

Complaint

Mrs M has complained about the overdraft charges TSB Bank (“TSB”) applied to her current account. She’s effectively said the charges applied to her account were unfair as she shouldn’t have been given the overdraft and this caused ongoing financial difficulty.

Background

Mrs M originally applied for a student overdraft in 2014. TSB accepted Mrs M’s application and she was provided with an overdraft which had an eventual limit of £2,000.00.

In January 2025, Mrs M complained saying that TSB shouldn’t have given her this overdraft and doing so caused ongoing difficulty as charges were applied even when she was unable to afford them.

TSB didn’t uphold Mrs M’s complaint. It did not think that it had done anything wrong or treated Mrs M unfairly. Mrs M remained dissatisfied after TSB’s response and referred her complaint to our service. When Mrs M’s complaint was referred to our service, TSB told us that we couldn’t consider part of it as it was made too late.

One of our investigators reviewed what Mrs M and TSB had told us. He reached the conclusion that we could look at the entire period Mrs M had her overdraft for. However, he wasn’t persuaded that TSB had acted unfairly by providing an overdraft or allowing Mrs M to use her overdraft in a way that was unsustainable or otherwise harmful. So the investigator didn’t think that Mrs M’s complaint should be upheld.

Mrs M 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 Mrs M’s complaint was made too late because she complained more than six years after the decision to provide the overdraft, the first limit increase and when 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 Mrs M’s complaint. Given the reasons for this, I’m satisfied that whether Mrs M’s complaint about some of the specific charges applied was made in time or not has no impact on that outcome.

Having considered matters, I’m satisfied that it is reasonable to interpret Mrs M’s complaint as being one alleging that the lending relationship between Mrs M and TSB was unfair to Mrs M as described in s140A of the Consumer Credit Act 1974 (“CCA”). I consider this to be

the case as Mrs M 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 Mrs M'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 Mrs M'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. This includes the submissions that Mrs M has made about her complaint having been made in time.

In deciding what is fair and reasonable in all the circumstances of Mrs M's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mrs M'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 (Mrs M), 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 Mrs M's complaint, I therefore need to think about whether TSB providing Mrs M with an overdraft, increasing her limit or allowing her to use the overdraft in the way that it did, resulted in the lending relationship between Mrs M and TSB being unfair to Mrs M, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove any such unfairness.

Mrs M's relationship with TSB is therefore likely to be unfair if it irresponsibly provided the overdraft or allowed Mrs M to continue using her overdraft 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.

I've therefore considered whether this was the case.

TSB's initial decision to provide Mrs M with an overdraft

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 Mrs M's complaint.

TSB needed to make sure that it didn't lend irresponsibly. In practice, what this means is TSB needed to carry out proportionate checks to be able to understand whether Mrs M 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.

I think that it is worth me starting by saying that when she was initially granted this overdraft Mrs M wouldn't have had to pay any interest or charges for some time provided that she kept within her agreed limit. I think this is especially important context to bear in mind given Mrs M's complaint about the initial decision to grant her an overdraft and the limit increases.

When Mrs M initially applied for her overdraft, I understand that TSB will have carried out a credit search. Bearing in mind what I've been provided, I'm satisfied that any credit search that TSB carried out will more likely than not have shown that Mrs M hadn't had previous difficulties with credit.

I'm also mindful about Mrs M's circumstances at the time of her overdraft application and the fact that she was entering full time education. In these circumstances, where Mrs M was unlikely to earn for some time, it's difficult for me to agree that agreeing this overdraft was wholly unreasonable given it would provide her with some breathing space and was a far better alternative to any other alternative sources of credit Mrs M would more likely than not have turned to.

Furthermore, I can't see an alternative where Mrs M would have been able to borrow from a lender – without having to pay interest at the time. And given the circumstances, where this was a student account where Mrs M would continue to receive the funds interest free for an extended period, it's difficult for me to accept that TSB providing Mrs M with the overdraft unfair.

So overall bearing in mind the circumstances and the type of facility it agreed to, I don't think that TSB treated Mrs M unfairly or unreasonably when providing her with an interest free overdraft of up to £2,000.00.

I'll now go on to consider whether it was fair and reasonable for TSB to begin adding interest to Mrs M's overdraft when it did so.

Did TSB unfairly allow Mrs M to continue using her overdraft in a way that was unsustainable or otherwise harmful for her once it became chargeable?

Before I go any further, as this aspect of Mrs M's complaint essentially boils down to a complaint that Mrs M 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 Mrs M if it applied this interest, fees and charges to Mrs M'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 which would have resulted in TSB charging Mrs M unfairly.

Having looked through the statements TSB has sent, it's clear that Mrs M has been using her overdraft since it started attracting interest after it was converted to a standard current account. I'm therefore satisfied that there can be no dispute that Mrs M was using her overdraft over the period of time this part of her complaint is concerned about. Mrs M's arguments appear to suggest that this in itself means that her complaint should be upheld.

However, Mrs M's overdraft was arranged under an open-ended agreement credit agreement. This means that Mrs M had an agreement to use her overdraft and as a result she was entitled to use it without having to reapply to do so. Therefore, Mrs M 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.

It's also worth saying that 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.

I've therefore considered whether TSB acted fairly and reasonably towards Mrs M, in this light. In other words, I've considered whether there were periods where TSB continued charging Mrs M even though it ought to have instead stepped in and taken corrective measures on the overdraft as it knew, or it ought to have realised, that she was in financial difficulty.

Having looked through Mrs M's account statements throughout the period concerned, I can't see that TSB ought reasonably to have realised that Mrs M was experiencing financial difficulty to the extent that it would have been fair and reasonable for it to have unilaterally taken corrective measures in relation to Mrs M's overdraft.

I'll explain why I think this is the case in a little more detail.

To begin with, I can't see Mrs M notified TSB that she was struggling and that these charges were causing her difficulty, prior to her complaint. If she had TSB would have known that the charges were causing harm and I would have expected it to act. Nonetheless, even though I can't see that Mrs M directly told TSB that she couldn't afford to pay these charges, I've also considered whether her account activity ought to have alerted it to this being the case.

In considering this matter, I'm mindful that in order to help with determining whether it is objectively the case that a customer was experiencing financial hardship, the regulator has set out guidance on what it considers to be potential indicators of financial difficulty.

The '*Guidance on financial difficulties*' 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. Having looked at Mrs M's account transactions, I've seen no indication that any of the potential signs of financial difficulty contained in the guidance, were obviously present in her circumstances during the entire period I've looked at.

I've also looked at Mrs M's incomings and outgoings 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 Mrs M 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 reviewing this matter, I've noted that throughout the period of time this aspect of Mrs M's complaint is concerned with, Mrs M's account was in receipt of credits that were sufficient to clear the overdraft within a reasonable period of time. In these circumstances, I'm satisfied that Mrs M's case isn't one where a borrower was marooned in their overdrawn with no reasonable prospect of exiting it.

Furthermore, while I'm not seeking to make retrospective value judgements over Mrs M expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Mrs M's account. There are also transfers to another TSB account.

I accept that Mrs M may well have had 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 it isn't immediately obvious to me that Mrs M was borrowing from unsustainable sources specifically to pay for these overdraft charges either.

Of course, I accept neither of these things in themselves (or when taken together) mean that Mrs M wasn't experiencing difficulty. But I don't think that Mrs M's account conduct and overdraft usage obviously show that she was clearly in financial difficulty. And bearing in mind I'm satisfied that it is more likely than not that Mrs M did not directly tell TSB that she was experiencing financial difficulty, that's what I'd need to be persuaded of in order to uphold her complaint.

Furthermore, while I appreciate that the addition of interest means that it would take more for Mrs M to fully clear the overdraft, than she would have if TSB continued offering the overdraft on interest free terms indefinitely, I don't think that this means TSB acted unfairly. Under the terms of the overdraft agreement TSB was entitled to add interest when it began doing so. It was also fair and reasonable for to do this as long as it had a reasonable belief that Mrs M wasn't in financial difficulty.

Looking from the outside, it looks like Mrs M had the funds to be able to reduce the amount that she used her overdraft. Therefore, I don't think that Mrs M was obviously locked into using her overdraft and paying the charges for doing so. I'm afraid that I also disagree with it being the case that there is a 12 month limit on a customer using an overdraft.

In my view, there was a reasonable prospect of Mrs M exiting her overdraft. And TSB was reasonably entitled to believe that Mrs M 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.

Overall and having considered everything, I don't think that it was unreasonable for TSB to have proceeded adding the charges that it did. This is particularly bearing in mind the consequences of TSB taking corrective action, in the way that it would have done had it acted in way that Mrs M is suggesting it should have, would have been disproportionate.

I say this because I don't think that it would have been proportionate for TSB to demand that Mrs M immediately repay her overdraft and if not defaulting her account (which is likely to have been what would happen bearing in mind matters), in circumstances where there was a realistic prospect of Mrs M clearing what she owed in a reasonable period of time.

Bearing all of this in mind, I've not been persuaded that TSB created unfairness in its relationship with Mrs M either by providing Mrs M with an overdraft, increasing her overdraft limit, or allowing her to use her overdraft in the way that she. Based on what I've seen, I don't find TSB treated Mrs M unfairly in any other way either.

So while I can understand Mrs M's sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Mrs M. 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 Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 5 January 2026.

Jeshen Narayanan
Ombudsman