

Complaint

Mr C has complained about the overdraft charges TSB Bank Plc (“TSB”) applied to his current account. He’s effectively said the charges applied to his account were excessive and unfair and as he had to borrow further to repay them, they led to ongoing difficulty going forward.

Background

TSB has said that Mr C has had an overdraft on his current account since November 2015. At this point, his overdraft limit was £100. The overdraft limit was increased over the years until it reached £3,000.00 in August 2017. I understand that the limit has remained at this amount since then.

In May 2025, Mr C complained saying that he was unfairly allowed to continue using the overdraft even when he was effectively locked into paying the charges which he couldn’t afford and this caused him ongoing difficulty.

TSB partially upheld Mr C’s complaint. As far as it was concerned, it shouldn’t have allowed Mr C to continue using his overdraft, in the way that he did, between May 2019 and December 2022 – so it refunded the interest, fees and charges added to Mr C’s account in this period. Mr C remained dissatisfied at TSB’s response as he believed that all of the overdraft charges applied to his account should be refunded and referred his complaint to our service.

When Mr C’s complaint was referred to our service, TSB told us that we couldn’t consider what had happened on the account up to and including April 2019 as it believed that Mr C had complained too late. One of our investigators reviewed what Mr C and TSB had told us. She reached the conclusion that we could look at the entire period Mr C had his overdraft for but thought that what TSB had already done to put things right for Mr C was fair and reasonable in all the circumstances and so his complaint shouldn’t be upheld.

Mr C 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 Mr C’s complaint was made too late because he complained more than six years after the charges on the overdrafts were applied, as well as more than three years after he ought reasonably to have been aware of his 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, Mr C) knew, or should really have known they had reason to complain. Dispute Resolution rule 2.8.2R can be found online.

Mr C has complained about the charges that were applied to what, he says, was an unaffordable overdraft on his account. For the purposes of this section of the complaint, this means that Mr C had, at least, six years from when the charges applied up to and including the end of April 2019 were applied to his account - in order to complain.

Mr C didn't complain until May 2025. I'm therefore satisfied that Mr C's complaint was clearly made more than six years after the charges up to and including April 2019 were added to his account.

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 Mr C with longer to complain here.

I want to start by saying that I think that in order for it to be the case that Mr C was aware, or he ought reasonably to have been aware of his cause for complaint, it would have to be the case that he was aware or ought reasonably to have been aware that:

- there was a problem – in this case his overdraft charges were excessive and therefore unfair;
- the overdraft charges caused him loss;
- another party's actions (or its failure to act) may have caused the loss; and
- the other party was TSB.

Mr C's account statements would have made him aware of the charges he is now complaining about when they were being applied. I think that in knowing about the charges themselves Mr C had enough information to decide whether he considered these charges to be excessive and whether he thought TSB applying them in the circumstances that it did was unfair. This is especially as Mr C has referred to the amount of time he was overdrawn as itself being a reason why it was unfair to charge him.

I also think that Mr C would have known that these charges were causing him a loss given what he has said about struggling to repay them and borrowing further in order to do so. Equally, as it was TSB that was charging Mr C, I think that he ought reasonably to have realised that TSB might have been responsible for his problem too. I'm therefore satisfied that Mr C ought to have been aware of his cause to complain at the time that these charges were applied. I don't think that Mr C needed any specialist knowledge to appreciate this either.

Three years from when each of the respective charges were applied does not provide Mr C 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 as he complained more than six years after the overdraft charges applied up to and including the end of April 2019, Mr C complained about these overdraft charges 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. However, Mr C hasn't told us about anything that would have stopped him from complaining in time. As this is the case, 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 Mr C's complaint as being one alleging that the lending relationship between Mr C and TSB was unfair to Mr C 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.

For the sake of completeness, I wish to confirm that I'm in agreement with the investigator that Mr C's complaint should be considered more broadly than just the individual charges or lending decisions. I consider this to be the case as Mr C 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 he alleges it was applying these excessive and unfair charges caused ongoing hardship.

In deciding what is fair and reasonable in all the circumstances of Mr C's case, I am required to take relevant law into account. As I'm satisfied that Mr C's complaint can be reasonably interpreted as being about that his lending relationship with TSB was unfair to him, 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 (Mr C), 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.

I've therefore considered Mr C's complaint in this context and I've started by looking at the charges that TSB added to the account from January 2023 onwards.

The position from January 2023 onwards

Having looked through Mr C's account statements from January 2023 onwards, it's clear that he's been using his overdraft. I'm therefore satisfied that there can be no dispute that Mr C was using his overdraft over the period of time this part of his complaint is concerned about. Mr C's arguments appear to suggest that this in itself means that his complaint should be upheld.

However, Mr C's overdraft was arranged and an open-ended credit agreement. This means that Mr C had an agreement to use his overdraft and as a result he was entitled to use it without having to reapply to do so. Therefore, Mr C using his overdraft in the period that he had it doesn't automatically mean that his 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.

So I've considered Mr C's incomings and outgoings as well as any overdrawn balances and thought about whether it was possible for him to have stopped using his overdraft, based on this. The first thing for me to say is that Mr C's was using his overdraft less than he had been previously and his account was in receipt of credits that were sufficient required to clear the overdraft within a reasonable period of time.

Indeed, I note that that there were periods where Mr C had a significant credit balance on his account and so had the option of removing the facility at this time. I'm therefore satisfied that from January 2023 at least, Mr C wasn't marooned in his overdraft in circumstances where it was clear that there was no reasonable prospect of him being able to exit it.

Furthermore, while I'm not seeking to make retrospective value judgements over Mr C's expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Mr C's account. I don't think that it is unfair to say that if Mr C made less of these transactions he would have used his overdraft less. Equally, in the period from January 2023 at least, I can't see that he was borrowing from unsustainable sources in order to meet his overdraft charges or that his borrowing was increasing exponentially in order to do so either.

I accept neither of these things in themselves (or when taken together) mean that Mr C wasn't experiencing difficulty. But I don't agree that Mr C was reliant on this overdraft. He was quite comfortably able to make any essential commitments without using his overdraft. However, he was choosing to use his overdraft to make discretionary transactions and in periods where he had increased funds his discretionary expenditure increased.

Given the repeat usage letters Mr C is likely to have been sent by TSB, I think that he ought to have realised that how much he was paying for this. So I simply don't agree that Mr C was using his overdraft purely for essential spending, or because he had a reliance on credit to get by.

Overall and having considered everything, I don't think that it was unreasonable for TSB to have proceeded adding the charges that it did from January 2023 onwards. This is particularly bearing in mind the consequences of TSB taking corrective action, in the way that it would have done would have been disproportionate.

In my view, if TSB had sought to take action in this way, Mr C would have pointed to the funds that he had elsewhere as evidence it did not need to do so. So I'm satisfied that any TSB doesn't need to refund any of the charges that it added in the six years prior to Mr C's complaint.

The charges added to Mr C's account in the period up to and including the end of April 2019

Even though there was no unfairness in Mr C's lending relationship from January 2023 onwards and any unfairness in the period between May 2019 and December 2022 has been removed as a result of TSB refunding the overdraft fees it added during this period, it is possible that such unfairness may have existed earlier. For example, it is possible that TSB

applied charges in circumstances where it shouldn't have done so in the period between November 2015 and April 2019.

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 Mr C'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.

In the section of this decision relating to time limits, I've already explained why I think that Mr C had enough to know whether he considered the overdraft charges were excessive and unfair and that he knew he was suffering a loss as TSB continued to charge him and he says he had to borrow elsewhere in order to pay these charges. I'm satisfied that this is sufficient for Mr C to have had knowledge of the relevant facts about the charges applied to his account up to the end of April 2019 at the time that they were applied.

However, Mr C didn't do anything about these charges until he complained in May 2025. So if there were to be a refund of interest and charges in this case, I'm satisfied that any such refund should be limited to the six-year period prior to Mr C making his complaint. As I've explained, it was fair and reasonable for TSB to add the charges that it added to Mr C's account from January 2023 onwards.

So, in my view, TSB has already fairly and reasonably compensated Mr C for anything that went wrong in the six years prior to him making his complaint. As I've explained, it's possible that unfairness existed earlier than this. But Mr C's delay in making this complaint despite having knowledge of the relevant facts, leads me to think that it would not be fair and reasonable for me to compensate him for any difficulty that may (or may not) have existed prior to May 2019, where I'm satisfied that difficulty hasn't existed since January 2023 and he's already been placed in the position he would be in had that difficulty not been present for a number of years.

Overall and having considered everything, while I can understand Mr C's sentiments and appreciate why he is unhappy, I'm satisfied that it wouldn't be fair and reasonable in all the circumstances of this complaint for me to require TSB to do anything more or anything further. Therefore, I'm not upholding Mr C's complaint. I appreciate this will be very disappointing for Mr C. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

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

My final decision

For the reasons I've explained, I'm not upholding Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 5 May 2026.

Jeshen Narayanan
Ombudsman