

Complaint

Mr C is unhappy with what TSB Bank plc ("TSB") has agreed to do to put things right after he complained about his overdraft.

Background

Mr C has also complained about a credit card that TSB also provided to him. But we've explained at that we're looking at his complaint about that matter separately. And this final decision is only considering Mr C's complaint about his overdraft.

When it reviewed Mr C's complaint, TSB agreed to refund all of the interest, fees and charges that were added to Mr C's overdraft. Mr C was dissatisfied with this and referred his complaint to our service.

One of our investigators looked at Mr C's complaint and she thought that what TSB had already agreed to do was fair and reasonable in all the circumstances of Mr C's complaint. So she didn't think that TSB needed to do anything more and didn't think that Mr C's complaint should be upheld.

Mr C disagreed with our investigator and asked for an ombudsman's decision.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having carefully considered everything, I think that what TSB has already agreed to do to put things right for Mr C is fair and reasonable in all the circumstances of his complaint. I'll explain why I think this is the case.

It might help for me to start by explaining that where a business accepts (or we decide) it did something wrong, we'd expect the business to put the consumer in the position they would be in if that wrong hadn't taken place. And in an ideal world, we'd tell a business to put a consumer in the position they'd now be in if they hadn't been given the credit they shouldn't have. However, that's not possible in cases where funds that shouldn't have been advanced were advanced because typically those funds will have already been spent.

So we have to look at a way of asking a business to put things right in a fair and reasonable way. And where a business irresponsibly provided credit that was unaffordable, we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any interest and charges on that credit.

This means we'd normally expect a lender to refund the interest and charges added to the credit. And if those interest and charges were paid also add 8% simple interest per year. That's what TSB has agreed to do here, so it has agreed to do what I'd normally expect a firm to do in these circumstances.

In this case, it's my understanding that Mr C believes he is likely to be left with an outstanding balance even after he's been 'refunded' all of the interest, fees and charges. But while Mr C may be left with an outstanding balance to repay and he might be unhappy with this, TSB has done what I'd normally expect it to do here. And I don't think that a balance being left for Mr C to pay means that he will have been treated unfairly.

That said, we do look at each case individually and on its own particular merits. And while we have a general approach to how we might tell a lender to put things right where it continued to provide credit it shouldn't have (such as here), we can and will tell it to do something different and/or something more if there's a strong reason to say that's what would be fair and reasonable to do in the circumstances of that individual case.

Mr C believes that TSB should do more. As I understand it, he believes that TSB should pay him some compensation because of the distress and inconvenience he says its actions caused him. I've carefully thought about what Mr C has said.

Mr C has said that he would have been in a different position in life had TSB not lent to him. I accept that Mr C may well have gone through a difficult time. However, without any corroborating evidence, it's difficult for me to reasonably conclude that Mr C would have been in a substantially better position but for TSB providing this overdraft in the first place.

This is particularly as the refund of interest, fees and charges in the first place, is an attempt to balance the fact that TSB shouldn't have lent to Mr C against Mr C having had use of the funds as a result of this – he was able to have funds he wouldn't have had and spent them. Indeed, from what I've seen in his account statements he used funds from his overdraft to repay other creditors and he may well have suffered adverse consequences in relation to those commitments had he not made his payments.

As this is the case, and I've not been provided with sufficient evidence to show me that Mr C would have been in a materially better position if he hadn't been provided with this overdraft, I'm not persuaded that it would be fair and reasonable to me to make an additional award for distress and inconvenience here.

Bearing in mind all of this, I'm satisfied that what TSB has already done to put things right for Mr C – reworking his account so that all the interest, fees and charges added are removed – is fair and reasonable in the circumstances of this case.

In reaching this conclusion I've also considered whether the lending relationship between TSB and Mr C might have been unfair to Mr C under s140A of the Consumer Credit Act 1974 ("CCA").

However, I'm satisfied that what TSB has already agreed to do to put things right for Mr C's complaint as a whole, is fair and reasonable in all the circumstances of this case and I'm not requiring it to do anything further.

I'm also not persuaded that s140A CCA or anything else would, given the facts of this complaint, lead to a different outcome in respect of this. I'm therefore not requiring TSB to do anything more or anything further and I leave it up to Mr C to decide whether he wishes to accept its offer in settlement of his complaint.

My final decision

For the reasons I've explained, I'm satisfied that what TSB Bank plc has already agreed to do to put things right for Mr C is fair and reasonable in the circumstances of his complaint.

I'm therefore not requiring it to do anything more or anything further and I leave it up to Mr C to decide whether he wishes to accept its offer.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 30 December 2024.

Jeshen Narayanan
Ombudsman