

The complaint

Mr A complains about an overdraft limit that TSB Bank plc provided to him on his bank account. He says that he had a gambling addiction and that it was irresponsible for TSB Bank plc to provide him this facility.

What happened

Mr A has two accounts with TSB Bank plc ("TSB"). On 21 February 2021, he applied for a £100 overdraft on his Spend and Save account. Mr A says he was surprised this was agreed as he had a very poor credit file rating and because TSB had already turned down his previous loan and credit card applications.

Mr A then throughout the next 24 hours successfully applied to increase his overdraft on around eight further occasions to an eventual limit of £3,000. He complained to TSB a few days later and said that it was absurd that he was allowed to increase his overdraft limit so many times in one day and that it was irresponsible for TSB to have allowed this because of his gambling addiction. Mr A also complained about TSB not calling him back when they had promised to, and that TSB had given him conflicting information about the contents of a letter they had sent.

TSB agreed that they had given Mr A poor service when he had contacted them about his complaint and offered to pay him £75 in recognition of this, as well as offering £18 to cover his call costs. However, TSB didn't uphold the part of Mr A's complaint about the decision to grant him the overdraft and the subsequent limit increases.

Mr A referred his complaint to our service. One of our investigators looked into this and agreed it should be upheld. She said, in summary, that TSB's lending checks weren't extensive enough and that, had they checked both of Mr A's accounts as she felt they should, they would have seen the extent of his gambling addiction and that it was unlikely they would have approved the overdraft as a result.

Our investigator recommended that TSB refund to Mr A all interest, fees and charges resulting from the overdraft and pay him a total of £150 compensation for the trouble and upset caused to him, plus the call costs they had already agreed to refund.

TSB said they would action our investigator's recommendation. Mr A did not agree with this, however. In particular, he felt that TSB should write off the balance of the overdraft and remove the adverse information they had recorded on his credit file about this. Our investigator didn't agree that TSB should write off the balance, and so Mr A's complaint has been referred to me for a decision.

I issued my provisional decision to both parties on 9 August 2022, in which I said the following:

We've set out our general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Mr A's complaint.

TSB needed to make sure that it didn't lend irresponsibly, in this case providing Mr A with credit in the form of an overdraft. In practice, what this means is TSB needed to carry out proportionate checks to be able to understand whether Mr A would be able to repay what he was being lent before providing any credit to him. Our website sets out what we typically think about when deciding whether a lender's checks were proportionate.

I've looked at the checks TSB carried out when Mr A applied for the initial £100 overdraft. They recorded that Mr A's monthly income was £1,290 which they checked against the records they held for him. TSB also recorded that Mr A's monthly share of rent or board was £300. The checks didn't record any other essential outgoings, but TSB did run a credit check which didn't show any concerns with how Mr A had been managing other credit commitments. TSB also noted that Mr A had not gone overdrawn on his bank accounts with them in the previous 12 months, and that there hadn't been any returned direct debit or standing order payments.

I understand from looking at the information TSB has sent us, that when Mr A applied for the £100 overdraft limit, TSB actually granted him the ability to increase this limit up to £3,000. So, in effect, TSB were satisfied that Mr A could sustainably repay the full £3,000 which, bearing in mind this was an open-end, running account agreement, would have to be within a reasonable period of time as set out in the Consumer Credit Sourcebook (CONC).

I accept, from the checks TSB carried out, that it didn't appear that Mr A would struggle to sustainably repay his overdraft. I say this because their income checks broadly matched the income Mr A was receiving into his account every month. And, there didn't appear to be any regular committed credit and living expenses that Mr A needed to pay, other than the £300 rent/board they included, apart from another credit card which looked to have been well managed at the time.

However, I have serious concerns over how TSB assessed, or rather didn't assess, Mr A's subsequent actions. Mr A, over the course of a single day, repeatedly and successfully increased his overdraft limit. He recalls that he applied to increase in multiples of £100 up to £500, and then from multiples of £500 up to £3,000, although TSB says Mr A successfully increased the limit on eight occasions.

In any event, I think the sheer number of repeated requests for further credit by Mr A in such a short space of time should have alerted TSB as to why he was in such urgent need for more borrowing. I can't see how Mr A acting in this way could have considered as being normal behaviour for an account holder, certainly not without some level of scrutiny.

I suspect TSB didn't intervene because they had already agreed to provide Mr A with an upper limit of £3,000. However, TSB does have a responsibility to protect vulnerable customers. And this includes ensuring that they have appropriate systems in place to flag up concerning patterns of account usage and repeated requests for borrowing, as in this case, to help identify customers showing possible signs of vulnerability.

My view is that TSB should have, at the very least, sought to question why Mr A was trying to increase his limit by the fourth time he had tried to do so. In other words, by the time Mr A applied to increase this to £400. I think, had TSB shown even the slightest bit of curiosity as to why this was happening, and declined or paused this particular request to carry out further checks on why Mr A was doing this, they would have uncovered that Mr A was in fact intending to use this credit to gamble. And, in doing so, to feed a serious gambling addiction he was suffering from.

Mr A's account usage on his Spend and Save account up until the point he first applied for

the overdraft shows repeated, significant spend on gambling. I've seen in the period from July 2020 to November 2020 that Mr A used his account to gamble close to 200 times. Had TSB even given Mr A's account statements a cursory examination by the time he had tried to increase his limit to £400, they would have seen how much of a serious problem Mr A had at the time. Not only that, Mr A's other TSB account showed similar significant spend for several months all the way up to the time he applied for the overdraft initially. So, had TSB checked this alongside his Spend and Save account, they would have seen the extent of Mr A's addiction. And had TSB looked at the information that was clearly available to them, I don't think they would or should have continued to give Mr A further credit.

In my view, had TSB carried out an appropriate check by the time Mr A asked for a £400 limit, it would have been clearly foreseeable to them that agreeing to this (and further limit increases) would have caused Mr A serious financial and emotional detriment. And this is in fact what happened as Mr A used the credit he was given solely to gamble almost immediately.

It follows then that I provisionally find that TSB should not have allowed Mr A to increase his overdraft limit to £400 onwards. I accept that Mr A will likely feel that TSB shouldn't have agreed to give him an overdraft at all. I don't though agree that TSB should have had concerns initially. As I've mentioned above, TSB did gather a reasonable amount of information to begin with and there were no apparent signs of financial stress or difficulty from the checks they did. I wouldn't have expected TSB to have gone through Mr A's bank statements as he says they should, bearing in mind the initial overdraft was for a very low amount.

This leaves me to determine what a fair resolution should be. Typically, when we decide credit has been irresponsibly lent, we ask the creditor to refund all interest and charges. I note though that TSB didn't actually apply any of these things to Mr A's account. And, in this case, I don't think that would go far enough even if these had been applied.

I consider TSB's actions in allowing Mr A to increase his overdraft so often, to have been so irresponsible, it led to Mr A suffering severe detriment extremely quickly that could clearly have been prevented.

I say this because Mr A used the overdraft solely to gamble until the limits were reached. This had the effect of swallowing up Mr A's monthly income, in other words, it still left Mr A in his overdraft. And he still continued to gamble however much of the overdraft limit still remained. As such, I think it would have been reasonably foreseeable to TSB that Mr A would not have been in a position to repay the overdraft from disposable income.

I've thought about Mr A's contribution to his situation as it's of course clear that he applied for the overdraft, and the limit increases, and gambled the money he received. So, it could be argued that the responsibility should be shared between both parties. However, I think it fair to hold TSB responsible taking into account all of the circumstances of the case.

Mr A's pattern of gambling was, in my view, extreme and I have outlined why I think that in my comments in the previous section of my decision. Given that, TSB ought to have been alerted to the fact that, in all likelihood, Mr A's gambling had become an addiction, over which he had little control.

As such, I think it ought to have been apparent to TSB that Mr A's gambling was not a controlled hobby or that he was gambling purely for entertainment. If that were the case, I could see the argument that TSB would not look to interfere with that. But that is so clearly not the case here. And the reality for Mr A would be not only having an addiction of which he

had little control, but the knowledge that he was moving ever further into debt because of this.

So, I don't consider that what our investigator proposed goes far enough. I currently think it reasonable for Mr A not to be held liable for anything other than overdraft borrowing of £300. And bearing in mind the impact this has had on Mr A, I would be also inclined to award him a sum for distress and inconvenience which likely approaches the £300 I've mentioned. In view of this, I think it would be pragmatic for TSB to now just simply write off the overdraft balance (or arrange to do so if the account is being managed by another party).

This just leaves how my proposed decision affects Mr A's credit file. We'd typically expect a lender to remove any adverse information from the borrower's credit file, where a complaint is upheld for irresponsible lending. However, I don't think that doing this would be the fair and reasonable thing to do here given what I'm asking TSB to do in terms of Mr A's overdraft balance.

The basis for Mr A's complaint is that he was a vulnerable consumer who shouldn't have been given credit because of his gambling addiction, and that this was exacerbated by TSB agreeing to increase the overdraft limits. I've accepted this is the case and this has played a large part in my intended decision to uphold Mr A's complaint.

It would be unfair and unreasonable for me to reach this finding in relation to the balance owed, but then depart from it in terms of Mr A's credit file going forward. In these circumstances, it seems to me removing adverse information from Mr A's credit file would be counterproductive and arguably not in his best interests, or those of any potential lender.

So, I think it's fair and reasonable for TSB to reflect what I'm intending to tell it to do in relation to the outstanding balance and record it wrote off a balance on this overdraft on Mr A's credit file.

For the reasons I've given, I'm intending to tell TSB to do the following to put things right.

- *Write off the outstanding balance on Mr A's overdraft; and*
- *TSB can and should record that it wrote off an outstanding balance on this overdraft on Mr A's credit file.*

I invited both parties to provide any final evidence or submissions for me to consider. Mr A replied saying that he accepted my provisional decision. TSB replied saying that, although their view of the complaint remained unchanged, and didn't agree that any refund or wider award was due, they would implement my provisional resolution to resolve this complaint. TSB did mention that they would add a marker to Mr A's account to ensure no further lending will be automatically approved.

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.

As neither party has provided any further evidence or points for me to consider, I see no reason to depart from my provisional findings. So, for the reasons I gave in my provisional decision, I consider that this complaint should be upheld.

Putting things right

TSB should write off the outstanding balance on Mr A's overdraft and record that it has done so on his credit file (or arrange both things if the account is now being managed by another party).

My final decision

I uphold this complaint and direct TSB Bank plc to:

- write off the outstanding balance on Mr A's overdraft; and
- record that it wrote off an outstanding balance on this overdraft on Mr A's credit file

If the account is being managed by another party, TSB Bank plc should arrange for the above to take place.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 13 September 2022.

Daniel Picken
Ombudsman