DRN-3059965

Complaint

Mr W has complained that TSB Bank plc ("TSB") irresponsibly provided him with an unaffordable loan.

Mr W is being assisted with his complaint by his wife who I'll refer to as Mrs W.

Background and my provisional decision of 6 September 2021

Mr W also has a complaint about a loan he jointly took out with his wife. And Mrs W has her own complaint about a loan in her sole name. We've looked at those complaints separately and I won't be offering any opinion on whether those loans should have been provided. That said, I will be referring to facts of those loans insofar as they are relevant to Mr W's application for this loan in his sole name.

TSB provided Mr W with a loan for £12,000.00 in April 2016. The loan had an APR of 6.9%, required no payments to be made for the first three months and was then due to be repaid in 60 monthly payments of £240.11. The purpose of this loan was consolidation of existing debts although some of the information provided suggests a portion of the funds were earmarked to buy a car.

One of our investigators looked into Mr W's complaint. She eventually reached the conclusion that TSB hadn't done anything wrong when providing Mr W with his loan as this loan consolidated Mr W's existing debts at a lower interest rates and at lower more affordable monthly payments. Mrs W, on Mr W's behalf, disagreed with our investigator and asked for an ombudsman's decision.

On 6 September 2021, I issued a provisional decision setting out my initial findings on Mr W's complaint. I won't copy that decision in full, but I will instead provide a summary of my findings.

I started by explaining that we've set out our approach to unaffordable/irresponsible lending complaints on our website and I'd considered this while provisionally deciding Mr W's complaint.

Having carefully considered everything provided, I thought that there were three overarching questions that I needed to consider in order to provisionally decide what was fair and reasonable in all the circumstances of Mr W's complaint. These questions were:

- Did TSB carry out reasonable and proportionate checks to satisfy itself that Mr W would be able to repay his loan in a sustainable way?
- Bearing in mind the circumstances was it the case that TSB ought reasonably to have realised it was increasing Mr W's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit?
- Did TSB act unfairly or unreasonably towards Mr W in some other way?

I proceeded to consider each of these questions in turn.

I explained that the rules and regulations when TSB lent to Mr W required it to carry out a reasonable and proportionate assessment of whether he could afford to repay what he owed in a sustainable manner. This assessment is sometimes referred to as an “affordability assessment” or “affordability check”.

These checks had to be “borrower” focused – so TSB had to think about whether sustainably repaying the loan would cause difficulties or adverse consequences *for Mr W*. In practice this meant that TSB had to ensure that making the repayments wouldn’t cause Mr W undue difficulty or adverse consequences. In other words, it wasn’t enough for TSB to simply think about the likelihood of it getting its money back, it had to consider the impact of any repayments on Mr W.

Checks also had to be “proportionate” to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking.

In light of this, I thought that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer’s income (reflecting that it could be more difficult to make any repayments to credit from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the *longer* the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

I also set out that there may also be other factors which could influence how detailed a proportionate check should’ve been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I kept all of this in mind when thinking about whether TSB did what it needed to before providing Mr W with his loan.

Were TSB’s checks reasonable and proportionate

TSB said that Mr W’s loan was considered affordable, in line with its policy, based on what it was told during the application. The information TSB gathered at the time suggested it concluded Mr W received just over £1,500.00 a month, which was made up of benefits of £1,295.00 and a pension of £212. It also looked as though Mr W’s mortgage and joint loan commitments were deducted from Mr W’s income as well as additional non-credit related expenditure. The result was that TSB concluded the maximum monthly repayment Mr W could afford was £518 and the maximum monthly repayment it was prepared to agree to was £373. As the monthly repayment of £240.11 for this loan was lower than this, the loan was deemed affordable.

I carefully thought about what TSB had said. And I began this section by setting out that it didn’t automatically follow that a lender will have acted fairly and reasonably when providing a loan simply because it acted in line with its policy. I thought that it was important for me to point this out because TSB's casehandler appeared to believe that it was outside my remit to uphold a complaint where a lender followed its policy.

I also pointed out that simply requesting information from a borrower didn't, on its own, mean that a lender would have carried out a borrower focused assessment of the borrower's ability to sustainably repay a loan. And I was concerned at some of the information TSB appeared to have proceeded with in this case.

I was concerned that TSB appeared to have disregarded the payments to Mrs W's loan when assessing the affordability of this loan, even though it has told us that Mrs W's loan was agreed – even though it took up almost all of Mrs W's income - because it was deemed affordable based on Mr and Mrs W's joint household finances. Given it also argued that Mrs W's loan was affordable because of Mr W's contribution, I could not see a reasonable basis for not including these payments in Mr W's expenditure for this loan.

I was also particularly concerned at some of the other omissions on the expenditure side of the income and expenditure calculation. For example, there appeared to be nothing recorded for motoring costs even though Mrs W's loan and some of the proceeds of this loan were supposed to have been used to buy a car. Secondly even though there was a section on the application entitled clothing this had a figure of 0 recorded even though the assessment was purporting to assess Mr W's projected expenditure over the next five years.

I was also mindful that that this loan was running concurrently with Mrs W's sole loan and Mr W and Mrs W's joint loan. And the combined payment required from all three loans was in excess of £700. I thought this was particularly important here because I also thought that TSB didn't properly account for the source of Mr W's income.

I wanted to make it clear that I wasn't saying that Mr W's income being made up of benefits and a small pension, on its own, meant that TSB should have declined any application. But I did think that TSB ought to have been on notice Mr W was on a fixed income. And, in these circumstances, I thought that TSB ought to have been particularly mindful that Mr W could ill afford to develop a dependency on credit.

I said this because I thought that there was a greatly reduced prospect of a consumer, in Mr W's position, being able to come into increased funds and use them to completely clear a persistent cycle of borrowing – in the way an employed individual might've been able to. For example, as a result of working overtime or maybe getting a bonus.

And in this case, I was particularly mindful of the fact that this wasn't the first consolidation loan Mr W was provided with and the proportion of the household funds going to TSB was increasing. I didn't think that it was fair and reasonable for TSB on the one hand to say that Mr W unreasonably concluded that the bank would continue to consolidate his debts and therefore continued to rely on credit, when it didn't appear to have factored this in as well as Mr W's source of income, when it made its decision to lend.

As there was no evidence that TSB asked for, or considered, further information to properly scrutinise the inconsistencies and address the concerns I highlighted, I found that it didn't complete fair, reasonable and proportionate affordability checks before providing Mr W with his loan.

As reasonable and proportionate checks weren't carried out before Mr W's loan was provided, I couldn't say for sure what they would've shown. And ordinarily I have needed to have gone on to decide whether it was more likely than not that reasonable and proportionate checks would have told TSB it shouldn't have provided this loan. However, I didn't think that it was necessary for me to do that in this case.

I said this because this wasn't Mr W's first loan with TSB and I was mindful that the relevant rules and guidance clearly set out that a lender shouldn't continue offering credit where the borrowing was unsustainable or otherwise harmful and/or where it was apparent the borrower may be experiencing financial difficulties. So in addition to assessing the circumstances behind each *individual* lending decision, I also thought it was fair and reasonable to look at what unfolded during the course of Mr W's relationship with TSB.

By this stage, I had already explained why I didn't think that reasonable and proportionate affordability checks were completed for this loan. I had also explained that this wasn't the first consolidation loan Mr W (and his household) had been provided with. It appeared as though this was the third time TSB (in its current form) consolidated existing debts for Mr W's household. And it was also advancing additional funds – over and above what Mr W already owed - when providing this loan.

From what I'd seen, TSB's defence of this complaint in large part relied on the fact that this loan had a lower interest rate than the existing debts being consolidated. So if I took TSB's argument to its logical conclusion, I saw it as being even if this loan was unaffordable, it still wasn't unfair to lend because this loan was less unaffordable then Mr W's existing repayments to his creditors. And therefore Mr W, in any event, didn't lose out as a result of having been provided with this loan.

I had concerns with this argument for two reasons. Firstly, I thought that TSB was presenting a false dichotomy as it was somehow suggesting that Mr W was faced with a binary choice of ether paying his existing creditors an unaffordable amount, or paying TSB a perhaps less unaffordable amount. But this ignored the fact that Mr W could have attempted to reach an arrangement with his existing creditors to repay what he owed more gradually. After all his existing creditors owed a regulatory obligation to exercise forbearance and due consideration in the event that he was struggling to repay what he already owed.

I wasn't suggesting that TSB was required to provide Mr W with debt advice in relation to his existing debts and tell him to reach arrangements with his existing creditors instead of lending to him. What I was saying was that Mr W's choice wasn't as binary as TSB appeared to be suggesting. And that it didn't automatically follow that Mr W won't have lost out simply because his TSB loan had a lower an APR than his existing debts.

Secondly, TSB advanced Mr W additional funds over and above what he owed elsewhere. So while it might have reduced his monthly payment (once again perhaps to a less unaffordable payment), it nonetheless increased Mr W's overall indebtedness. This was Mr W's third consolidation loan and the amount he owed was increasing. Equally, it ought to have been apparent that Mr W's indebtedness was increasing in circumstances where he (and the household) was only repaying what he owed by borrowing further. And this, in itself, is highlighted as unsustainable within the regulator rules.

TSB itself noted that Mr and Mrs W appear to have been relying on being provided with a further consolidation loan further down the line in order to repay what they owed. I didn't think it was fair and reasonable for TSB to argue this while also failing to acknowledge its shortcomings in terms of Mr W's adoption of this repayment strategy. In my view, TSB's actions encouraged Mr W to continue *'kicking the can further down the road'*. And it was clear that the previous consolidation hadn't reduced Mr W's (and Mrs W's) overall indebtedness – Mr W owed more than he did previously. I also said this while especially mindful of what I'd already highlighted and commented on when talking about the make-up of Mr W's income in the previous section of this provisional decision.

TSB also said that it couldn't have been expected to have known that Mr W's circumstances could change. But given it would have, or at the very least it, ought to have known that the term of this loan extended past Mr W's natural retirement age and his fixed income made it unlikely the loan would be repaid early, I thought that TSB ought to have realised that Mr W was always going to have to make the payments to this loan past his retirement age. So I thought that it ought to have questioned Mr W's ability to make his loan payments at this stage and also queried whether he'd still have the same entitlement to benefits at this stage.

Therefore, I thought that a change in Mr W's circumstances was reasonably foreseeable at the outset. And I thought that it was perfectly fair and reasonable to expect TSB to have considered Mr W's ability to make his payments in these circumstances – especially as it was increasing the amount he owed. And I didn't think it was fair and reasonable for TSB to argue that Mr W's inability to make his payments was down to an unforeseen change in circumstances.

Given all of TSB's obligations and what I thought was fair and reasonable taking into account the circumstances and everything I'd covered in this section, I was minded to find that TSB ought fairly and reasonably to have realised it was increasing Mr W's indebtedness in a way that was unsustainable or otherwise harmful. And so it shouldn't have provided him with this loan.

I then went on to consider the third of the overarching questions set out in my provisional decision. I considered that Mr W (and Mrs W) were unhappy that TSB hasn't agreed to consolidate all of their loans into one new one. I could understand why Mr and Mrs W may have wanted their loans and existing debts consolidated into a single further loan. But I had to consider this in the context that I'd already concluded that TSB ought to have realised it was providing Mr W with a loan that was unsustainable for him in April 2016. As this was the case, it would have been unfair for TSB to have consolidated Mr W's borrowing into a further interest-bearing loan at a time when his circumstances had changed for the worse.

In those circumstances, I would expect a lender to exercise forbearance and due consideration rather than provide further unsustainable credit. I could see that when Mr W got into trouble with this loan, TSB transferred it to its collections, froze the interest and attempted to reach a repayment arrangement with Mr W. This was in line with what I'd expect a lender to do in such circumstances. Albeit I did have some limited concerns over whether it was the best decision to pass Mr W's account to a third-party bearing in mind everything that was going on at this stage.

That said, overall I didn't think TSB's decision to decline a further consolidation loan or pass Mr W's account to collections was unfair in the circumstances. So overall I found that TSB didn't also act unfairly or unreasonably towards Mr W in some other way.

In conclusion I set out that, overall and having carefully thought about the three overarching questions set out at the start of my provisional decision, I intended to issue a final decision which found that:

- TSB *didn't* complete reasonable and proportionate checks on Mr W to satisfy itself that he was able to sustainably repay his loan;

- TSB ought fairly and reasonably to have realised that this loan was unsustainable or otherwise harmful for Mr W and was unfairly and excessively increasing his overall indebtedness;

- TSB didn't also act unfairly or unreasonably towards Mr W in some other way.

These findings left me minded to issue a final decision reaching the overall conclusion that TSB unfairly and unreasonably provided Mr W with this loan in April 2016.

I then went on to consider whether Mr W had lost out because of TSB's shortcomings. I explained that Mr W paid and is still being expected to pay additional interest and charges as a result of being unfairly provided with his loan. I considered TSB's argument that Mr W would've have paid more interest on his existing commitments had he not been provided with this loan. But I had already explained that I didn't think this was automatically the case, as it was entirely possible Mr W would have reached an arrangement to repay what he owed his existing creditors. And it was perfectly possible this arrangement wouldn't have accrued further interest.

In my view, TSB providing Mr W with this loan meant that he had to pay TSB additional interest for the privilege of it allowing him to delay dealing with what, in my view, had already become an unsustainable debt position. And I thought that Mr W had to pay this additional interest at a time when he was already finding it difficult to repay what he owed. So I was satisfied that Mr W has lost out because of what TSB did wrong and that TSB needed to put things right.

I finally set out a method of putting things right, which I thought fairly and reasonably addressed TSB's shortcomings and Mr W's resulting loss.

TSB's response to my provisional decision

TSB didn't respond to my provisional decision or provide anything further for me to think about.

Mr W's response to my provisional decision

Mrs W, on behalf of Mr W, responded to confirm receipt of my provisional decision and acceptance of my findings.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having carefully considered everything, I remain satisfied that there are three overarching questions that I need to consider in order to decide what is fair and reasonable in all the circumstances of Mr W's complaint. These questions are:

- Did TSB carry out reasonable and proportionate checks to satisfy itself that Mr W would be able to repay his loan in a sustainable way?

- Bearing in mind the circumstances was it the case that TSB ought reasonably to have realised it was increasing Mr W's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit?

- Did TSB act unfairly or unreasonably towards Mr W in some other way?

In my provisional decision, I, in some detail, set out my thoughts in relations to these key questions and in essence the reasons why I intended to uphold Mr W's complaint. And as neither party has disputed my provisional findings or provided anything further for me to think about, I see no reason to depart from these conclusions.

So having carefully thought about the three overarching questions set out above, I still find that:

- TSB *didn't* complete reasonable and proportionate checks on Mr W to satisfy itself that he was able to sustainably repay his loan;
- TSB ought fairly and reasonably to have realised that this loan was unsustainable or otherwise harmful for Mr W and was unfairly and excessively increasing his overall indebtedness;
- TSB didn't also act unfairly or unreasonably towards Mr W in some other way.

These findings leave me reaching the overall conclusion that TSB unfairly and unreasonably provided Mr W with this loan in April 2016. As I've already set out why I think that Mr W lost out because of what TSB did wrong, I'm satisfied that TSB should put things right. It should do this by following the method set out in the next section of this decision.

Fair compensation – what TSB needs to do to put things right for Mr W

I've given a lot of careful thought to what fair compensation should look like in this case.

I've already explained that Mr W's real loss here is the interest that TSB has added to this loan. So I'm satisfied that TSB should make sure that Mr W pays no more than the £12,000.00 he was advanced.

Ordinarily, where I find that a lender unfairly provided a borrower with a loan, I'd direct the lender to remove any adverse information recorded about that loan from the borrower's credit file. However, I'm mindful of the circumstances of this case and in particular my reasons for upholding the complaint.

I've upheld Mr W's complaint on the basis that Mr W's existing debts, at the time of this application, already appear to have been unsustainable and that TSB potentially providing him with less unaffordable credit didn't take into account that Mr W may have reached arrangements with his existing creditors. But adverse credit information being recorded on Mr W's credit file would have been one of the consequences of him reaching arrangements with his existing creditors.

It would be unreasonable and illogical for me to say that TSB should remove the interest added to this loan because providing it delayed Mr W dealing with the consequences of his unsustainable debt, but depart from this conclusion in terms of Mr W's credit file going forward. And, in these circumstances, I think that removing adverse information where it was more likely than not a lender would have recorded this would place Mr W in a more advantageous position. In my view, this would be counterproductive and arguably not in Mr W's best interests, or those of any potential lender.

So having carefully thought about everything, including everything Mr W (and Mrs W on his behalf) has told us, I'm not going to direct TSB to amend Mr W's credit file to remove any adverse information.

All of this means that I'm satisfied TSB should do the following to put things right for Mr W:

- remove all interest, fees and charges applied to the loan from the outset. The payments made should be deducted from the new starting balance – the £12,000.00

originally lent. TSB should treat any payments made should the new starting balance be cleared as overpayments. And any overpayments should be refunded to Mr W;

- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mr W to the date of settlement†;

†HM Revenue & Customs requires TSB to take off tax from this interest. TSB must give Mr W a certificate showing how much tax it's taken off if he asks for one.

It appears as though TSB sold the outstanding balance on this account to a third-party debt purchaser. If it has it will either need to buy the account back from the third party and make the necessary adjustments, pay an amount to the third party in order for it to make the necessary adjustments, or pay Mr W an amount to ensure that it fully complies with this direction.

My final decision

For the reasons set out above and in my provisional decision of 6 September 2021, I'm upholding Mr W's complaint. TSB Bank Plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 19 October 2021.

Jeshen Narayanan
Ombudsman