

The complaint

Miss G has complained that she was consistently overdrawn for the past 14 year's and that TSB Bank plc ("TSB") acted unfairly by applying overdraft charges when she was in financial difficulty.

What happened

Miss G had a bank account with an overdraft limit of £2,000. Miss G complained to TSB that by allowing her to increase her overdraft limit she was trapped into a spiral of debt.

TSB said Miss G passed all its affordability checks and it was Miss G's choice to apply for and use the overdraft facility and that it wouldn't expect her to spend money which she couldn't afford to repay. It says that it has no record Miss G had made it aware of any financial difficulty prior to April 2019 where it agreed a temporary increase in Miss G's overdraft limit and following this referred her to a debt charity and waived charges. It acknowledged that her statements show gambling transactions and referred her to organisations that could help her with this.

Despite TSB saying no error had been made it refunded £90.09 of charges and waived charges that were due to debit her account on 2 May 2022. Miss G was dissatisfied with this and she referred the complaint to our service.

Miss G's complaint was considered by one of our adjudicators. They explained that they could only look at what happened on Miss G's overdraft in the six years before she brought her complaint which she accepted. Initially they thought that TSB ought to have realised that Miss G was experiencing financial difficulty by December 2017 and then after further review and comments from TSB July 2018 and February 2021.

Though TSB didn't agree with our adjudicator's view as Miss G's bank statements show that she was able to pay off her overdraft on a number of occasions in November 2018 by refinancing, receiving money from family in September and October 2019 and finally from a gambling win in April 2020. TSB's view is Miss G chose to spend again on her overdraft rather than clear the debt. But as gesture of goodwill and to settle the complaint it agreed to refund the charges incurred from February 2021 amounting to £549.29 and confirmed that an interest waiver had been in place on the account since February 2022.

Miss G didn't wish to accept this offer and so the case was passed to an ombudsman. I issued my provisional decision on 13 January 2023. In my provisional decision, I explained why I was proposing to uphold Miss G's complaint. I invited both parties to let me have any further submissions before I reached a final decision. Miss G has accepted the findings in my provisional decision and TSB have responded but haven't provided any new evidence.

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.

In my provisional decision I said that:

“TSB will be familiar with all the rules, regulations and good industry practice we consider when looking at whether a bank treated a customer fairly and reasonably when applying overdraft charges. So I don’t consider it necessary to set all of this out in this decision.

I’m intending to find that TSB acted unfairly when it continued charging overdraft interest and associated fees from April 2018, as it ought to have been clear that Miss G was in no position to sustainably repay what she owed within a reasonable period of time.

By this point, TSB ought to have realised that Miss G’s use of her overdraft was unsustainable. Miss G’s statements show significant gambling and that from January 2017 to April 2018 her overdraft balance hadn’t reduced at all and that she hadn’t seen or maintained a credit balance since July 2017. In these circumstances, TSB ought to have realised that Miss G was at a significant risk of being unable to repay what she already owed. So TSB should have stopped providing the overdraft on the same terms and treated Miss G with forbearance rather than charge even more interest, fees and charges on the overdraft.

I accept that Miss G was able to get a loan for £8,000 to refinance her debt in November 2018 which was just enough to pay off her credit cards and overdraft. But Miss G was in financial trouble before this and I think TSB should’ve stepped in and not allowed Miss G to continue to borrow and spend in a way that wasn’t sustainable. So this doesn’t make a difference to my thoughts on Miss G’s complaint.

Miss G ended up paying additional interest, fees and charges on her overdraft and this ended up exacerbating difficulties she already had in trying to clear it. So I think that TSB didn’t treat Miss G fairly and she lost out because of what TSB did wrong. And this means that it should put things right.”

As neither party has provided any further evidence or arguments for consideration, I see no reason to depart from the conclusions set out in my provisional decision. It follows that I uphold this complaint.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Miss G’s complaint for TSB to put things right by:

- Reworking Miss G’s current overdraft balance so that all interest, fees and charges applied to it from April 2018 are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made TSB should contact Miss G to arrange a suitable repayment plan, Miss G is encouraged to get in contact with and cooperate with TSB to reach a suitable agreement. If it considers it appropriate to record negative information on Miss G’s credit file, TSB should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in April 2018. TSB can also reduce overdraft limit by the amount of refund if it considers it appropriate to do so, as long as doing so wouldn’t leave Miss G over their limit.

OR

- 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 G 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 G's credit file.

† HM Revenue & Customs requires TSB to take off tax from this interest. TSB must give Miss G a certificate showing how much tax it has taken off if they ask for one.

My final decision

For the reasons explained I uphold Miss G's complaint against TSB Bank plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 6 March 2023.

Caroline Davies
Ombudsman