

Complaint

Ms F has complained about the overdraft charges HSBC UK Bank Plc (trading as “First Direct”) applied to her current account.

She’s said that the overdraft was unaffordable and so she shouldn’t have been provided with it. Ms F is also unhappy that her account was defaulted.

Background

Ms F opened a current account with First Direct in April 2015. In August 2015, Ms F successfully applied for an overdraft which had a limit of £250. This limit was never increased and was for an amount that First Direct didn’t charge overdraft interest on as long as it wasn’t exceeded.

In May 2024 Ms F complained saying that First Direct provided her with an unaffordable overdraft which led to ongoing difficulty. First Direct did not uphold Ms F’s complaint. It didn’t think that it had done anything wrong in providing Ms F with her overdraft or allowing her to use it in the way that she did.

Ms F remained dissatisfied at First Direct’s response and referred her complaint to our service. When Ms F referred her complaint to us, First Direct told us that it considered Ms F’s complaint was made too late.

One of our investigators reviewed what Ms F and First Direct had told us. He reached the conclusion that we could look at the entire period Ms F had her overdraft for. However, he wasn’t persuaded that First Direct had acted unfairly by allowing Ms F to use her overdraft in a way that was unsustainable or otherwise harmful.

As this was the case, the investigator didn’t recommend that Ms F’s complaint be upheld.

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. First Direct 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.

Having carefully considered everything, I've decided not to uphold Ms F's complaint. Given the reasons for this, I'm satisfied that whether Ms F's complaint about the decision to provide her with the overdraft was made in time or not has no impact on that outcome.

Having considered matters, I'm satisfied that it is reasonable to interpret Ms F's complaint as being one alleging that the lending relationship between Ms F and First Direct was unfair to Ms F as described in s140A of the Consumer Credit Act 1974 ("CCA"). I consider this to be the case as Ms F has not only complained about the circumstances behind the overdraft application, but also the fact First Direct'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 reasonably be interpreted as a complaint that the lending relationship between herself and First Direct was unfair to her. I acknowledge the possibility that First Direct 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 First Direct 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 (First Direct) 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 First Direct's allowing Ms F to use her overdraft in the way that it did, resulted in the lending relationship between Ms F and First Direct 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 First Direct is therefore likely to be unfair if it provided Ms F with an unaffordable overdraft and/or allowed Ms F to continue using it 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, First Direct didn't then remove the unfairness this created somehow.

I'll now proceed to considering whether the lending relationship between First Direct and Ms F was unfair to Ms F. I'll start by looking at First Direct's decision to provide Ms F with an overdraft in the first place.

Our typical approach to complaints about unaffordable and irresponsible lending

We've set out our general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when considering Ms F's complaint.

First Direct needed to make sure that it didn't lend irresponsibly. In practice, what this means is First Direct needed to carry out proportionate checks to be able to understand whether Ms F would be able to repay what she was being lent before providing any credit to her.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

Application to Ms F's complaint – Did First Direct act fairly and reasonably in agreeing to provide Ms F with an overdraft of £250 in August 2015?

First Direct says that it obtained some information on Ms F's income and her expenditure before deciding to lend to her. Ms F's overdraft was an open-ended (running account) agreement (in other words, while First Direct was required to periodically review the facility, there was no fixed end date) where there was an expectation that she'd repay what she borrowed plus the interest due within a reasonable period of time.

CONC didn't (and still doesn't) set out what a reasonable period of time was. So I think it's important to note that a reasonable period of time will always be dependent on the circumstances of the individual case.

It's fair to say that an overdraft limit of £250 will not have required especially large credits in order to clear the full amount that could have been owed within a reasonable period of time. Nonetheless, the information that First Direct has provided suggests that Ms F declared that she had an annual income of £11,000.00.

Having looked at Ms F's account statements, she does appear to have been receiving credits commensurate with this amount. Furthermore, the limit being was low and the chances of Ms F ending up overdrawn with no reasonable prospect of returning to a credit balance was low.

Taking into account Ms F's declaration of income and the fact that the facility would be interest free, I think that First Direct was entitled to conclude that Ms F had sufficient funds to cover sustainable credits to her overdraft as well as also cover whatever regular monthly living costs she may have had.

As this is the case and bearing in mind the low credits required to clear a balance of £250 within reasonable period of time, I'm satisfied that First Direct was reasonably entitled to accept Ms F's application for an overdraft with a limit of £250 in August 2015.

I'm therefore not persuaded that Ms F was initially provided with an unaffordable overdraft or any unfairness was caused at this stage.

Did First Direct act fairly and reasonably towards Ms F after she notified it of her change in circumstances and when deciding to take corrective action on the overdraft in 2022

There is no dispute that Ms F contacted First Direct in December 2019 to explain that she had lost her job. So I agree that it ought to have been aware of Ms F's change in circumstances. I would expect a lender to take appropriate action in response. This action could include things like freezing interest or setting up a payment plan and any action taken should be with a view to mitigating the risk of the customer's debt increasing unsustainably.

In this case, Ms F's overdraft was already interest free so there were no interest, fees or charges to suppress. Furthermore, Ms F was continuing to receive credits into her account. I note that there were occasions where Ms F had returned direct debits and/or exceeded her agreed limit, but I can't see that she was charged for this. So I don't think that First Direct acted unfairly or unreasonably in allowing Ms F to use the overdraft in the way that she was.

For whatever reason, Ms F stopped receiving the larger credits that she'd been receiving from the latter part of 2021 onwards. As Ms F's account did not receive these credits, Ms F's overdrawn balance exceeded her agreed limit far more regularly and for a number of months in a row. Ms F wasn't charged for this and I've seen evidence that First Direct sent her a number of letters about the limit being exceeded on the overdraft and that there was a need for her to bring the facility within its agreed limit.

I've also seen no obvious reason why Ms F wouldn't have received at least some of this correspondence – especially as the vast majority of correctly addressed post is successfully delivered. Furthermore, by July 2022, it was clear that Ms F wasn't making any inroads into the balance owed.

I'm sorry to hear that Ms F has been through a difficult time and I can appreciate why Ms F is unhappy that First Direct defaulted her account and reported adverse information to credit reference agencies. I also understand why she is concerned at the implications of this. But I don't think it would have been fair, reasonable or proportionate for First Direct to continue ignoring this outstanding balance, or the way that the account was being operated indefinitely. So by this stage, I would have expected First Direct to have taken corrective action in the way that it did.

After all while withdrawing a facility and recording a default or other adverse information, might be viewed negatively by other lenders, it does offer the borrower certain protections in relation to the overdraft debt – for example it stops interest and further charges being added, which First Direct was entitled to add but didn't as Ms F was regularly over her agreed limit in 2022. And asking First Direct to remove the default here and record that Ms F paid this debt when it was due when she didn't, would arguably be counterproductive and not in Ms F's interests or that of any future lender.

Bearing in mind all of this, I'm satisfied that it was fair and reasonable for First Direct to begin the process of taking corrective action in relation to Ms F's overdraft when it did. As this is the case and Ms F didn't respond to First Direct's final demand or take any steps to repay what was owed, I'm satisfied that First Direct was entitled to register the default it did.

Overall and having considered everything, while I can understand Ms F's sentiments and appreciate why she is unhappy, I've not been persuaded that First Direct failed to act fairly and reasonably to her whether when providing the account or taking the corrective action that it did in 2022.

Therefore, I don't find that the relationship between Ms F and First Direct was unfair to Ms F. I've not been persuaded that First Direct created unfairness in its relationship with Ms F by

providing the overdraft, allowing her to use it in the way that she did, or when taking corrective action in 2022. Based on what I've seen, I don't find First Direct treated Ms F unfairly in any other way either.

So 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 14 July 2025.

Jeshen Narayanan
Ombudsman