

The complaint

Miss R complained that TSB Bank plc ("TSB") acted irresponsibly by providing her with an overdraft facility and increasing her overdraft limit. She is also unhappy TSB failed to cancel her debit card and send her a cash card as a replacement. She says this led to increased gambling debt.

What happened

Miss R notified TSB through a webchat that she had a gambling addiction on 17 June 2021. Two days later TSB agreed an overdraft for Miss R with a limit of £250 which was increased the following month to £2,000.

Soon after Miss R requested TSB put a block on her account explaining that she suffers from an anxiety disorder and the gambling helped her manage the disorder. TSB was unable to put a block on gambling transactions but advised it can offer a control or cash card but it doesn't guarantee gambling transactions will be blocked. It also made her aware of websites to assist with her gambling which would allow her to put blocks on her card.

TSB acknowledged it failed to send Miss R an ATM card and that she was still able to use her debit card online and continued to make gambling transactions. As a gesture of goodwill TSB paid Miss R £100 for this mistake.

One of our adjudicators looked at this complaint and thought that TSB acted irresponsibly when it granted Miss R with an overdraft after she had informed it of her gambling addiction. They thought that TSB should settle Miss R's complaint by:

- Re-working Miss R's current overdraft balance so that all interest, fees and charges applied to it from 19 June 2021 onwards are removed.
- If an outstanding balance remains on the overdraft once these adjustments have been made TSB should contact Miss R to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Miss R's credit file, it should backdate this to 19 June 2021.
- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Miss R, along with 8% simple interest on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then TSB should remove any adverse information from Miss R's credit file. †

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

Our adjudicator also thought TSB should make an award of £250 for the distress and inconvenience caused as a result of TSB's actions and ensure the right support is provided to Miss R to enable her to manage her gambling addiction in the future.

TSB accepted the view of our adjudicator but Miss R didn't wish to accept this offer – she would like further compensation as what TSB is offering doesn't come close to helping her pay off her overdraft or her gambling debt which she says was incurred as a result of TSB's failings and has asked for an ombudsman's 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.

Firstly, just to be clear my decision only relates to Miss R's overdraft lending from June 2021. And having carefully considered everything, I think that what TSB has already agreed to do to put things right for Miss R is fair and reasonable in all the circumstances of this complaint. I'll explain why I think this is the case.

It might help for me to start by explaining that where a business accepts (or we decide) it did something wrong, we'd expect the business to put the consumer in the position they would be in if that wrong hadn't taken place. And in an ideal world, we'd tell a business to put a consumer in the position they'd now be in if they hadn't been charged the fees and given the credit they shouldn't have. And we may award modest compensation that we think is fair and reasonable.

So where a business continues to allow a consumer to use a credit facility which it should have realised was unsustainable, we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any further interest and charges on that credit. This means we'd normally expect a lender to refund the interest and charges added to any credit from the point the lender ought to have realised it was unsustainable. And if those interest and charges were paid also add 8% simple interest per year.

I'm in agreement with our adjudicator here that prior to agreeing another overdraft facility with Miss R she had informed TSB through a webchat of her gambling problem and that it was impacting her mental health and financially. And even just a cursory look at Miss R's statements show a significant history of gambling and using credit as a means to continue gambling. In these circumstances it should have been apparent that Miss R was unlikely to have been able to repay what she was allowed to borrow and TSB shouldn't have agreed further overdraft lending.

In this case TSB has agreed to settle Miss R's complaint in line with what I'd expect – and Miss R will be 'refunded' all of the interest, fees and charges caused by her overdraft from 19 June 2021 and it agreed to compensate her a further £250 for the distress and inconvenience caused by not sending her an ATM card. So while Miss R has been left with a balance and she might be unhappy with this, TSB has agreed to do what I'd normally expect it to do here.

That said, we do look at each case individually and on its own particular merits. And while we have a general approach to how we might tell a lender to put things right where it continued to provide credit when it shouldn't have (such as here), we can and will tell it to do something different and/or something more if there's a strong reason to say that's what would be fair and reasonable to do in the circumstances of that individual case.

Miss R says TSB haven't done enough. She says because TSB failed to cancel her debit card and send her the ATM card she was able to continue gambling. I can see that Miss R confirmed in an email in August 2021 that she had received the ATM card and that prior to this TSB confirmed it had cancelled her debit card in its final response letter dated 30 July 2021. However my understanding is that even if Miss R was sent the ATM card earlier or

agreed to having a control card she still would've been able to gamble and that although TSB itself wasn't able to put a block on her account to stop gambling transactions it had provided Miss R with information on how she could do this herself – which she agreed she would do.

So I don't think I can say that it was TSB's failure to send her an ATM card alone which allowed her to continue gambling. And on that basis I consider the compensation offered of £250 fair and reasonable and I don't think TSB needs to do anything more on this complaint point.

And as Miss R hasn't given me a reason for departing from our normal approach to putting things right when a customer has been given credit when they shouldn't have and TSB have agreed to settle the complaint in-line with this, I won't be asking it to do anything more. So what Miss R is left with to repay are the funds which she used. In these circumstances, and bearing in mind Miss R spent them, I think it's perfectly fair and reasonable to expect her to repay these funds. And I don't think that Miss R's unhappiness at having a balance to repay on her overdraft, even after her complaint has been upheld, is in itself a compelling reason for me to depart from our usual approach here.

Bearing in mind all of this, I'm satisfied that what TSB has already agreed to do to put things right for Miss R is fair and reasonable in all the circumstances of this case and I'm not requiring it to do anything more. As this is the case, it's up to Miss R to decide whether she wishes to accept TSB's offer.

My final decision

For the reasons I've explained, I'm satisfied that what TSB Bank plc has already agreed to do to put things right for Miss R is fair and reasonable in the circumstances of this case. So I'm not requiring it to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 26 August 2022.

Caroline Davies
Ombudsman