

### The complaint

Miss G complains that TSB Bank plc lent to her irresponsibly. Miss G says that TSB should have known from the transactions on her current account and her credit card that she was gambling and so not lent to her.

Miss G also complains about a telephone call she had with a TSB representative.

Miss G complains that she never received a final response letter, only a communication through a chat bot.

### What happened

Miss G took four loans with TSB - some were the refinancing of the previous loan. This table gives some details.

Loan	Approved	Capital Amount	Repayments (rounded)	Repaid
1	30 July 2022	£2,000	36 months x £77	12 September 2022
2 (partial refinance of loan 1)	12 September 2022	£3,046 (£2,046 used to pay off loan 1)	36 months x £104 (£27 increase)	29 September 2022
Gap in lending ten months				
3	21 July 2023	£1,000	36 months x £38	1 November 2023
4 (loan 3 partially refinanced)	27 October 2023	£3,016 (£1,016 used to repay loan 3)	36 months x £109 (£81 increase)	Open, no arrears.

Miss G applied for and was approved for a TSB credit card in August 2022 but that is not part of this complaint. That lending decision is being dealt with as a separate complaint.

Miss G had complained to TSB on 6 January 2024. I have seen the first complaint email received by TSB which was sent using an on-line complaint handling service. Among other points Miss G said: *'TSB would have been able to see from the account, what I was doing yet kept lending me more money.'*

Miss G says she received its final response letter (FRL) in a chat box, and then referred her

complaint to the Financial Ombudsman. Miss G telephoned an investigator at the Financial Ombudsman Service in February 2024 to check her complaint had been received and I have listened to that call.

After that one of our investigators considered it all. He thought that the credit card cash withdrawal evidence ought to have demonstrated to TSB that Miss G was not managing her existing credit facilities. So, our investigator thought that loans 3 and 4 ought not to have been approved.

Miss G agreed with that outcome in relation to loans 3 and 4.

TSB disagreed with our investigator's outcome. It said that '*financial difficulties*' indicators would not necessarily include cash withdrawals from a credit card account and would not be a reason to refuse further credit in the form of a loan. TSB also pointed out that across all Miss G's accounts (current, loan and credit) she'd no late/missed payments, was never over the limit and had no arrears.

The unresolved complaint regarding the four loans was passed to me for a decision. I issued a provisional decision on 9 August 2024 giving reasons why I planned not to uphold 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.

Duplicated here is the provisional decision issued on 9 August 2024. The reply date was the 23 August 2024 but both parties have responded early.

### **Duplicated provisional decision dated 9 August 2024.**

#### **What I've provisionally 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 all the relevant rules, guidance, and good industry practice - on our website. And I've used this approach to help me decide Miss G's complaint. Having carefully considered everything I've decided to uphold Miss G's complaint in part. I'll explain why in a little more detail.

TSB needed to make sure it didn't lend irresponsibly. In practice, what this means is that it needed to carry out proportionate checks to be able to understand whether Miss G could afford to repay any credit it provided.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for checks to be less thorough – in terms of how much information is gathered and what is done to verify it – in the early stages of a lending relationship.

But we might think more needed to be done if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So, we'd expect a firm to be able to show that it didn't continue to facilitate a customer's loans irresponsibly.

I've carefully considered all the arguments, evidence and information provided in this context and what this all means for Miss G's complaint.

Miss G agreed with our investigator's assessment about the complaint and the outcome in relation to loans 3 and 4. So it seems Miss G accepted the non-uphold outcome for loans 1 and 2. So I do not consider those to be in dispute anymore and I have only reviewed them in so far as they are relevant to my findings for loans 3 and 4.

Miss G has explained that she was unwell in 2018 and her bank statements transaction behaviour changed from '*well run*' to '*chaotic*' in or around 2018/2019. Miss G says that TSB ought to have recognised this.

But the loans about which Miss G is complaining were approved in 2022 and 2023 and so the earlier transactions in 2018/2019 – about which we have no information – would be irrelevant for what I am being asked to review which are the lending decisions made in 2022 and 2023.

TSB's issue is that it disagrees with the basis of our investigator's uphold which is that the cash transactions showing on the credit card ought to have alerted TSB to the fact that Miss G was not managing her existing credit facilities and so TSB should not have lent to her again.

Miss G's issue is that these loans should never have been given in the first place as she was gambling and TSB exacerbated that spending habit by providing her with credit as easily as it did. Miss G concedes that she could afford the repayments.

#### *Loans 3 and 4*

The first element about which I need to satisfy myself is whether TSB carried out checks proportionate to the loans being applied for. I'm reviewing loans 3 and 4 only.

#### *Loan 3*

Loan 3 was applied for after a ten month gap since repaying loan 2 in September 2022. I accept that Miss G was a continuing customer during that ten month period. I'd consider the gap a factor for TSB to have been aware of when assessing whether Miss G was, or was becoming, dependent on the need for credit. I don't consider that a lengthy gap indicated that Miss G was demonstrating a need for credit.

TSB's records would have shown that Miss G had repaid loan 2 swiftly and without issue. And so, I don't think it's likely TSB would have had a concern having received a fresh application from her ten months later. Miss G had said the loan 3 funds were for a holiday and it was for a modest amount of £1,000.

TSB has provided summaries of the information Miss G had told it about her income and her expenditure (I&E) for each loan. Miss G had told TSB that she earned £3,300 each month and her outgoings were £800 each month.

TSB has said it did not keep a copy of the credit report so I've not got one. But it has told us that the checks did not flag any negative markers, and this plus the other checks TSB carried out were proportionate.

The £800 declared expenditure figure does seem low, but for a loan repayment figure of £38 a month and with TSB knowing that Miss G had a good repayment history and a good level of income I do not consider that any further information was required before TSB approved the loan.

For all the reasons I've stated, I do not consider that TSB needed to do more for the loan 3 application. My view is that it had carried out proportionate checks and had enough information to approve such a loan and the details it had about Miss G were good enough for it to be confident she'd be able to repay it easily.

Further, I do not consider that a proportionate check for loan 3 would have included a review of Miss G's credit card transactions. Just because Miss G held multiple products with TSB, it doesn't mean that the level of checks she should have been subjected to were expected to be more involved than that of a potential customer who didn't hold other accounts with it.

I plan not to uphold the complaint about loan 3.

#### *Loan 4*

Moving to loan 4, this was approved in October 2023. Miss G said in her loan 4 application that she earned £4,000 each month and her mortgage was £550 a month and her spending on children/childcare was £400 a month. The other details on the application form, for instance the costs of bills and TV licence, were left blank.

TSB had verified her income at £4,000 a month and having reviewed her bank statements I can see that this was correct. Miss G's income changed. Her salary had increased from 22 September 2023 from around £855 a week to around £1,124 a week. So, no issue arises as to what TSB used in its creditworthiness assessment for her income for loan 4.

However, this was the fourth loan in 13 months and Miss G had used nearly all her £10,000 credit card available credit in 12 months. It was first approved for her in August 2022 with a starting balance of £3,388 being a balance transfer from another card. TSB had increased her credit card limit to £10,750 on 23 August 2023. So, for Miss G to return for further credit in October 2023 I think more thorough checks ought to have been carried out.

The I&E evidence shows Miss G was able to afford the repayments of £109 a month. And I say this because I have double checked the usual expenditure Miss G had each month by reviewing the bank statements I have from Miss G for the period leading up to loan 4.

These reveal that Miss G's regular expenditure included several direct debits including what looked to be a mortgage payment, utility bills, mobile telephone bills, music streaming services and TV licence, TV service provider and council tax and all those came to around £1,550. Added to which Miss G was repaying her credit cards and loans at around £200 a month for all of them. Her bank account statements always were in credit with several thousand pounds showing for the months from June 2023 to October 2023. In a telephone call with one of our investigators Miss G conceded that she could afford to repay the loans and has done.

With Miss G being an existing customer it would have been feasible for TSB to have reviewed the accounts it needed to. If TSB had reviewed her current account transactions, I am not persuaded that what TSB would have seen would have led it to refuse Miss G's application for the loan. I've already summarised what her bank statements would have revealed to it in relation to her household expenditure earlier in this decision.

While I don't consider TSB's checks were proportionate at loan 4, I have a different view to that of our investigator surrounding the level of detail TSB was expected to look into. I don't consider that it would have been proportionate for it to have reviewed in detail Miss G's credit card transactions. Of course, TSB would as part of its credit worthiness assessment have been aware of the credit limit and the balance on her credit card. But I do not consider it proportionate for TSB to have reviewed her credit card transactions before lending given what it would have seen had Miss G's current account statements been reviewed.

In addition, I've looked at all the bank statements Miss G has sent to me to address her concern surrounding the gambling being obvious and extensive enough that TSB ought not to have lent to her.

If TSB had reviewed her bank transactions it would have been looking for evidence that there may have been some financial difficulty. The FCA CONC guidelines are the ones TSB would have used to determine whether Miss G was in financial difficulties. These are:

### CONC 1.3.1G

*In CONC (unless otherwise stated in or in relation to a rule), the following matters, among others, of which a firm is aware or ought reasonably to be aware, may indicate that a customer is in financial difficulties:*

- (1) consecutively failing to meet minimum repayments in relation to a credit card or store card;*
- (2) adverse accurate entries on a credit file, which are not in dispute;*
- (3) outstanding county court judgments for non-payment of debt;*
- (4) inability to meet repayments out of disposable income or at all, for example, where there is evidence of non-payment of essential bills (such as, utility bills), the customer having to borrow further to repay existing debts, or the customer only being able to meet repayments of debts by the disposal of assets or security;*
- (5) consecutively failing to meet repayments when due;*
- (6) agreement to a debt management plan or other debt solution;*
- (7) evidence of discussions with a firm (including a not-for-profit debt advice body) with a view to entering into a debt management plan or other debt solution or to seeking debt counselling.*

I do not consider any of these apply to what TSB would have seen from Miss G's bank statements. Miss G's current account was always several thousands of pounds in credit.

So, the issue as to whether TSB ought to have lent to Miss G at loan 4 comes down to Miss G's gambling activities – and whether TSB ought to have known further borrowing may have caused her harm.

Taking an overarching view of whether Miss G's bank account transactions revealed anything which may have caused TSB to think again in October 2023 before lending to Miss G then I've provisionally concluded probably not.

There are two sets of bank statements which cover 1 September 2023 to 29 September 2023 and I have counted a minimum of 45 transactions to one amusement centre. Each of those transactions were £40 each and were concentrated into three or four specific days. So, they do stand out. And the total cost was  $45 \times £40 = £1,800$ . That was a lot to spend at one place. But to put it in context, Miss G's bank balance never dropped much below £3,000 and on 29 September 2023 was £4,770 in credit. I don't think TSB would have been wrong to have considered this was affordable discretionary spending by Miss G.

By contrast, in the bank statements covering 1 October 2023 to 24 October 2023, the transactions to that same place were far less – 11 at £40 each. And Miss G's balance on 24 October 2023 was just over £4,875 which was just before she applied for loan 4.

TSB has said that it did not consider that the transactions to this one place were recognised as gambling and I do accept that they are not referenced on the statements as being payments to obvious betting and gambling or casino websites. However, even if they were, her balance never dropped much below £3,000 – as such, I can't fairly say the management of her current account indicated her gambling activities weren't managed.

I've had to consider this set of circumstances taking all the submissions by both parties and the financial evidence into account. I have provisionally decided that there was no sign of financial difficulties such as returned direct debits or the inability to pay priority bills. I do think that the multiple transactions of £40 each to one place in September 2023 could have prompted an enquiry because there were so many of them. But if TSB had reviewed the October 2023 transactions it would have seen a marked decrease (about four fifths less) in those transactions. And so, it may have chosen to consider that these were not necessarily items it ought to have asked Miss G about.

TSB would have seen that Miss G's bank account was in credit all the time. It also would have seen that Miss G's regular salary had increased and what she earned was sufficient to cover the £108 monthly repayments of a relatively modest loan.

Overall, my provisional decision is that TSB ought to have carried out further checks at loan 4, but if it had done and seen all I have outlined from having looked at her bank statements then I do not think that its decision to lend in October 2023 would have been different.

I plan not to uphold the complaint about loan 4.

#### *S 140A Consumer Credit Act*

I've also considered whether TSB has acted unfairly or unreasonably in any other way and I have considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974.

However, for the reasons I've already given, I don't think TSB lent irresponsibly to Miss G or otherwise treated her unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

#### *Phone call*

Miss G has recounted an event which upset her. She rang TSB as her Visa debit card daily transaction limit had been used up and wanted to extend it for the day. The TSB representative had '*...laughed at me and said looks like you've had a busy day*'.

I asked TSB for any recorded call it had with Miss G and the only one it had noted related to one in November 2023. It was not able to provide us with a copy of the call and its description of that call does not sound as though it related to an increase in a debt card daily use limit.

So, without evidence I cannot proceed to make a finding on that interaction between Miss G and TSB which she says upset her.

#### *Final response letter*

Miss G has described that she made her complaint in early January 2024 using the on-line complaint handling service. But not having heard from TSB, Miss G used a TSB on-line chat service to ask what was happening.

Miss G was told that a letter was due and then it posted the FRL in the chat screens. Copies of these have been sent to us. Miss G says it's poor that she has still not received the letter. She has said that if she'd not contacted TSB through its chat system then she would not have known of the outcome of the complaint as still she's not received a letter from TSB. The only way Miss G knew of the FRL was through the chat. Further Miss G says that it demonstrates that TSB '*has no interest*' in her.

I asked Miss G, through our investigator, to check the on-line complaint handling service documents to see if that had a copy of it, and her response is that it does not.

I asked TSB to give me details of the issuing of the FRL and how it had handled her complaint. It has sent me some account notes which show that an automated acknowledgement was sent out on 11 January 2024 and a '4 week letter' on 2 February 2024 and that it issued its FRL on 7 February 2024. The partial copy letter I've seen as part of those account notes looks to me like a letter addressed to her home address.

So, I'm not fully satisfied that TSB issued the letter in any way other than through the chat service. And I take Miss G's point that unless she had contacted TSB and got it through the chat service she would not have known and would not have received the required referral rights to the Financial Ombudsman Service.

I think TSB may have made a mistake, but when Miss G contacted it for the FRL, she was given the information she needed to refer her complaint to us. So, while she has experienced some inconvenience, I'm not persuaded it's to the extent that warrants compensation. I have had to consider what the impact on Miss G was.

Miss G read out the FRL contents to one of our Investigators when she telephoned us to check that the complaint details had been received by us. So, weighing up the impact of not having received a hard copy, then I think it was low. And I don't plan to award any compensation to Miss G for the fact that she received the FRL through the chat service and no other way.

### **How did the parties respond to the provisional decision?**

Both Miss G and TSB responded earlier than the set reply date and so in the interests of resolution I've decided to issue the final decision now.

Miss G thanked us for the provisional decision and made enquiries surrounding her other complaint relating to her credit card. That is being dealt with by a different ombudsman.

TSB accepted the provisional decision but it was not content with that part relating to the final response letter (FRL). I've read its comments carefully and it seems to have interpreted my provisional findings surrounding the FRL as leading to a requirement for all future TSB FRLs to have to be sent out as recorded delivery. It has said:

*'I hope that your service can reconsider this aspect of the complaint as we feel it is unfair to make a business obtain evidence of postage just on the basis that your service will no longer accept the evidence on our records.'*

My provisional finding was that I was not fully satisfied that in this case the letter was issued after the contents of the FRL to Miss G was posted in the chat bot screens. And I also said that it *may* have made a mistake not that it did make a mistake.

I accepted then and I do now that there was some doubt about what happened to the FRL. Miss G had confirmed she'd never received it through the on-line complaint handling organisation and had never received a hard copy. This does not amount to any sort of direction on any future internal processes TSB may choose to do or otherwise.

And as TSB will have read, I provisionally decided that the impact on Miss G was low as she did receive what amounted to an FRL communication albeit through chat bot screens. And Miss G acted on it by contacting the Financial Ombudsman Service.

I make no alteration to the outcome relating to this part of the complaint and as TSB had not been asked to do anything about this part then I do not consider it had an impact on TSB.

As for all the other elements of Miss G's complaint, my provisional findings are repeated here. My final decision is that I do not uphold the complaint.

### **My final decision**

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 16 September

Rachael Williams  
**Ombudsman**