

Complaint

Miss N has essentially complained that TSB Bank plc ("TSB") unfairly provided her with an overdraft that was unaffordable.

She also says that it continued applying charges to her overdraft even after it should have realised that she couldn't sustainably repay it. Miss N argues that this created an unmanageable debt which she had trouble repaying.

Background

Miss N was initially provided with an overdraft that had a limit of £1,000.00 sometime between February 2011 and July 2015. Miss N's overdraft limit was increased to £2,000.00 in July 2015, then £3,000.00 in February 2016.

One of our investigators looked at this complaint and didn't think that TSB had done anything wrong or treated Miss N unfairly. So he didn't recommend that Miss N's complaint should be upheld.

Miss N disagreed with the investigator's assessment of her complaint and asked for an ombudsman's review.

My provisional decision of 21 February 2025

I issued a provisional decision – on 21 February 2025 - setting out why I was intending to partially uphold Miss N's complaint.

In summary, I was satisfied that that TSB didn't initially act unfairly when providing Miss N with her overdraft or increasing her limit. However, I was also satisfied that from November 2018 onwards it allowed Miss N to continue using her overdraft in circumstances where it knew, or it ought reasonably to have known, that it was unsustainable or otherwise harmful for her.

Miss N's response to my provisional decision

Miss N didn't respond to my provisional decision or ask for any additional time in order to do so.

TSB's response to my provisional decision.

TSB responded to say that it had already agreed to refund the fees that Miss N had paid since March 2019 as this was 12 months from when Miss N was last in credit. In its view, this was in line with previous assessments and decisions that it had received from our service. It also said that it wasn't clear why I considered that November 2018 was a more appropriate date for it to have taken action on Miss N's account.

My findings

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

TSB's initial decisions to provide Miss N with an overdraft before increasing its limit to £2,000.00 and then £3,000.00.

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 considering Miss N's complaint.

TSB needed to make sure that it didn't lend irresponsibly. In practice, what this means is TSB needed to carry out proportionate checks to be able to understand whether Miss N would be able to repay what she was being lent before providing any credit to her.

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 a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more 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 lender to be able to show that it didn't continue to lend to a customer irresponsibly.

Miss N's overdraft was an open-ended (running account) agreement (in other words, while TSB was required to periodically review the facility, there was no fixed end date) where there was an expectation that she'd repay what she borrowed plus the interest due within a reasonable period of time. CONC didn't (and still doesn't) set out what a reasonable period of time was. So I think it's important to note that a reasonable period of time will always be dependent on the circumstances of the individual case.

It's fair to say that overdraft limits of £1,000.00, £2,000.00 and £3,000.00 required reasonably chunky credits in order to clear the full amount that could have been owed within a reasonable period of time. TSB hasn't been able to provide any details on what it knew about Miss N's circumstances before it provided this overdraft to her, or increased her limit on the occasions that it did.

As this is the case, and bearing in mind the amounts Miss N would have to clear within a reasonable period of time, I've not been persuaded that the checks that TSB carried out before initially providing the overdraft or increasing the limit on it were reasonable and proportionate.

Ordinarily, where a firm failed to carry out reasonable and proportionate checks before providing credit or increasing the amount available to a customer, I'd usually go on to recreate reasonable and proportionate checks in order to get an indication of what such checks would more likely than not have shown.

However, Miss N says she been unable to provide us with the information we've asked her for in order to be able to assess what TSB finding out more about her circumstances at the respective times is likely to have shown. I've seen some limited statement information from 2015 but it doesn't clearly show me that the following limit increase was unaffordable. So I've not been provided with sufficient evidence to reasonably conclude that the overdraft and the limit increases were as a matter of fact unaffordable for Miss N.

I appreciate that Miss N has said it is unreasonable and unfair to expect her to provide information which she doesn't have and cannot reasonably be expected to have. And that it should be down to TSB to evidence that it was responsible for it to lend to her. But I also have to take into account that TSB isn't required to have retained all of this information either and it was Miss N that chose to make her complaint in September 2023. As this is the case, I have to decide the complaint on what I have before me.

Equally, it is only fair and reasonable for me to uphold a complaint in circumstances where I can see that any credit provided was unaffordable. I'm afraid that I've not been provided with sufficient evidence which corroborates what Miss N has said about not having the required funds in order to clear the full amount she could owe within a reasonable period of time at the time the lending decisions in question were taken.

As this is the case, I'm not upholding the complaint on the basis that Miss N should not have been provided with an overdraft or the limit increases to £2,000.00 in July 2015 or £3,000.00 in February 2016.

The position from November 2018 onwards

Even though I've not been provided with sufficient evidence to demonstrate that TSB acted unfairly or unreasonably when providing Miss N with her overdraft, or when increasing her limit to £2,000.00 in July 2015 and £3,000.00 in February 2016, TSB still had an ongoing duty to review Miss N's facility going forward.

As part of this TSB needed to consider whether it was fair and reasonable for it to continue allowing Miss N to use the facility bearing in mind the way she was managing her account. Our investigator appears to have completely forgotten to consider this aspect of Miss N's complaint. Nonetheless, I've considered whether TSB acted fairly and reasonably in this regard.

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.

Having considered everything provided, I think that TSB acted unfairly when it continued adding interest and associated fees and charges to Miss N's overdraft from November 2018. By this point, it was evident that Miss N's overdraft had become demonstrably unsustainable for her and that continuing to provide it was likely to cause significant adverse consequences.

In response to my provisional decision, TSB has said that it had already agreed to refund the charges it added to Miss N's overdraft from March 2019. This was on the basis that this was twelve months from when Miss N last saw a credit balance on her account. It considers this to be in line with previous answers it has received from us.

I've thought about what TSB has said. However, in the first instance, I've noted that TSB never sought to explain why it decided to refund the charges added to Miss N's account from March 2019. Indeed, the content of its final response actually said:

"After reviewing your account and the ongoing affordability of the Overdraft, I cannot agree we have made an error in allowing you the Overdraft facility. However from reviewing your account and taking into account your circumstances we will be removing your Planned Overdraft limit on your account on 20 December 2023.

At this time, I'll be arranging to refund all charges applied from March 2019 and it may be likely that an outstanding balance will remain on the account. This will mean your account will be passed to our Financial Services team (FS) who will try and contact you to discuss what repayment options are available to you".

In my view, TSB's final response appears to suggest that it did nothing wrong, but that it was nonetheless prepared to refund some of the charges it added to Miss N's account. It's also worth noting that Miss N had referred her complaint to us on the basis that she considered the charges applied earlier than March 2019 should also be refunded to her. So, in my view, it doesn't automatically follow that TSB's decision to refund the charges from March 2019 is fair and reasonable in all the circumstances of this case.

I've also considered that since my provisional decision TSB has said that it refunded Miss N's fees from March 2019 onwards as by March 2019 it had been 12 months since she had seen a credit balance on the account. And this was in line with what it had received on assessments and decisions from us. However, there is no rule that an overdraft will only have become unsustainable for a customer once they haven't seen a credit balance for 12 months.

Whether an overdraft is sustainable for a customer, will depend on a number of factors and the individual facts and circumstances of a complaint. This will include things like the overdraft limit, the credits going into account, the transactions being made and how long a customer has remained in an overdrawn position for.

Furthermore, the earliest statement information that TSB has provided us with on Miss N's account are from May 2018. Looking at Miss N's statements from this period onwards it is clear she had been hardcore borrowing for an extended period. I am satisfied that for a period of least six months, from the earliest statements I've been provided with, Miss N was consistently getting towards the upper end of her overdraft limit.

In my view, Miss N was using her overdraft over an extended period and in a way which suggested that he would struggle to return to credit from her income. Indeed, the major credits Miss N appears to have been receiving into her account appears to be from benefits. And there isn't anything to indicate that this fixed income was commensurate with her overdraft limit, or sufficient to clear Miss N's outstanding balance within a reasonable period of time.

For the sake of completeness, I wish to make it clear that Miss N had been operating her overdraft in this way for longer than six months by November 2018. And had I had earlier statement information, depending on what they showed, it is possible that I may have directed TSB to refund the charges applied to Miss N's account earlier than November 2018. However, the absence of these statements means that I don't have sufficient evidence and information to be able to safely say that Miss N's overdraft had become demonstrably unsustainable for her earlier than November 2018.

All of this means that having considered the available evidence and on balance, I remain satisfied that TSB should have realised that Miss N wasn't using her overdraft as intended by November 2018. And as the account conduct suggested the overdraft had become unsustainable for Miss N shouldn't have continued offering it on the same terms from this point onwards.

As TSB did not react to Miss N's problematic overdraft usage and instead continued charging her in the same way, while allowing her to continue using the facility in an unsustainable way, I'm satisfied that TSB failed to act fairly and reasonably towards Miss N from November 2018.

Miss N ended up paying additional interest, fees and charges on her overdraft at a time when her usage indicates it had become unsustainable for her. So I'm satisfied that Miss N lost out because of what TSB did wrong and that it now should put things right.

In reaching my conclusions, I've also considered whether the lending relationship between TSB and Miss N might have been unfair to Miss N under s140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I'm directing TSB to do (in the section below) results in fair compensation for Miss N given the overall circumstances of her complaint. For the reasons I've explained, I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

Fair compensation – what TSB should do to put things right for Miss N

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

- Reworking Miss N's current overdraft balance so that all interest, fees and charges applied to it from November 2018 onwards, which haven't been refunded, are removed.

AND

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

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

My final decision

For the reasons I've explained above and in my provisional decision of 21 February 2025, I'm partially upholding Miss N's complaint. TSB Bank plc should put things right in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 16 April 2025.

Jeshen Narayanan
Ombudsman