

## **complaint**

Miss O complains that TSB Bank plc irresponsibly gave her an overdraft and later increased that overdraft limit.

## **background**

Miss O applied for an overdraft in August 2018 but TSB refused the application and told her that any lending would be irresponsible as she was spending her money on gambling and payday loans. Miss O then questioned why TSB had approved her previous overdraft applications which were later converted into loans which she says she couldn't afford. She says TSB gave her a £1,000 overdraft which was converted into a loan then some time later allowed her to have a £3,000 overdraft which again was converted into a loan.

Miss O says she has taken out over a hundred payday loans and has spent a significant amount of money on gambling. She says TSB's lending was unaffordable and irresponsible and would like all charges and interest refunded.

TSB says both loans refinanced existing debt and so didn't increase Miss O's debt and it was not new lending. It says the interest rate on the loans was lower than Miss O would have paid if the overdraft hadn't been converted to the loans. TSB says it referred Miss O to a debt help organisation in 2014 and that the first loan was paid regularly until it ended in November 2016. It says it declined further lending in May 2015 but approved the overdraft application in November 2015 as there were regular credits to the account and Miss O was managing the loan. TSB says it didn't take account of the type of expenditure and says its unlikely Miss O would have told it the reason for the borrowing was for gambling in any event. It says it's treated Miss O positively and sympathetically but accepts it gave Miss O incorrect information and has paid her £56 compensation.

Miss O brought her complaint to us with a list of her debts and borrowing. Our adjudicator considered the complaint and thought overall TSB had dealt fairly with it and had acted positively and sympathetically to Miss O's position. The adjudicator provided all of the background to the borrowing and thought TSB had tried to help Miss O by converting the overdrafts into loans with lower interest rates. And any charges were made in line with the account terms and conditions. The adjudicator thought there were regular payments into Miss O's accounts and thought TSB was entitled to make commercial decisions on lending.

Miss O didn't accept that view and says in summary it was irresponsible to keep lending to her whilst she gambled and used regular payday lending whilst having a small wage paid into her account.

## **my provisional view**

I issued a provisional view on this complaint and said in summary that some of TSB's lending was irresponsible and unaffordable.

I looked through TSB's records and saw that the overdraft was approved in July 2012 but by October 2012 TSB was aware that Miss O was in financial difficulties as its records have a note about those difficulties. In 2014 after a financial assessment TSB converted Miss O's overdraft into a loan which was paid regularly. And in May 2015 Miss O applied for another loan but this was refused by TSB. So I thought at this stage TSB hadn't lent irresponsibly. And had acted fairly by converting the overdraft into a loan which I thought would have

meant Miss O paid far less in interest as the loan interest was significantly less than the overdraft charges and interest. I also thought TSB was or ought to have been aware that Miss O had financial difficulties and I think that is the reason why it refused her loan application in May 2015 and why it converted the overdraft into a loan.

In those circumstances I said I would have expected TSB to look carefully at any further application for credit by Miss O. I also think that by May 2015 TSB ought to have been aware of Miss O's gambling problem. I say that as looking at Miss O's account statements, as TSB must have done to have considered the loan application in 2015. And the financial assessment shortly before, would have shown that Miss O was carrying out hundreds of gambling transactions. And that she was in receipt of benefits but her income was supplemented by occasional gambling winnings. I accepted Miss O also had a regular wage.

I appreciated TSB says that its systems create a "Shadow Decision" on such matters as an overdraft facility in principle and that had Miss O applied for an overdraft in a branch then it would have looked closer at that application. And that it doesn't consider the type of transactions. But for the reasons I explained I was satisfied TSB already knew by the time of the overdraft application in October 2015 that Miss O had been in financial difficulties and had a spending problem. So I said that I would have expected TSB to have recognised that by placing a note on its systems not to approve online overdraft applications without a detailed consideration. I thought not to do so was irresponsible and allowed Miss O to immediately use the overdraft to spend in the manner she did. I was satisfied that allowing a customer to have an overdraft is borrowing and is no different to approving a loan for example.

I could see that TSB then increased Miss O's overdraft limit one month later to £1,600 and in December 2015 increased the limit to £2,000. I didn't think TSB had explained why it did that or if it carried out an assessment. I could see from Miss O's account statements that she used the new overdraft limits to increase her spending up towards the overdraft limit. During 2016 Miss O continued to spend heavily and was taking out a number of short term loans and her overdraft was close throughout to the limit. There were occasional credits from gambling winnings. But TSB then increased Miss O's overdraft limit to £3,000 in October 2016. Miss O then followed what I thought was by now her usual pattern by using that new overdraft limit to spend significantly and use short term lending. And again I couldn't see that TSB carried out any affordability checks at that time.

I said that I appreciated that it was up to Miss O how she spends her money and that it would not ordinarily be for a bank or building society to tell a customer what he or she should or should not be spending money on. But I was of the provisional view that TSB ought to have known that if it lent to Miss O then it likely she would spend immediately and have difficulty repaying it. I could also see that TSB refused a lending application from Miss O for those same reasons. So I didn't think TSB acted responsibly in dealing with the overdraft increases from October 2015 to October 2016 and ought to have carried out detailed assessments of all of them and monitored how Miss O was using the exiting overdraft facility before simply increasing them.

I accepted that the decision to convert the first overdraft to a loan may have assisted Miss O. But it must follow that if I think that the decision to grant the overdraft in October 2015 was irresponsible and should not have been made then it also follows that a loan wouldn't have been needed in the first place.

To put matters right my provisional view was that TSB should refund any charges, interest and fees incurred as a result of approving an overdraft from October 2015 to when that overdraft was converted into a loan in or around November 2017. I also thought that TSB ought to refund any interest charges and fees in respect of that loan and allow Miss O to repay that loan without future interest or charge. I also thought the fairest approach would be to apply any refunded money to the capital balance Miss O owes TSB and for TSB to amend her credit file.

I was satisfied that Miss O had the benefit of the money and so I thought Miss O should repay the money she owes TSB. And I could see that Miss O agreed with that view.

Miss O has replied to my provisional view and whilst she has some questions about previous overdrafts she largely accepts my view.

TSB doesn't accept my provisional view and says in summary that it did apply strict flags to prevent further borrowing in May 2015 and that it was Miss O's decision to apply for the further overdrafts. It says Miss O agreed to those overdrafts and didn't tell it about spending problems. TSB says it's not appropriate to remove the default as that may allow her to apply for further credit and says it was in October 2014 that Miss O had been in financial difficulties. It says it didn't force credit on Miss O but it was she that applied for it.

### **my findings**

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And having done so I've come to a similar overall view as I reached in my provisional decision.

I appreciate that TSB says it was Miss O's decision to apply for further credit and did not force credit on her. But I don't think that means it was responsible for TSB to simply allow the lending. I have explained in my provisional view that lending ought to be responsible and proportionate and appropriate checks carried out and in this case such checks were not carried out as I would have expected.

I don't think it matters that Miss O didn't tell TSB that she had spending problems or what that problem was. I think the key point is that I find that the credit was unaffordable and appropriate checks as carried out in the past would have shown that. I have also made clear in my provisional view that I don't think TSB carried out any monitoring of the overdraft and simply approved the applications for increases without any real consideration.

I understand why TSB says the default should not be removed so to prevent further lending by other lenders. But I also think that if the lending was irresponsible that it ought to follow that Miss O's credit file be updated to the correct position.

**my final decision**

My final decision is that I uphold this complaint in part. I order TSB Bank plc to refund any charges, interest on the overdraft from October 2015 until that overdraft was converted into a loan. And that it refund any interest or charges on the loan and allow Miss O to repay that loan without future interest or charge as well as amend her credit file to reflect the position when those changes are made. All refunds should be applied to the amount Miss O owes TSB Bank plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 2 April 2020.

David Singh  
**ombudsman**