

## The complaint

Miss B complains about some loans she got from TSB Bank plc (TSB).

## What happened

I issued my provisional decision on this case on 27 January 2022. I gave both parties the chance to respond with anything else they wanted me to consider by 10 February 2022. I have copied my provisional decision below, which also forms part of this final decision.

*"In June 2019, Miss B took out a loan through TSB for £4,000. The interest rate on the loan was 23.4% APR, due to be repaid over 48 months at a monthly repayment amount of £124.40.*

*Just over a month later in July 2019, Miss B applied online for another loan through TSB. This time, Miss B wanted to borrow £10,085.40. She said with this loan, she wanted to repay the existing loan, and have additional funds to get her back on track after her personal circumstances changed. TSB approved the loan at a rate of 15.9% APR, to be repaid over 60 months at a repayment amount of £239.35.*

*Almost immediately after taking the loan, Miss B realised that she wouldn't be able to afford the monthly repayment amount. And she also decided that she didn't need all of the capital she'd taken. Because of this, she repaid £3,000 to the loan, and asked TSB to reduce the monthly repayment amount to reflect the lesser balance on the account.*

*TSB said they couldn't do this. It said that any additional repayment made towards the loan account would reduce the loan balance, but it wouldn't reduce the monthly repayment amount. It would just mean that less interest would be charged and the loan would be repaid sooner than the initial term detailed in the agreement.*

*Miss B then attempted to refinance this loan into a new one to reflect the new balance of the loan and to reduce the amount she'd have to repay monthly. But TSB couldn't do this. It said that there had been an IT issue which meant that it couldn't refinance Miss B's loan. Leaving her with the current loan and a monthly repayment amount of £239.35.*

*Miss B said that she's had many issues trying to sort this out. She has spoken to lots of people at TSB to try and get help. And she has continuously been told that it would refinance the loan to make it more affordable to her and then this didn't happen.*

*TSB sent a final response to Miss B in October 2019. This response covered off the issues Miss B had in refinancing the loan. TSB offered to pay £150 for any distress and inconvenience it caused her.*

*Another two attempts were made after this final response to refinance Miss B's loan, and again these attempts were unsuccessful. TSB paid Miss B an additional £160 for distress and inconvenience and paid £43 to compensate her for call costs and travel expenses. TSB also re-aged Miss B's loan account to remove the arrears and amended her credit file. It provided her with an additional £118 which was the difference between what her loan*

repayment was and repayment amount for the new refinanced loan (which didn't go ahead). However, Miss B still remains unhappy that TSB has not been able to refinance her loan, and has left her with a loan that isn't affordable to her.

Miss B has told this service about the severe impact this loan has had on her. She has spent a lot of time initially trying to resolve things. She says it has caused her a lot of stress. And the impact of the loan on her credit file could potentially affect her job.

Our investigator looked into things for Miss B. He let her know that this service wouldn't be able to look into the issues that TSB covered off in its final response from October 2019, because she had referred these matters to this service outside of the time limits that apply. It seems that this was accepted by Miss B.

The investigator then looked into the other issues. He essentially found that Miss B's complaint stems from TSB's decision to provide Miss B with the loans. He didn't think that either loan was affordable to Miss B, and so TSB should refund any interest and charges that have been applied to the loan and it should remove any adverse information it has reported to the credit reference agencies about the loans. Miss B accepted this, but TSB didn't.

Because TSB don't agree, the complaint has been passed to me to make a decision on the matter.

### **What I've provisionally 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 done so, it is my current intention to uphold Miss B's complaint in part.

I think it's important to firstly explain I've read and taken into account all of the information provided by both parties, in reaching my decision. A lot has happened in the course of this complaint and I've purposefully tried to keep the background to this complaint as brief as possible. If I've not reflected something that's been said in this provisional decision it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is. This also means I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless it's relevant to the crux of the complaint.

Clearly this situation has been very difficult and stressful for Miss B. And at the moment, I don't find that TSB have been as helpful as they could have been in trying to resolve things. While the initial complaint that Miss B brought to this service was the issue of not being able to refinance her loan – essentially, the issue with the refinancing has only come about because of TSB's decision to lend to her in the first place. So, I think it's important to consider this before anything else. I appreciate TSB's comments in that Miss B hasn't raised a complaint about the affordability in relation to the first loan, but I think this complaint does stem from this initial lending. So I will also look to see how this loan was granted.

Our investigator has already explained the rules, and what is required of a business, like TSB, to do before it lends to a customer. So I don't intend to go over these again in much detail in this provisional decision. But essentially, and amongst other things, the rules say that a lender must carry out reasonable and proportionate checks to ensure that a customer can repay the debt in a sustainable way. The checks must be borrower focussed, which means it needs to take into account the customers overall situation, and not just determine

*the likelihood of the lender being able to get their money back.*

*Reasonable and proportionate checks aren't defined in the rules, but the rules do state what types of things a business should consider – for example, the type of credit, the amount of credit etc. And we generally take the view that these checks ought to take into account the customers personal circumstances – for example, income, amount of lending elsewhere etc.*

*What this means is that TSB needed to check that Miss B would be able to afford to repay the debt it was planning on giving her – in a sustainable way, while taking into account things like her income, expenditure and the lending she already had elsewhere.*

*There are three overarching questions that I need to consider when making a fair and reasonable assessment as to the affordability of these loans. And these are:*

- Did TSB carry out reasonable and proportionate checks to satisfy itself that Miss B would be able to repay her loans in a sustainable way?*
- Bearing in mind the circumstances was it the case that TSB ought reasonably to have realised it was increasing Miss B'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 Miss B in some other way? I have thought about these questions when coming to a fair outcome on this complaint.*

*Loan for £4,000 (loan 1)*

*Based on everything currently available to me, I don't think TSB's decision to lend to Miss B on this occasion was a fair one – so I think that it likely the loan wasn't affordable to Miss B.*

*I've looked at the application that Miss B completed for this loan. At the time, she said she was earning £1,300 a month. She said she paid £600 a month in rent, and she paid around £275 for child maintenance. The loan repayments were £124.40 for 48 months.*

*I don't currently think TSB did enough to check Miss B could sustainably repay the debt before lending to her, and I'll explain why.*

*Miss B told TSB on the application that she wasn't paying anything in other household bills, or for anything else at all (other than rent and child care), I think the fact that Miss B said she said she wasn't paying anything at all, for example food, travel etc, ought to have made TSB question the accuracy of the information provided by Miss B.*

*Had it done this, it would have been able to see that Miss B did have other outgoings – for example I have seen direct debits for a mobile phone bill, council tax, insurance, credit card repayments, tv licence and payments for other general living expenses – that she'd previously told TSB on the application that she didn't have. While I appreciate TSB's comments, in that it should be able to take what the application says on face value, when the information on the application is likely inaccurate, I would have expected it to have done more to check this information with Miss B before agreeing to lend to her.*

*I can also see that Miss B had a credit card with a different lender at the time too. TSB would likely have been aware of this from any credit check it would have completed on her. Again, this would show that the information she put in the application wasn't accurate, because she said that she wasn't paying anything towards credit cards at the time.*

*TSB has said that it wouldn't check bank statements before agreeing to lend to someone, and while this might be the case, this doesn't mean that it couldn't or shouldn't. The affordability information TSB has sent me, asks a question at the bottom: "Confirmation that*

*all the information was checked against bank records (where applicable)". Next to this, it states "No". Based on this, it seems that TSB can check this information against its bank records, but a check wasn't carried out when it agreed to lend to Miss B.*

*So, at the moment, it seems to me that had TSB carried out borrower focussed checks, it would have found that Miss B's outgoings were in fact more than what she'd stated on her application form, and I can't agree that TSB did enough to check the information on the application was correct.*

*If TSB had done more to check Miss B's financial position, and had verified her outgoings, it likely would have found that she would have had much less disposable income than the application form would suggest.*

*I've also taken on board what TSB has said about Miss B receiving benefits that she didn't declare as income – TSB have suggested that Miss B's income was more likely to be around £1,525 per month, as opposed to the £1,300 she put on the application. I think TSB are probably right here in that Miss B was getting more than she declared on the application. The statements I've seen show benefit payments, but they also show that Miss B's income wasn't consistent each month, with the April 2019 payment being less than she'd put on her application. However, I am still minded to agree with TSB that Miss B's income was more than what she'd said it was.*

*I've considered Miss B's income (£1,525) less the childcare payments she said she made (£275), less her rent (£600), less the regular payments leaving her account (£236) and less the repayment for the loan (£124) – and after this, she would have had a disposable income of around £290. This disposable income doesn't include any payments Miss B would likely have been making for other general day to day living expenses, such as food, travel, clothes etc.*

*With the above in mind, I don't think I can fairly say that TSB carried out borrower focussed checks in ensure that Miss B could repay this loan in a sustainable way. And I think had it done this, it would likely have found that Miss B would struggle to repay the loan without causing her financial harm further down the line. It follows that I think TSB needs to do something to put things right for Miss B.*

*Loan for £10,085 (loan 2)*

*Miss B took this loan out around a month after she took out the initial loan. She used this loan to repay loan 1 and to have some additional money to help her with a change in her personal circumstances. The loan was for £10,085.40, to be repaid over 60 months, with a monthly repayment amount of £239.35.*

*Already, the fact that Miss B had applied for a second loan, more than double what she wanted for the loan 1, only a month after the loan 1, would lead me to believe that there was perhaps a negative change in Miss B's financial position.*

*TSB have said that it didn't draw anything negative from this because it could have just been that Miss B had taken out the first loan for the wrong amount and realised she needed more capital. Regardless of the use of the loan, I would have expected TSB to carry out proportionate checks here to ensure that Miss B could afford to repay the loan without it having a negative impact on her financially – especially given the large increase in borrowing. At the moment, I haven't seen enough evidence that TSB carried out sufficient checks, and I currently think its decision to lend more than £10,000 to Miss B has caused her financial harm.*

*I've looked at the application information Miss B completed for the second loan. It's similar to the first, in that Miss B has stated that she didn't have any outgoings other than her rent and child maintenance/childcare payments.*

*Again, we know this not to be true. TSB has access to information that would have verified this – for example her bank statements and the information on her credit file. Given the additional level of borrowing Miss B had applied for, I'd have expected TSB to have checked these things before agreeing to lend to her. I think the fact that Miss B had said that she didn't have any other outgoings at all - other than rent and child maintenance, ought to have made TSB question the accuracy of the application.*

*Based on what I've seen from Miss B's current account statements, I don't think much had changed regarding her financial position. For example, the regular payments leaving her account don't appear to have increased or decreased dramatically, and her income remained broadly the same. This is perhaps expected, given only one month had passed since loan 1 had been granted.*

*Based on what I've said, I think further checks would have indicated that Miss B couldn't afford to repay the £239.35 a month loan repayment. And I think this became clear when Miss B almost immediately struggled to repay what she borrowed. This figure is around double what TSB had previously decided Miss B could afford in loan 1, and based on what I've seen so far, sufficient proportionate checks weren't carried out to establish if this 50% increase in repayments was affordable.*

*And so it follows, that I don't think TSB should have lent to Miss B on this occasion, and it needs to do something to put things right for Miss B, which I'll go on to explain more below.*

*refinancing the loan*

*When Miss B realised she couldn't afford the repayments, and had borrowed more than she needed, she repaid £3,000 back to the loan account – thinking that this would reduce the monthly loan repayment. When Miss B found out that this wouldn't happen, she attempted to refinance the loan.*

*Looking at everything that's happened since TSB issued its final response in October 2019, I don't think it has treated Miss B fairly.*

*I can see Miss B was in contact with TSB in November 2019 to refinance the loan. Looking at the notes provided by TSB it appears that initially, the refinanced loan was accepted but then later, in December 2019, there's a note to say that the loan had failed to open due to an 'unknown error'.*

*I can see that another loan was discussed and agreed in February 2020. I can also see that Miss B gave the documents to the branch, who didn't forward on the correct information, which meant TSB had to send the information back to branch, and it asked Miss B to go back to sign and resubmit. Then in April 2020, TSB again said that it had multiple system issues which meant it couldn't refinance her loan.*

*I can only begin to imagine how frustrating this must have been for Miss B. To have gone through months of worrying about how she was going to be able to afford to repay the loan, to then be offered a solution by TSB, twice, only for it then to say that it couldn't help her because of a system error.*

*I have taken on board TSB's comments, in that Miss B hasn't mitigated her circumstances by not making any payments at all towards to the loan. And I'm minded agreeing with this.*

*However, I don't think that Miss B would have ended up in this situation had TSB lent to her responsibly in the first place. And I can understand why Miss B might have buried her head in the sand about the issue given that she wasn't getting the help she was led to believe she could and would get.*

*That said, TSB has already paid Miss B £160 in distress and inconvenience, £43 in call costs and travel, £181 to help her make her loan repayment and re-aged her loan account to remove the arrears and updated her credit file to reflect this. While I agree that TSB could have done more to help Miss B, I think what it has already paid her is enough to put things right here."*

Miss B responded to the provisional decision to say she was happy with the outcome.

TSB responded, but it didn't agree with the provisional decision. And made the below main points:

- Miss B started this process by making two separate applications for the loans.
- Miss B has chosen not to pay anything towards the debt in the two and a half years she has had the loans.
- It would like me to reconsider my view that it should remove the adverse information from Miss B's credit file regarding the loans. It said that, had it not had system issues, it would have refinanced the loan. And Miss B would have likely defaulted on that agreement.

### **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 again, it is still my decision to uphold Miss B's complaint – and broadly for the same reasons as set out in my provisional decision. However, I will provide answers to TSB main points listed above.

While Miss B might have proactively made the application for the loans, and so starting the process to borrow money herself, this doesn't mean that TSB should have lent to her. TSB has a responsibility to ensure that a person could afford to repay the borrowing before agreeing to lend. I have already explained in my provisional decision why I don't think it did this.

In my provisional decision I referred to the fact that Miss B hadn't made repayments to the loan. Some of the reason she didn't initially do this is because she spent a long time communicating with TSB trying to refinance the loan, and so likely didn't make a payment while she was trying to arrange this. In addition, Miss B has admitted that she buried her head in the sand after she couldn't refinance the loan or afford the repayments. While this might not be an acceptable explanation as far as TSB is concerned, I can understand why she did this. She was faced with the burden of a large debt that she couldn't afford to repay. And had TSB carried out sufficient checks in the first place, she likely wouldn't have been in this position.

I understand that TSB is keen for me to reconsider my view that it should remove the adverse information from Miss B's credit file. It thinks that had it been able to refinance the loan, then Miss B wouldn't have repaid it anyway, and so the loan would have always gone

into a default position. But TSB didn't refinance the loan. And I don't see the value in speculating what might have happened had it been able to do this.

I've already made a finding that both loans were unaffordable to Miss B, and so it is very possible she might have defaulted after the refinance. But I think my point here is that I don't think TSB should have given Miss B the loans in the first place. And had it done sufficient checks before agreeing to lend to her, it likely wouldn't have put her in a position where she was struggling to make repayments, and so avoiding any kind of default on her credit file. For this reason, I will still be asking TSB to remove all adverse credit information from Miss B's file regarding these loans.

Having considered the points raised by TSB, I don't find that these change the findings I made in my provisional decision. And so, it is my decision that this complaint should be upheld and that TSB needs to put things right for Miss B.

### **Putting things right**

I've thought about what amounts to fair compensation in this case. Where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they would be in now if that wrong hadn't taken place. This would mean TSB putting Miss B in the position she'd now be in if she hadn't been given either loans 1 or 2. But when it comes to complaints about irresponsible lending this isn't straightforward. Miss B was given the loans in question and she used the funds – albeit in reality she's effectively used a proportion of what was advanced to repay the previous loan. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Miss B back in the position she would be in if she hadn't been given either loan in the first place.

As this is the case, I have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. Miss B did spend a proportion of the funds she was provided with. So I'm satisfied that Miss B had the use of these funds and it's the extra in interest and charges she paid that's her loss here.

So, in this case, this would involve TSB refunding all of the interest and charges Miss B paid on loans 1 and 2. And removing any adverse information recorded on Miss B's credit file as a result of these loans.

With this in mind, TSB should:

- Calculate the capital amount that Miss B has borrowed, and deduct any payments Miss B has made to the loans from this figure.
- Refund all interest, fees and charges Miss B paid, or has been added to her loan balances;
- The refunded interest, fees and charges for the loans should be deducted from the outstanding balance.
- Arrange an affordable way to repay the outstanding balance on the loan with Miss B.
- Remove any adverse information from her credit file which relates to the loans.

### **My final decision**

For the reasons set out above, I uphold Miss B's complaint. I order TSB Bank plc to put things right for Miss B by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept

or reject my decision before 14 March 2022.

Sophie Wilkinson  
**Ombudsman**