

The complaint

With the help of a professional representative, Mr L complains that National Westminster Bank Public Limited Company trading as Ulster Bank lent to him irresponsibly. For ease, I'll refer mainly to the actions of the PR as being those of Mr L.

What happened

Mr L has had an overdraft of £1,000 on his current account with Ulster Bank since February 2009. On 19 January 2024, Mr L complained to Ulster Bank. He said he had *"remained at the upper limit of [his] overdraft for a prolonged period and has incurred significant charges of interest as a result."* Mr L said Ulster Bank had failed to properly monitor his account as it is obliged to under various codes and regulations, and it should have noticed he wasn't using the overdraft as intended – for short term emergency borrowing. He said Ulster Bank had failed to assess his ability to afford the overdraft. As a result of these complaint points, Mr L says his credit relationship with Ulster Bank was unfair as described in Section 140A of the Consumer Credit Act 1974 (s.140).

To resolve the complaint, Mr L asked Ulster Bank to refund all charges and interest he'd paid on the account, along with statutory interest of 8%, a payment for distress and inconvenience, and to remove any adverse information it has registered with the credit reference agencies.

Ulster Bank looked into Mr L's complaint and issued a final response letter. It said due to the time that had passed it no longer had details of his application for the overdraft. It said all charges and interest had been correctly applied and there had been no bank error. The bank said it had written to Mr L a number of times over the last few years to invite him to speak to it to discuss options to repay the overdraft, but he hadn't made contact. Ulster Bank didn't uphold Mr L's complaint.

Mr L didn't accept the bank's response, so he referred his complaint to our service. Ulster Bank told us that as the lending decision was taken more than six years before Mr L raised his complaint, it was outside our jurisdiction, and it didn't consent to us considering it.

One of our investigators looked into the complaint. She didn't agree with Ulster Bank that the early part of the complaint was outside our jurisdiction, because Mr L had complained that the credit relationship was unfair. She explained this meant we could consider the whole of the relationship.

Our investigator looked at the whole complaint but felt Ulster Bank hadn't treated Mr L unfairly. She found that there wasn't enough information to enable her to say that the bank had reached an unfair decision to give Mr L an overdraft limit. Having reviewed Mr L's statements from 2010 onwards, she felt the bank hadn't acted unfairly in continuing to allow Mr L use of the overdraft and didn't feel it had treated him unfairly. Our investigator didn't uphold Mr L's complaint.

Mr L didn't accept our investigator's view of the complaint. As there was no agreement, the complaint has been passed to me for a 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.

There are time limits for referring a complaint to the Financial Ombudsman Service, and Ulster Bank thinks this complaint was referred to us too late. Our investigator explained why she didn't, as a starting point, think we could look at a complaint about the lending decision as that happened more than six years before the complaint was made. But she also explained that Mr L had complained about his credit relationship with Ulster Bank being unfair as described in s.140, and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

For the avoidance of doubt, I agree with our investigator that I have the power to look at the complaint on this basis. I acknowledge Ulster Bank still doesn't agree we can look at this complaint, but as I don't think it should be upheld, I don't intend to comment on this further.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Mr L's complaint is also about the fairness of his relationship with Ulster Bank, relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974.

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (Ulster Bank) and the debtor (Mr L), 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.

S.140B 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 what Mr L has complained about, I need to consider whether Ulster Bank's decision to lend to him and increase his overdraft limit, or its later actions, created unfairness in the relationship between him and the bank such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr L's relationship with Ulster Bank is therefore likely to be unfair if it didn't carry out proportionate affordability checks and doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.

I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did Ulster Bank carry out reasonable and proportionate checks to satisfy itself that

Mr L was in a position to sustainably repay the credit?

- If not, what would reasonable and proportionate checks have shown at the time?
- Did Ulster Bank make a fair lending decision?
- Did Ulster Bank act unfairly or unreasonably towards Mr L in some other way?

Ulster Bank had to carry out reasonable and proportionate checks to satisfy itself that Mr L would be able to repay the overdraft. It's not about the bank assessing the likelihood of it being repaid, but it had to consider the impact of the overdraft on him.

There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the credit, and the overall circumstances of the borrower.

Did Ulster Bank carry out reasonable and proportionate checks?

Not unreasonably due to the time that's passed, neither Ulster Bank nor Mr L have any information about the application for the overdraft or the decision to agree it in 2009, or Mr L's financial circumstances at the time. Neither party is obliged to hold records indefinitely, so I am not surprised that this is the case. But in view of that, I can't reach any assessment on whether it was reasonable for Ulster Bank to have agreed the limit for Mr L. It follows that I can't say its decision to lend was unfair.

Did Ulster Bank act unfairly or unreasonably towards Mr L in some other way?

Banks generally review accounts on an annual basis. Given Ulster Bank agreed Mr L's overdraft in February 2009, I've considered the next annual review was likely to be February 2010 and annually thereafter. I'd generally expect a review to look at things such as how the account is funded, how often it sees a credit balance, how the overdraft is being used and whether there are signs the customer may be experiencing financial difficulties which may mean they would be unable to repay the overdraft in a reasonable period of time.

I have statements for Mr L's bank account which start from January 2010. I can't therefore reasonably reach any conclusion about the annual review from February 2010 as I only have limited information. But I've looked carefully at the activity of the account since then.

I can see Mr L used his overdraft consistently from January 2010. He was weekly paid which, in my experience, makes it more difficult to get an account into credit once it is overdrawn, because the income receipts are smaller than those where people are paid monthly. Mr L would routinely take cash withdrawals on or shortly after payday and make small discretionary payments from the account. From November 2011, he began to make transfers to another account and transfer the money back when needed. But there is no sign that Mr L was in any particular financial difficulty - simply using the overdraft isn't necessarily a sign that he was in difficulties.

Over the years, Mr L's wages increased but his use of the account didn't change, although his discretionary payments increased too. I think he could have repaid the overdraft if he'd wished - or been required - to do so. I say this because the income he was receiving was sufficient to enable him to do so within a reasonable period of time. There is no indication that he had any problems meeting his commitments or was starting to borrow elsewhere.

It is clear Mr L wasn't using the overdraft for short term borrowing, and I can see it has written to Mr L several times inviting him to contact it to speak about how he was managing his account, and the cost of the overdraft, but he didn't do so. But I don't think his account performance shows signs that he was struggling financially or was unable to repay the

overdraft to the extent that I would have expected Ulster Bank to intervene any further.

Having reviewed all the evidence and arguments presented by each party to this complaint, I haven't seen anything which makes me think Ulster Bank treated Mr L unfairly. If Mr L feels he is in financial difficulty – or indeed simply wants help to get out of his overdraft – I would encourage him to speak with the bank. I'd remind Ulster Bank of its obligation to treat customers in difficulty fairly.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 8 July 2025.

Richard Hale
Ombudsman