

complaint

Miss O complains that TSB Bank plc acted irresponsibly when it agreed to extend her overdraft facility and didn't do enough checks to make sure she could afford it. Miss O says the overdraft facility has trapped her into a cycle of debt which she was (and still is) unable to get out of.

background

I recently issued my provisional findings setting out the events leading up to this complaint, and how I thought best to resolve it. I've attached a copy of my provisional decision, which forms part of this final decision. I invited both Miss O and TSB to let me have any further comments they wished to make in response to my provisional conclusions.

Miss O agreed with my provisional findings and didn't provide any further comments.

TSB made two further submissions. It disagreed with my provisional findings and re-iterated its view that when a customer applies for an overdraft facility or an extension to an existing facility, there is no need to complete an affordability assessment because there is no fixed monthly repayment.

TSB also referenced other cases we'd dealt with but not upheld, arguing they were of a similar nature to Miss O's case. And the bank noted Miss O had recently undertaken further significant expenditure. It felt this should be taken into consideration.

my findings

In light of the responses received from TSB, I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm not persuaded by what TSB has said and think it might be helpful if I make the following observations.

As TSB is aware, we look at the individual circumstances surrounding each complaint we receive, to decide what we think's the fair way to resolve that particular complaint. That almost inevitably means that cases which on the face of it, might share similar features, could well result in quite different outcomes. And certainly, no case we decide is intended to act as a precedent for all complaints of that nature.

The points I feel are most pertinent to this case were set out in my provisional decision. They are the same considerations as those we set out in our published technical guidance on financial hardship and unaffordable lending, and can be found on our website.

I don't agree with TSB when it says it doesn't need to undertake an assessment when an overdraft limit increase is requested as it doesn't require fixed monthly repayments. An overdraft is a form of open-ended running account credit. The regulator's conduct of business rules (notably CONC 6.2 and – given its potential relevance – CONC 5.3) are quite clear in setting out that a creditworthiness assessment should be carried out when setting an increased credit limit. They say the lender should have regard for (amongst other things) a borrower's ability to repay credit "*within a reasonable period.*" Similar provision was made in the Lending Code, which applied to credit assessment for consumer overdrafts before regulation.

That's not to say there's anything inherently wrong with TSB's use of online processes to make this determination. They just need to be sufficiently effective in making a reasonable assessment of the consumer's financial situation, taking into account the regulatory requirements. But I don't think TSB's online process was effective in Miss O's case. Her account and spending history, and her repeated requests for increased borrowing, were indicative of someone who was struggling to manage their finances properly and showed warning signs of financial difficulty. Aside from anything else – that would call into question her ability to repay within a reasonable period.

I therefore remain of the view that TSB failed to make a proper assessment of whether Miss O could afford the increasing overdraft facility. The online process the bank adopted wasn't sufficient in this individual case. I also think TSB ought to have had greater regard for Miss O's use of the overdraft facility and offered assistance when it appeared that Miss O was experiencing difficulty. The indicators I've mentioned – such as her frequent overdraft extension requests – are things that were identified in the Banking and Lending Codes for some time as potential signs a lender ought to look out for that suggest a customer is in difficulty. I've no reason to conclude that's no longer good practice.

It's clear to me from the bank statements that I have seen that Miss O was barely keeping her head above water. And the fact that Miss O had made a significant number of failed requests to extend the overdraft shows that Miss O was struggling to manage her finances. It doesn't simply indicate that TSB was acting responsibly by refusing the extension requests, though even if it did, that doesn't explain what changed on the occasions TSB did agree. There doesn't appear to be any obvious change in Miss O's financial income which might allow an increase to be deemed appropriate.

To conclude, I'm not persuaded by the further submissions put forward by TSB about its reasons for not carrying out an affordability assessment on Miss O's account and/or its failure to pick up clear indicators that Miss O was in difficulty.

I note TSB say it should be entitled to seek repayment of the £850 Miss O recently spent on a one-off item. However I can see that this was paid largely by a third party who credited £715 into Miss O's account in the days before the purchase was made and the remaining £135 Miss O says was given to her in cash towards her living expenses. This more or less puts the account back to its original position.

my final decision

My final decision is that I uphold this complaint.

In recognition of the irresponsible lending due to lack of appropriate affordability checks and the consequent ongoing problems Miss O has faced, I order TSB Bank Plc to take the following steps:

1. pay Miss O compensation of £2,951.27. The bank should use this amount to repay towards Miss O's overdraft on her current account; and
2. reset the approved overdraft limit on Miss O's current account to £50.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 4 August 2017.

Shakeela Ahmed
ombudsman

provisional decision

complaint

Miss O complains that TSB Bank plc, acted irresponsibly when they agreed to extended her overdraft facility and didn't do enough checks to make sure she could afford it. Miss O says the overdraft facility has trapped her into a cycle of debt she was unable to get out of.

background

By way of background, Miss O holds a bank account with TSB with an approved overdraft facility – which was extended from £2000 to £3000 in 2012. Miss O says this extension to the overdraft should not have been approved by the bank because it was unaffordable.

TSB has looked into Miss O's complaint and does not agree the extension to her overdraft to be unaffordable or irresponsible. TSB say the overdraft extension was applied for online by Miss O, such that she expressly chose not to speak with a member of staff to discuss her financial situation. In such a situation, TSB assume Miss O applied for the extended overdraft having taken into account all her finances and her ability to afford it.

TSB note that Miss O's account indicates expenditure on non-essential items, which means she was making her own lifestyle choices about what to spend on. TSB say Miss O did not make any visible change to her spending in order to try and reduce the overdraft and bring her account out of overdraft.

TSB also say that Miss O had not missed any payments due on her account and loans, and her credit file didn't show any markers to indicate she was experiencing financial difficulty or hardship. It is TSB's position that they haven't made any errors in increasing Miss O's overdraft as she hasn't displayed any signs of someone experiencing financial difficulty.

our initial conclusions

Our adjudicator reviewed all the information provided in this matter and concluded that TSB could have done more to help.

The adjudicator considered that whilst the overdraft facility at the time it was approved was probably acceptable, it subsequently became clear from Miss O's account that she later started to experience financial difficulty when her monthly income was not enough to even temporarily take her out of overdraft limit. At this point, the adjudicator felt TSB could have stepped in and tried to help Miss O manage her account better.

To resolve the matter, the adjudicator recommended that TSB refund any overdraft charges during the period being complained about, but only for those months where Miss O had been operating in the overdraft facility entirely.

TSB as well as Miss O (who felt the refund of charges should start from when the £3,000 overdraft was first approved) didn't agree with the adjudicator's recommendations so the matter has been passed to me for review.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm minded to uphold this complaint for the reasons set out below.

Lenders are allowed to set their own criteria to make lending decisions. But those criteria must reflect the fact that lenders are required to take appropriate steps to ensure borrowers can afford to repay

the lending they provide. So I've considered what TSB has said about how it went about assessing Miss O's ability to repay her borrowing, each time she asked for an increased limit.

In this regard, TSB say checks were carried out through its online application system and it was reasonably assessed that Miss O was able to repay the extended overdraft. For example, TSB say that Miss O had been very good in keeping up payments on her account and any loans she had with them. TSB also say that a credit file check showed Miss O not to hold any default judgements or other adverse markers, which might cause them to refuse the application.

I can see how that assesses Miss O's *propensity* to meet repayments. But I don't think this alone is good enough to establish her *ability* to repay. From what TSB has said, it didn't make any enquiries about Miss O's income or expenditure, or take these factors into account when making its assessment of her ability to repay. The bank's approach to online applications seems to be that it was for the applicant, rather than the lender, to make the assessment. I'm not persuaded that approach is enough to show TSB considered Miss O's ability to repay the money she asked to borrow.

By looking at Miss O's account history, especially her monthly income, TSB would have realised that she was someone already in financial difficulty and not suitable for additional borrowing. The fact that she was continuously requesting to extend her overdraft facility should have rung alarm bells with TSB and prompted it to do something to help Miss O.

It's clear that TSB's online system didn't pick up the fact that the additional borrowing was unaffordable for Miss O and therefore should not have been approved.

I can see that on a few occasions, Miss O did have some fairly large sums paid into her account. Given what she'd told them about her day-to-day finances, and the cause for concern I've already mentioned, I'd have expected TSB to step in at those points and review the overdraft limit. That would have been an appropriate step to avoid Miss O going back into the same cycle of living in overdraft. Taking everything into account, I feel TSB acted irresponsibly in agreeing to extend the overdraft and should now put things right.

my provisional decision

For the reasons I have explained, but subject to any further information or evidence I might receive from either Miss O or TSB Bank plc by 11 May 2017, my provisional decision is that I am minded to uphold this complaint.

In recognition of the irresponsible lending due to lack of appropriate affordability checks and the consequent ongoing problems Miss O has faced, I intend to order TSB Bank Plc to take the following steps:

1. pay Miss O compensation of £3,000.00. The bank should use this amount to repay Miss O's overdraft on her current account; and
2. reset the approved overdraft limit on Miss O's current account to £50.

Shakeela Ahmed
ombudsman