

The complaint

The estate of Mrs R (the estate) complains that TSB Bank plc approved a loan for Mrs R despite TSB knowing she was vulnerable.

What happened

The estate discovered that Mrs R took out an unsecured loan from TSB, despite the estate saying that TSB were fully aware that she was a vulnerable person. They say that Mrs R was accepted for the loan without a witness, and she couldn't understand her own bank statement let alone a lengthy loan agreement. The estate says that notes they've obtained from TSB about Mrs R show she was confused and was also registered as disabled. They say TSB haven't followed the Standards of Lending Practice. The estate made a complaint to TSB.

TSB did not uphold the estate's complaint. They said the correct affordability checks were completed when Mrs R visited a TSB branch on 13 November 2021 to apply for a personal loan of £10,500 with monthly repayments of £268.52 over 60 months. They said that the loan was used to pay off her existing loan, purchase a car, and to pay for home improvements. TSB said they wouldn't decline a loan based on an applicant's age, and the loan did not require a witness.

TSB said the system note about Mrs R being confused was related to a branch call which they made to Mrs R during the pandemic to see if she needed support. They said Mrs R became confused because they were asking about transactions on her account. TSB said Mrs R had fraudulent activity on her account and she put somebody else on the telephone. TSB said the branch phone calls aren't recorded, so they were unable to establish who this was. The estate brought their complaint to our service.

Our investigator did not uphold the estate's complaint. He said Mrs R's average essential expenditure, food, credit commitments etc, was £700.68, and her average income was £1,568.10, leaving a disposable income of around £867. Our investigator said considering that Mrs R was repaying her existing loan first, with the new loan funds, then her statements show the new repayment would likely have been affordable and sustainable for Mrs R.

Our investigator said Mrs R wasn't unknown to the branch, and TSB were aware of the needs she told them of. He said he wouldn't expect TSB to not lend to someone because of their age or disability as this would be discriminatory. He said he couldn't fairly say Mrs R had no capacity to agree to the loan, based on what the evidence showed.

The estate asked for an ombudsman to review the complaint. They made a number of points. In summary, they said vulnerability was the main area of the complaint, and they don't believe TSB applied the Standards of Lending Practice, especially where their website says *'Where customers are identified as, or the firm has reason to believe that they may be, vulnerable, appropriate adjustments are made to ensure that their individual circumstances are accommodated'* and *"Firms' sales policies and processes should take account of the impact vulnerability may have on a customer's ability to make an informed decision about a product and provide relevant support to customers during the credit application process"*.

The estate said that TSB were aware of Mrs R's confused state of mind, therefore she was a vulnerable client, so there should have been a witness present for the loan. They said that as she didn't recognise her own family member who was overseas, then this would equate to a reduced mental capacity. They said TSB also allowed the same unknown individual to confirm Mrs R made cash withdrawals that TSB's notes state she had forgotten, and he was present when cash withdrawals were made, so the estate question whether the individual was withdrawing cash for himself.

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, I want to pass my condolences to the estate. The estate have made a number of points to this service, and I've considered and read everything they've said and sent us. But, in line with this service's role as a quick and informal body I'll be focusing on the crux of their complaint in deciding what's fair and reasonable here.

The estate has mentioned about cash withdrawals and whether an individual was withdrawing cash for himself rather than Mrs R. But I'm unable to look into this complaint point as the estate has not complained to TSB about this. So the estate may want to raise a complaint with TSB directly on this point if they would like this to be investigated.

I've considered what the estate has said about what TSB should have been aware of about Mrs R's vulnerabilities. I've also taken into account the Standards of Lending Practice, and I've reviewed the available TSB notes to see what TSB should have been aware of prior to the loan being approved. Although the notes don't cover the full period to date after the loan was approved, it is before the loan I need to see what TSB were aware of, or reasonably ought to have been aware of.

The Standards of Lending Practise's website sets out that *"A vulnerable customer is someone who, due to their personal circumstances, are especially susceptible to harm. Where customers are identified as, or the firm has reason to believe that they may be, vulnerable, appropriate adjustments are made to ensure that their individual circumstances are accommodated to ensure that their individual circumstances are accommodated to enable the customer, or their authorised third party, to manage their account(s)".*

Their website sets out nine customer outcomes for firms with how to treat vulnerable customers. I've considered TSB's system notes to see if they should have been aware that Mrs R may be vulnerable when they approved the loan for her.

I'm not persuaded that Mrs R's age, or any disabilities she may have had should result in a loan being declined as I'm persuaded that TSB wouldn't be acting in line with the Equality Act 2010 if they did this. And it is not mandatory for a loan application to have a witness, even if vulnerabilities had of been identified.

TSB's system notes show that Mrs R applied for a personal loan previously on 12 November 2018. And from this note, TSB would have been aware Mrs R had family overseas at that time. On 30 October 2019, Mrs R told TSB about her disabilities, and this was noted on the system, although there doesn't appear to be anything she told them which could affect a loan, based on the system note.

On 5 November 2019 Mrs R visited the branch to apply for a new loan. The notes show rationale from Mrs R about the reasons why she favoured a loan over other types of borrowing. The note on 16 April 2020 was regarding when TSB spoke to Mrs R to see if she

needed help during the pandemic. Unfortunately, as TSB have confirmed branch calls aren't recorded, I can't listen to what was exactly said on this call.

The note does say that Mrs R became confused, so the phone was passed to a family member, where the notes state he was with Mrs R when she made these transactions. From reading the notes it does appear that Mrs R was confused with the transactions as opposed to being confused in general. I say this because the notes appear to show Mrs R had the mental capacity to know her account was overdrawn due to fraudulent transactions, and she had raised this with the fraud department. The notes confirmed she confirmed transactions as genuine, which was also confirmed by the other person on the phone.

But the estate says the person who was attributed to being with Mrs R lived overseas, and that country was in lockdown, so he couldn't possibly have been with Mrs R. But while I don't dispute what the estate has said here, and it's not clear who was with Mrs R speaking to TSB, I can't fairly say that there would be any reason why TSB should have doubted what Mrs R has said.

I say this because although TSB's notes show a different family member was overseas in November 2018, this wouldn't prevent her family moving back to the UK prior to the phone call. So I'm not persuaded that because Mrs R was confused about transactions and asked someone else to speak on an issue separate to a personal loan that it would be apparent that Mrs R had lost her mental capacity.

I've reviewed the notes for when Mrs R applied for the loan in the branch. The notes show the *"borrowing for us"* leaflet was explained in full. There is rationale from Mrs R as to why she would prefer part of the loan to consolidate her previous loan, which could indicate Mrs R had mental capacity as she was able to explain how this would be more suitable for herself as the loan payment would be around £18 more a month instead of having two separate loan payments.

As Mrs R was in the branch, then she would have been able to ask any questions she had about the loan, or if she didn't understand the documents or loan agreement then they would have been able to explain this to Mrs R.

I do note that a Lasting Power of Attorney (LPOA) document was signed by Mrs R on 4 February 2022 which would indicate that Mrs R still had mental capacity at that point. I say this as the first page of the form is clear that the restrictions for the LPOA document is that the donor (Mrs R) *"must be over 18 years old and be able to understand and make decisions for yourself (called 'mental capacity')"*.

So as Mrs R had signed this form, and it was witnessed and signed by other people, then it would be reasonable to expect that Mrs R still had mental capacity after the loan was approved, otherwise the LPOA may have been invalidated. But ultimately, I can't fairly conclude that Mrs R didn't have mental capacity at the time of the loan or that TSB had breached the Standards of Lending Practice.

I've then focused on the lending decision that TSB made. Before agreeing to approve the credit available to Mrs R, TSB needed to make proportionate checks to determine whether the credit was affordable and sustainable for her. There's no prescribed list of checks a lender should make. But the kind of things I expect lenders to consider include - but are not limited to: the type and amount of credit, the borrower's income and credit history, the amount and frequency of repayments, as well as the consumer's personal circumstances. I've listed below what checks TSB have done and whether I'm persuaded these checks were proportionate.

TSB would have been able to see how Mrs R managed her existing loans with them in the past. They would have also had access to her bank statements to see any other credit agreements Mrs R was paying for from that account. Mrs R had told TSB that she was going to consolidate her existing loan with them, therefore the new loan was around £18 a month more expensive. But the notes also suggest she was going to use the money for a new vehicle and home improvements.

I've reviewed Mrs R's bank statements in the three months prior to the acceptance of the loan to see if the loan repayments appeared to be sustainable and affordable for her. There was one occasion where Mrs R appeared to exceed her arranged overdraft limit by £4.16, but I note that £500 credited her account two days later.

Although Mrs R frequently used her arranged overdraft, she was in credit at times. And given that her statements show the existing loan repayments debiting her account each month, I've not seen anything which would indicate she was experiencing financial difficulty prior to the loan being approved, or that she wouldn't be able to afford the extra £18 a month repayment compared to what she was paying on her existing loan.

TSB were able to verify Mrs R's income through the Credit Reference Agency checks and their checks suggested Mrs R would have the affordability to pay a higher repayment. So based on all of the information, I'm not persuaded that TSB made an unfair lending decision in approving Mrs R's application for the personal loan.

I've also 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 can't conclude that TSB lent irresponsibly to Mrs R 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. So it follows I don't require TSB to do anything further.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs R to accept or reject my decision before 21 November 2024.

Gregory Sloanes
Ombudsman