DRN-4535386

Financial Ombudsman Service

The complaint

Miss M has complained that TSB Bank plc ("TSB") lent to her irresponsibly as it provided her with two unaffordable loans.

What happened

TSB provided Miss M with a loan of £5,000.00 in July 2022 after she applied in branch. This loan had a 60-month term with monthly repayments of £151.13. This loan was repaid in February 2023. The loan was intended to consolidate other debt.

In February 2023 TSB provided Miss M with a second loan in the sum of £11,600, again after she applied in branch. This loan also had a 60-month term with monthly repayments of £350.51.This loan was again intended to be used chiefly to consolidate debt. This loan remains outstanding.

Miss M said both loans were unaffordable and TSB ought to have known better than to have granted them.

One of our investigators looked at this complaint and thought that TSB unfairly provided the two loans as its checks ought to have alerted it to the fact that the lending was both unaffordable and unsustainable for Miss M.

TSB disagreed with our investigator and the case has therefor been passed to me to review the complaint.

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.

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 Miss M's complaint.

Having carefully thought about everything, I think that there are two overarching questions that I need to answer for each loan in order to fairly and reasonably decide Miss M's complaint. These two questions are:

1. Did TSB complete reasonable and proportionate checks to satisfy itself that Miss M would be able to repay her loan in a sustainable way? If so, did it make a fair lending decision? If not, would those checks have shown that Miss M would've been able to do so?

2. Did TSB act unfairly or unreasonably in some other way?

I will consider each loan in turn:

2022 Loan (ending 9622)

Did TSB complete reasonable and proportionate checks to satisfy itself that Miss M would be able to repay her loan in a sustainable way?

TSB provided this loan while it was authorised and regulated by the Financial Conduct Authority ("FCA"). The rules and regulations in place required TSB to carry out a reasonable and proportionate assessment of Miss M's ability to make the repayments under this agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so TSB had to think about whether repaying the loan would cause significant adverse consequences for Miss M. In practice this meant that TSB had to ensure that making the payments to the loan wouldn't cause Miss M undue difficulty or adverse consequences. In other words, it wasn't enough for TSB to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Miss M – whether it was sustainable for her. Any checks also had to be "proportionate" to the specific circumstances of the loan application.

In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same consumer, a proportionate check could look different for different applications.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);

- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);

- the *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and

- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may also be other factors which could influence how detailed a proportionate check should've been for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I've carefully thought about all of the relevant factors in this case.

Were TSB's checks reasonable and proportionate?

TSB's final response suggests that it looked at how Miss M was managing her existing TSB bank account as well us using information it got from credit reference agencies. It also factored in the monthly income of £1,600 from her employment. It then used statistical data to work out how much disposable income she would have, allowing specific sums based on her existing credit and household costs. Having done so, it calculated that after allowing for the new loan repayment, Miss M would have been left with a disposable income of around £1,300.

The loan was for five years so Miss M would be committed to making the monthly payments for a considerable period. So I think TSB needed to go further by applying better checks. TSB was in a good position to do this given that Miss M already banked with TSB, so a detailed review of her regular expenditure was readily possible. But I can't see that this happened.

Would reasonable and proportionate checks more likely than not have shown that Miss M was able to sustainably make the repayments to this loan?

As proportionate checks weren't carried out before the first loan was granted, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would likely have shown TSB that it was unfair to provide this loan to Miss M.

Both Miss M and TSB have provided us with copy bank statements which give a good insight into how she was managing her financial situation at the time. These show that her monthly spending on credit and non-credit commitments exceeded her income. I can also see that Miss M was heavily reliant on her overdraft facility and was consistently using it on an unarranged basis, thereby incurring higher fees. I've also noted that she took out a loan for £3,500 in April 2022 which was costing her £92 a month to repay. She was also regularly receiving and paying back sums of money of around £100 between what I take to be family and friends. From around June 2022 she began making heavy use of gambling sites, spending hundreds of pounds over numerous transactions. This pattern of heavy gambling continued in the months that followed.

TSB said some of the loan was intended to repay Miss M's overdraft – and I've seen that this was reduced from £3,000 to £500. But it ought to have been manifestly clear to TSB from looking at Miss M's account activity, that her financial circumstances were stretched and she was making very heavy use of gambling sites.

It therefore seems likely that Miss M wouldn't have sufficient funds going forwards to sustainably repay the new loan.

Overall and having carefully considered everything, I'm satisfied that reasonable and proportionate checks would have alerted TSB to the fact that Miss M wasn't able to sustainably manage to make the payments to this agreement. And so such checks, had they been carried out at the time, would more likely than not have shown TSB it shouldn't have provided this loan.

Did TSB act unfairly or unreasonably towards Miss M in some other way?

I've carefully thought about everything provided. And having done so, I've not seen anything to suggest that TSB acted unfairly or unreasonably towards Miss M in some other way. So I I don't think TSB acted unfairly or unreasonably towards Miss M in some other way.

Did Miss M lose out as a result of TSB unfairly providing her with this loan?

As Miss M paid interest and charges on a loan that she shouldn't have been provided with, I'm satisfied that she has lost out as a result of what TSB did wrong.

2023 Loan (ending 8309)

I've applied the same approach as I've set out above for the first loan to this second loan in considering whether TSB completed reasonable and proportionate checks to satisfy itself that Miss M would be able to repay this second loan in a sustainable way.

Were TSB's checks reasonable and proportionate?

TSB applied a similar approach before agreeing this loan, checking Miss M's monthly income and working out what it thought her monthly outgoings were likely to be. So, given that Miss M was again signing up for a long term credit commitment of five years for a monthly loan that was more than double that of the first loan, I don't consider that the checks were reasonable or proportionate.

Would reasonable and proportionate checks more likely than not have shown that Miss M was able to sustainably make the repayments to this loan?

Had TSB carried out better checks it likely would have seen that this second loan could not be repaid sustainably. A key factor here is that Miss M's employment income had ceased after November 2022. It is surprising that this wasn't apparent to TSB from its checks. Miss M was continuing to make heavy use of gambling sites. Also, her overdraft use had gone back to its previous levels.

TSB says that the loan, which now incorporated the previous TSB loan, was being used once again to repay Miss M's overdraft plus previous loan borrowing. But against a background of heavy gambling site use, plus being without any source of employment income, TSB ought to have been put on notice that Miss M would not be in a position to repay it without further worsening her financial situation.

Did TSB act unfairly or unreasonably towards Miss M in some other way?

Again, I've not seen anything to suggest that TSB acted unfairly or unreasonably towards Miss M in some other way.

Did Miss M lose out as a result of TSB unfairly providing her with this loan?

As Miss M was again required to pay interest and charges on a loan that she shouldn't have been provided with, I'm satisfied that she has lost out as a result of TSB having granted this loan as well.

It follows that based on what I've seen, Miss M didn't have enough consistent and disposable income to sustainably afford either loan. I think TSB ought to have done more to look into her financial situation at the time of each application, especially given she already banked with TSB and so it was in a position to gain a better understanding of her regular monthly expenditure, including her ongoing credit and non-credit commitments. TSB therefore didn't act fairly by approving the two loans.

So I think that TSB needs to put things right.

Putting things right – what TSB needs to do

Miss M had the use of the funds as a result of this lending. So I think it's fair that she repays the capital amounts she borrowed. But Miss M has paid interest on two loans that shouldn't have been brought about. So, as I don't think TSB ought to have approved the lending, I don’t think it’s fair for it to be able to charge any interest or charges under each of the agreements.

Miss M should therefore only have to pay the original loan amount for each loan. Anything Miss M has paid in excess of that amount should be refunded as an overpayment.

To settle Miss M’s complaint TSB should therefore do the following for each loan:

- Remove all interest, fees and charges applied from the outset. Any payments made by Miss M should then be deducted from the new starting balance.

  a. If the payments Miss M has made total more than the amount she was originally lent, then any surplus should be treated as overpayments and refunded to her, together with 8% simple interest* calculated on any overpayments made, from the date they were paid by Miss M to the date the complaint is settled.

  b. If after the adjustments have been made there is still a balance to pay TSB should discuss arranging a suitable/affordable payment arrangement with Miss M

- Remove any adverse information recorded on Miss M’s credit file once any outstanding balance has been repaid.

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

My final decision

For the reasons I’ve explained, I’m upholding Miss M’s complaint. TSB Bank plc needs to put things right in the way I’ve set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss M to accept or reject my decision before 30 May 2024.
Michael Goldberg
Ombudsman