that Ms F’s complaint was made too late because she complained more than six years after some of the charges on the overdraft were applied, as well as more than three years after she ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why it was reasonable to interpret the complaint as being one alleging that the lending relationship between Ms F and TSB was unfair to Ms F as described in s140A of the Consumer Credit Act 1974 (“CCA”). He also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I’m satisfied that what TSB has already done to put things right for Ms F is fair and reasonable and so I’ve decided not to uphold the complaint.

Given the reasons for this, I'm satisfied that whether Ms F's complaint about some of the specific charges applied was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Ms F's complaint should be considered more broadly than just the individual charges or lending decisions. I consider this to be the case as Ms F 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 ought to have seen she was experiencing difficulty caused ongoing hardship.

I'm therefore satisfied that Ms F's can therefore reasonably be interpreted as a complaint that the lending relationship between herself and TSB was unfair to her. I acknowledge the possibility that TSB may still disagree that we are able to look at the whole of Ms F's complaint, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Ms F's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Ms F'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 F), 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.

Given Ms F's complaint, I therefore need to think about whether TSB's allowing Ms F to use her overdraft in the way that it did prior to February 2018, resulted in the lending relationship between Ms F and TSB being unfair to Ms F, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove any such unfairness.

Ms F's relationship with TSB is therefore likely to be unfair if it allowed Ms F to continue using her overdraft, prior to February 2018, in circumstances where it ought reasonably to have realised that the facility had become unsustainable or otherwise harmful for her. And if this was the case, TSB didn't then remove the unfairness this created somehow.

Did TSB unfairly allow Ms F to continue using her overdraft in a way that was unsustainable or otherwise harmful for her prior to February 2018?

Before I go any further, as this essentially boils down to a complaint that Ms F was unfairly charged as a result of being allowed to continue using her overdraft, I want to be clear in saying that I haven't considered whether the various amounts TSB charged were fair and reasonable, or proportionate in comparison to the costs of the service provided. Ultimately,

how much a bank charges for its services is a commercial decision. And it isn't something for me to get involved with.

That said, while I'm not looking at TSB's charging structure per se, it won't have acted fairly and reasonably towards Ms F if it applied this interest, fees and charges to Ms F's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware that there was a clear reason it would have been unfair to do so. I've therefore considered whether such a reason existed, prior to February 2018, which would have resulted in TSB charging Ms F unfairly.

Having looked through Ms F's account statements, it's clear that she has been using her overdraft from when it was granted to her in February 2016. I'm therefore satisfied that there can be no dispute that Ms F was using her overdraft over the period of time she's had it.

Ms F's arguments appear to suggest that this in itself means that her complaint should be upheld. However, Ms F's overdraft was arranged. This means that she had an agreement to use her overdraft and she was entitled to use it. Therefore, Ms F using her overdraft in the period that she had it doesn't automatically mean that her complaint should be upheld.

That said, I do accept that the rules, guidance and industry codes of practice all suggest that prolonged and repeated overdraft usage can sometimes be an indication of financial difficulty. However, it isn't always the case that prolonged and repeated overdraft usage by a customer will always mean that they are, as a matter of fact, in financial difficulty. Indeed, if that were automatically the case, there would be an outright prohibition on revolving credit accounts being open ended, rather than there being a requirement for a lender to review how the facility is being used.

I've therefore considered whether TSB acted fairly and reasonably towards Ms F, in this light. One such instance where a lender would be expected to act is where it was clear that the customer was experiencing financial difficulty. Nonetheless, it would need to be objectively clear to the lender, rather than a matter open to interpretation, that the overdraft charges were clearly making things worse and they were harmful as a result.

To help with determining whether it is objectively the case that a customer was experiencing financial hardship, the regulator has (since April 2014) set out guidance on what it considers to be potential indicators of financial difficulty. This '*Guidance on financial difficulties*' is set out in CONC 1.3. It states that things such as a customer failing to meet consecutive payments to credit, being unable to meet their commitments out of their disposable income, having adverse credit or other insolvency information recorded against them, or being in a debt arrangement should be considered as potential signs of a customer being in financial difficulty.

However, having looked at Ms F's account statements between February 2016 and February 2018, I've seen no indication that any of the potential signs of financial difficulty contained in regulator's guidance, were obviously present in her circumstances during the period I'm looking at. Furthermore, I can't see anything in Ms F's statements which shows that she was borrowing from payday or other high-cost lenders, which although not contained in the regulator's guidance, is generally accepted to be an indication that a borrower could be struggling too.

I've also looked at Ms F's incomings and outgoings in this period as well as her overdrawn balances and determined whether it was possible for her to have stopped using her overdraft, based on this. I think that if Ms F was locked into paying charges in circumstances where there was no reasonable prospect of her exiting her overdraft then her facility would have been unsustainable for her, even where the indicators of financial difficulties I've set

out above weren't clearly present in her circumstances, when looking at the account transactions.

In considering this matter, the first thing for me to say is that Ms F's overdraft limit in the period I'm looking at was relatively low at £250. I accept that this doesn't in itself mean that TSB did nothing wrong prior to February 2018, but it's fair to say that it's less likely that a customer would be trapped into continuously using an overdraft with such a low limit.

Furthermore, I've noted that throughout the period of time I'm looking at, Ms F's account was in receipt of credits that regularly cleared her overdrawn balance and brought her back into credit. Indeed, I'm satisfied that Ms F's case (prior to February 2018) isn't one where a borrower was permanently in their overdraft. The fact that Ms F was receiving regular credits into her account is another reason why her overdraft of £250 doesn't appear to have been obviously unsustainable for her.

Equally, while I'm not seeking to make retrospective value judgements over Ms F expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Ms F's account. Indeed, there was significant discretionary spend and Ms F also appears to have been transferring funds to and from another account of hers. Given Ms F will have seen how much she was paying in charges, I think that she ought to have realised that how much she was paying as a result of using her overdraft in this way.

I accept that Ms F did have other credit commitments at this time. But this in itself does not mean that she was reliant on credit to meet her essential expenditure. And as I've explained, it isn't immediately obvious to me that Ms F was borrowing from unsustainable sources – such as payday type lenders – in order to pay for the charges, or meet other committed expenditure either.

Of course, I accept neither of these things in themselves (or when taken together) mean that Ms F wasn't experiencing difficulty. But I don't think that Ms F's account conduct and overdraft usage, prior to February 2018, obviously show that she was. And that's what I'd need to be persuaded of in order to uphold her complaint for the period I'm looking at.

Looking from the outside, it looks like Ms F had the funds where she was in a position where she didn't need to use the overdraft. However, she was choosing to do so. In these circumstances, TSB was reasonably entitled to conclude that Ms F was choosing to use her overdraft to make discretionary transactions, rather than it being the case that she had become reliant on it. Furthermore, I'm also mindful that the available evidence shows that it is from around 2020 that Ms F's circumstances changed and TSB's refund addresses this.

Therefore, I don't think that Ms F was obviously locked into using her overdraft, prior to February 2018, and paying the charges for doing so. In my view, Ms F was dipping in and out of the overdraft and there was a reasonable prospect of Ms F permanently exiting it. So TSB was reasonably entitled to believe that Ms F was choosing to use her overdraft in the way that she was, rather than a case that her financial circumstances meant that she had no choice other than to do so.

As this is the case, I don't think that it was unreasonable for TSB to have proceeded adding the charges that it did prior to February 2018.

Therefore, I don't find that the relationship between Ms F and TSB was unfair to Ms F prior to February 2018. I've not been persuaded that TSB created unfairness in its relationship with Ms F by allowing her to use her overdraft in the way that she did up until then. And any unfairness that may have been created by TSB allowing Ms F to use the overdraft from

February 2018 onwards has since been removed as a result of what TSB has already done to put things right. Based on what I've seen, I don't find TSB treated Ms F unfairly in any other way either.

I appreciate that Ms F is unhappy at TSB having appointed a collection agent in relation to the outstanding balance on her account. However, TSB is entitled to take this action. Furthermore, TSB has simply appointed a collection agent rather than sold her debt and it has already applied the refund to Ms F's account.

For the sake of completeness, I'd like to remind TSB of its (and any agent appointed) ongoing obligation to exercise forbearance and due consideration in relation to the outstanding balance on Ms F's account. I'd also add that Ms F may be able to complain to us – subject to any jurisdiction concerns – should she be unhappy with TSB's actions in relation to recovering the balance, or it failing to exercise forbearance going forward.

Overall and having considered everything, while I can understand Ms F's sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Ms F. 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 F's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 16 June 2025.

Jeshen Narayanan
Ombudsman