DRN-3365766

The complaint

Miss G complains that TSB Bank plc ("TSB") lent to her irresponsibly when they gave her two loans.

What happened

Miss G took out three loans with TSB. The first was in May 2019 and was paid off. The next loan was taken out in October for £2,300 and another in November for £5,597.14 – and part of this loan was used to pay off the October loan. The November loan account was then closed in March 2021. Miss G says around the time of the October and November loans she was in an arranged overdraft of £3,300 and the loan was to clear the overdraft. Miss G says TSB lent to her irresponsibly as she was already struggling to pay other debts at the time.

TSB responded and said Miss G signed the loan agreements electronically which detailed the interest rate, term of the loan, the monthly repayments and the total amount repayable. TSB explained they believe Miss G was therefore satisfied with the terms they were offering. TSB explained they had reviewed Miss G's bank statements from April 2019 to May 2020 and completed retrospective affordability assessments for the loans based on the income and expenditure they were seeing through her account at the time. They said they had also considered the information provided in Miss G's application in November.

TSB said the online application included an affordability assessment where Miss G was required to inform TSB of any other borrowing she held, such as outstanding credit/store cards, overdraft total, monthly repayment for any existing loan and any repayments for hire purchase. TSB said Miss G noted she didn't have any other debts. TSB said, following their review of Miss G's online application and based on the information she had provided, they believed the loans were affordable for her. TSB said, they believe Miss G was happy with the loan terms in November and they could see it was used to clear her overdraft on her account and also to repay her previous loan. TSB said it was Miss G's choice to apply for the loans and use the funds made available to her and they wouldn't expect her to spend money she couldn't afford to repay.

After considering all of the evidence, I issued a provisional decision on this complaint to Miss G and TSB on 7 March 2022. In my provisional decision I said as follows:

> "*We've set out our general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.*
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> *TSB needed to take reasonable steps to ensure that they didn't lend irresponsibly. In practice this means that they should've carried out proportionate checks to make sure that Miss G could repay the credit in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure.*
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> *The first point I've addressed is whether I think TSB carried out reasonable and proportionate checks. Section 5 of the Consumer Credit (CONC) sourcebook, in*

place at the time, outline that the assessment that TSB needed to complete should've been dependent on, and proportionate to, a number of factors – including the amount and cost of the credit and the consumer's borrowing history. CONC also provides guidance on the sources of information TSB may have wanted to consider as part of making a proportionate assessment. It then gives examples of factors a firm must consider and refers to whether the information the firm has is sufficient and whether to obtain additional information from the customer and any other sources of information to use.

October 2019 loan

TSB is free to decide how to set their lending criteria but they should complete proportionate checks to ensure borrowing is sustainable. Miss G is given a loan of £2,300 on 22 October. In this case, TSB say Miss G applied for this loan online which requires her to inform TSB of her income and expenditure. They say all customers are credit scored at the point of application and TSB check for evidence of adverse credit history from internal and Credit Reference Agency ("CRA") data. They say applications are subject to an affordability assessment and with consideration of income, housing costs, unsecured credit costs and essential living expenditure.

I think the checks carried out by TSB are reasonable and proportionate as they take into account a number of factors. And, the checks carried out are the type I would reasonably expect because they would help TSB to not only build a picture of Miss G's financial situation, but also to assist in determining whether she could repay the credit in a sustainable way.

The next point I've considered is whether TSB made a fair lending decision bearing in mind the information gathered and what they knew about Miss G's circumstances. To help decide this, I've looked at the information shown on Miss G's application. The income and expenditure assessment completed by Miss G shows she entered her net monthly disposable salary as £1,300 and her total monthly expenditure as £40.

There are questions asking about other short term borrowing and Miss G hasn't entered any amounts. Looking at this information, it would suggest Miss G has a disposable monthly income of £1,260. And, given that the monthly repayments were £124.98, I think TSB could be satisfied from the information provided that Miss G would be able to afford the repayments.

TSB say it's Miss G's responsibility to ensure she has provided correct information. They say, when a customer takes out a loan online they are prompted to TSB's online calculator to ensure the loan is affordable. Taking this all into account, I can't see any information here which I believe should've led TSB to identify that Miss G wouldn't be able to make repayments without undue difficulty and wouldn't be able to meet other commitments without having to borrow further.

November 2019 loan

Miss G applied for another loan, which again was online. This loan was taken out a month after the previous loan and was for £5,597.14 with a monthly repayment of £224.77. TSB have provided a copy of the online application completed by Miss G when applying for this loan. This notes Miss G's net monthly income as £1,403.48 and her expenditure as £40. And, the information on the application indicates no other borrowing. There's a question which asks whether Miss G is aware of any *changes to her circumstances that may impact her ability to make monthly loan repayments over the term of the loan, and she's answered 'No'. The checks carried out by TSB are similar to the checks carried out when granting the loan in October. So, it would appear, from the income and expenditure assessment, Miss G was in a similar position in that she had sufficient disposable income to meet the monthly repayments. However, for this loan, I don't think the checks carried out by TSB are reasonable and proportionate in the circumstances.*

Miss G is applying for a loan only one month after the previous loan. This time it's for over double the amount she previously requested. I think TSB should therefore have carried out further checks to get a better understanding of Miss G's expenditure. And, given that Miss G holds a bank account with TSB which shows her income and how it's being spent, this is what TSB should've looked into further.

Given that I don't think reasonable and proportionate checks were completed in this case, the next point I've considered is, if reasonable and proportionate checks had been completed, would they more likely than not have shown that Miss G was more likely than not unable to sustainably repay what she was being lent.

To help decide this, I've looked at Miss G's bank statements for her 'Classic Plus' account for the three months leading up to the November loan. In August, the closing balance is £149.48 and shows the total money in during that month as £2,223.81 and total money out as £2,745.33. In September, the closing balance is £192 and shows the total money in during the month as £3,044.72 and total money out as £2,902.72. And, in October the closing balance £1,668.36 overdrawn and total money in during that month as £6,026.24 and total money out as £6,420.82. I don't think this demonstrates Miss G had much disposable income left, if any, once all expenditure is deducted from deposits. For August it shows as a deficit of £521.52, in September it's £142, and in October it's a deficit of £394.58. For two of the three months, there's a deficit and one month where there's a surplus. Although, the surplus is only by a small amount, and importantly, it's less than the minimum repayment amount of £224.77 for the November loan. I think this shows a completely different picture than the one which the income and expenditure assessment shows. In the latter, it looks like Miss G is left with a significant surplus after the monthly expenditure of £40 she notes on the application is deducted from her monthly income. But, the bank statements show significant spending beyond her monthly income.

The bank statements also show Miss G transferred the October loan of £2,300 into her 'Spend and Save account' and £2,100 of this is immediately transferred to her 'Easy Saver' account – both of which are held with TSB. Miss G then immediately transfers this £2,100 to her 'Classic Plus' account. At this point, the transfer improves Miss G's balance from £1,149.61 overdrawn to a credit of £950.39 but Miss G is back in overdraft the following day. And, the account remains in overdraft up to the point TSB provide the next loan on 22 November – and at that point Miss G's overdraft amount had reached £3,670 against an arranged overdraft limit of £3,700.

I can see the November loan is used to clear the outstanding balance on the October loan and to reduce the overdraft on Miss G's 'Classic Plus' account. This shows the additional borrowing was to meet other debts and liabilities. In addition to this, Miss G's 'Classic Plus' account shows transfers being made on an almost daily basis between this account, and her other two bank accounts with TSB. I think this suggests Miss G was simply transferring money between these accounts to keep them within any overdraft limits while funding significant expenditure. This leads me to the reason for that significant expenditure. Miss G's bank statements show payments being made on an almost daily basis to a payment platform used to make *payments for goods and services. It's not clear what the purpose of that expenditure is but it's clear from the bank statements that Miss G is spending significantly higher than her monthly income. Even in October, and with the deposit of £2,100 from the October loan, Miss G's total spending for the month is £6,420.82.*

Having reviewed Miss G's bank statements for the months preceding the loan application, it is glaringly obvious that the pattern of spending – almost exclusively on the payment platform – is not what most people would consider normal or unproblematic. In October alone, there's around 195 transactions to the same payment platform – and the previous two months to this show transactions with a similar frequency. And I think it was irresponsible of TSB to overlook this information, especially given that in October this was money being spent using the credit provided. I can see TSB refer to Miss G's spending on the payment platform as 'non-essential spending'. I agree with TSB's point here and this further persuades me that TSB should've looked into Miss G's spending habits given that significant amounts of money was being used for non-essential spending. And, I believe TSB should've realised, given what the three months of bank statements show, it was more likely than not the additional credit in November was going to be used for further non-essential spending. While I agree the November loan was used to consolidate other debts, I think it's important to keep in mind the credit facilities Miss G consolidated were used for the same non-essential spending.

Taking this all into account, I don't think Miss G's bank statements show she would be able to repay any borrowing in a sustainable manner. It's clear Miss G was using the loans to service other debts – in this case, to pay off another loan and to lower her overdraft on her bank account. And, I think it's important to note that when the October loan is used to reduce her overdraft limit, Miss G is back in overdraft the following day following significant spending. And, after £3,400 from the November loan is paid into her account, it still doesn't bring it into credit. And, again, even when those loans are paid into Miss G's bank account it's not long before she spends the credit provided. So, I feel if TSB had carried out reasonable and proportionate checks it would've showed Miss G being in a difficult financial position and spending significantly more than she was earning. And, needing this loan to either meet other repayment liabilities or to otherwise make ends meet. This would've highlighted that Miss G wouldn't be able to repay the extra credit in a sustainable manner and without any undue difficulty. Taking this all into account, I think TSB have acted unreasonably in giving Miss G the loan in November."

So, subject to any further comments from Miss G or TSB, my provisional decision was that I was minded to uphold this complaint.

Following my provisional decision, Miss G has responded to say she accepts the decision. TSB have responded to say, while their view of the complaint remains unchanged, and they don't believe the refund or any wider award to be due, in this case they will implement the suggested resolution on a goodwill basis to resolve the complaint for Miss G.

Given that both parties have responded and TSB have agreed to the redress set out in my provisional decision, I see no reason to delay making a final decision.

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 done so, I see no reason to depart from my provisional decision. So, I've decided to uphold the complaint for the reasons set out in my provisional decision and copied above.

Putting things right

I've taken the view that TSB lent irresponsibly to Miss G when they gave her a loan in November 2019. I therefore consider this is irresponsible lending and TSB should put this right. I think it is fair and reasonable for Miss G to repay the principal amount that she borrowed, because she had the benefit of that lending. But she paid interest on the November loan that shouldn't have been provided to her. TSB say the November loan account has been closed. So, TSB should remove all interest, fees and charges accrued or incurred on Miss G's November loan – this should leave just the principal amount lent. TSB should then treat all the payments Miss G made as payments towards the principal amount.

By reworking the November loan account in this way, once the principal sum has been repaid, any overpayments should be refunded to Miss G with 8% simple interest calculated from the date of the overpayments to the date the refund is paid to Miss G. TSB should provide Miss G with a certificate showing any taxation deducted.

My final decision

My final decision is that I uphold the complaint. TSB Bank plc must take the steps in accordance with what I've said under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 8 April 2022.

Paviter Dhaddy
Ombudsman