

The complaint

Mr H complains that TSB Bank plc (“TSB”) overdraft charges caused him financial difficulty and kept him in a cycle of debt. He is particularly unhappy with the unplanned overdraft charges applied between 2008 and 2011.

What happened

Mr H holds an account with a £600 overdraft with TSB. Mr H complained to TSB about the overdraft charges applied to his account. TSB said it couldn't look into the charges applied prior to April 2017 as Mr H's complaint was raised too late. Although TSB didn't think an error had been made on its part in the charges applied to Mr H's account post 2017 it agreed to refund the interest Mr H paid in the six months before raising his complaint.

Mr H was dis-satisfied with this and brought his complaint to this service. One of our adjudicators looked into Mr H's complaint but didn't think we could look at the charges applied to Mr H's account prior to 2017 because he raised this element of his complaint too late. They thought Mr H would've been notified of the charges around the time they were applied and thought at that time Mr H ought to have known enough to decide whether he thought they were unfair and that he had reason to complain. Following a review of Mr H's statements for the past six years, our adjudicator didn't think there were signs of financial difficulty that should've prompted TSB to treat Mr H any differently.

Mr H disagreed – he says there were many occasions he complained to TSB about the charges and made it aware of his financial situation and that TSB ignored him. So the complaint was passed to an ombudsman for a decision.

Why I can't look into this complaint before April 2017

I can't look at all the complaints referred to me. The rules applying to this service say that, where a business doesn't agree, I can't look at a complaint made more than six years after the event being complained about – or (if later) more than three years after the complainant was aware, or ought reasonably to have been aware, of cause for complaint. This is Dispute Resolution rule 2.8.2R(2) – which can be found online in the Financial Conduct Authority's handbook.

And in this case TSB hasn't provided consent. Mr H's complaint was made in April 2023 in relation to overdraft charges dating back to 2008. Six years before he raised his complaint is April 2017. So under the six year rule we can only look at overdraft charges applied – the events complained about – from April 2017. So I need to think about whether the complaint was made within three years of when Mr H should reasonably have been aware he had cause to complain.

When applying this rule Mr H doesn't need to know the specifics of the complaint – just that something may have gone wrong. And I need to consider whether a reasonable person in his circumstances should really have known they had reason to complain.

Mr H by his own admission says the overdraft charges caused him financial difficulties and kept him in a cycle of debt. He specifically refers to the period from 2008 to 2011. Mr H also says he raised this with TSB on many occasions over the phone and when visiting a branch. So it's clear to me that Mr H has known for a number of years the overdraft charges were causing him financial difficulty – yet he only raised a complaint with TSB in April 2023.

TSB have provided us with its internal records and notes and there is no record of Mr H ever raising a complaint with it regarding its overdraft charges or any financial difficulties Mr H may have had. But I can see that an account Mr H had with TSB was closed in April 2012 and the outstanding balance of around £3,000 transferred to its consumer debt recovery team where it was written off.

I think at this point a reasonable person would have likely questioned whether the overdraft charges applied to their account was causing them financial difficulty and making their situation worse. So I think it is likely Mr H would've known enough around the time his account was transferred to debt recovery whether the overdraft charges were affordable and whether the charges were keeping him in debt.

Three years from this is April 2015. As this doesn't provide with Mr H with a longer period of time to complain about the overdraft charges applied it means we can only look at Mr H's overdraft from April 2017 (6 years prior to Mr H raising his complaint).

I can still look into complaints made outside the time limits if I'm satisfied the failure to comply with them was due to exceptional circumstances, but as Mr H hasn't informed us of any exceptional circumstances that may apply and because he didn't make his complaint in time my decision is that I am unable to look into his complaint regarding overdraft charges prior to April 2017.

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.

Having considered everything provided, I've decided not to uphold Mr H's complaint.

Mr H says that the charges TSB applied to his account kept him in a cycle of debt. TSB wouldn't have acted fairly and reasonably towards Mr H if it applied any interest, fees and charges to Mr H's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr H was experiencing financial difficulty.

So I've considered whether there were instances from April 2017 (the period we can look at) where TSB didn't treat Mr H fairly and reasonably. I don't think that TSB did treat Mr H unfairly or unreasonably here though. I say this because despite what Mr H has told us, TSB has no record of Mr H contacting it about having financial difficulties and having looked at Mr H's statements, I can't see anything to suggest for the period being looked at that TSB ought to have realised he might have been experiencing financial difficulty prior to Mr H raising his complaint.

Mr H may argue his regular use of his overdraft was in itself an indication that he was struggling. But although I can see Mr H used his overdraft facility, I can also see that there are significant amounts of non-committed, non-contractual and discretionary transactions – in particular on takeout and other leisure spending.

There were regular credits and cash transfers into the account and Mr H was able to bring the overdraft down and often pay it off before once again going on to use his overdraft to

make debit card transactions, at times large money transfers and cash withdrawals. I accept this doesn't necessarily mean that Mr H wasn't experiencing financial difficulty. But there isn't anything in these transactions in themselves which ought to have alerted TSB to any potential financial difficulty. And although there were short periods of time where Mr H didn't see a credit balance Mr H was able to keep within his limit.

So, in these circumstances I don't think that it was unreasonable for TSB to proceed with adding the interest, fees and charges it did in light of how Mr H's account was being used.

So taking everything into consideration I don't think TSB treated Mr H unfairly or unreasonably which means that I do not uphold this complaint.

My final decision

For the reasons I've explained, I do not uphold Mr H's complaint against TSB Bank plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 28 September 2023.

Caroline Davies
Ombudsman