

complaint

Mrs I complains about the action that TSB Bank plc has taken to recover money from an informal loan it made to her.

background

Mrs I paid £1,000 in over the counter at a branch of TSB on 4 April. She wanted it to go to her credit card account with a different bank. But the money didn't get there. She complained on 19 April, and TSB started to try and find out where the money had gone. While that was happening, Mrs I said that she needed that money. TSB said it would pay her that amount for now, so she had access to it, but when it found her money it would take back the £1,000 it was giving her. Mrs I said she never agreed to TSB taking this money back again.

TSB paid Mrs I £1,000 on 9 May. Mrs I used the money that TSB loaned her to pay her credit card account. At the same time, the money she had lost was found, and also paid into her credit card account.

TSB said that now the original money was found, it would be taking the £1,000 it had loaned Mrs I back. It gave her a month's notice of that. But Mrs I told TSB she couldn't pay it. She offered to pay in instalments. TSB said it wouldn't accept that, and it was still going to take all the money from her account. So Mrs I closed her accounts instead.

TSB then reopened the account, and took £1,000 from it. It used some money in a savings account to pay off a little bit of the debt. And it said it would start charging Mrs I for an unauthorised overdraft. Mrs I said that wasn't fair, and she complained to this service.

Our investigator upheld this complaint. She said that TSB knew that Mrs I had used the money to make a payment to her credit card. So TSB should've found a way to get the money back from the card, either by debiting the card or by allowing Mrs I to transfer the money across, and then reimbursing Mrs I for the costs of that. She also thought that TSB should refund any fees and charges which had been applied to Mrs I's account because of the unauthorised overdraft, and remove any negative markers from her credit file. And she said that TSB should pay Mrs I £100 in compensation.

TSB didn't agree with that solution. It said that if Mrs I had paid both amounts – the loan and her original credit – into her credit card account, then that credit card account should've been in credit. When credit card accounts are in credit, it doesn't cost anything to get the money back. And TSB said that it had been very generous when Mrs I told it that she needed to pay much more for a holiday, because she was booking later. It had paid her £2,220.84, without any real proof that this extra cost had been incurred. And it had already paid her £100 in compensation and £12 in call costs on top of that to make up for the inconvenience of having lost her money. TSB thought it had done enough. And it thought that when Mrs I closed her accounts, she was trying to defraud the bank. So it didn't think it had to do any of the things that our investigator suggested.

Because TSB didn't agree with our investigator, the case was passed to me for a final 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. I've reached the same conclusion as our investigator, and for broadly the same reasons.

I have read this case file carefully. I think it is clear that TSB was only offering £1,000 as a loan, until the original money was found. I know that Mrs I says she didn't agree to pay it back. But those are the conditions under which she accepted the money. Mrs I does have to pay that money back. So that money has to come from somewhere. I need to think about where it should come from.

TSB told Mrs I that it would be taking the money back from her account, with a month's notice. It wouldn't accept instalments, and doesn't seem to have suggested any other way that Mrs I could pay. Mrs I says that she initially told TSB, when it gave her this loan, that she would be using it to make the payment which was due onto her credit card account. She said that TSB would have to take it back from there. TSB doesn't seem to have explored this with Mrs I at all. It insisted that it would take the money back from her account.

TSB has defended this action since. It says that if Mrs I had made two payments onto her credit card account, then that account would be in credit. So she could easily have transferred the money back. But when Mrs I made the payment onto her card account, it was £1,700 in debit. She paid a total of £2,100. So even if Mrs I had stopped using her card right away, she would still only have had a credit balance of £400. TSB seems to have assumed that there should be a credit balance of £1,000 on Mrs I's card, waiting to be transferred back. But I don't agree. I don't think that the evidence that both I and TSB have seen supports that conclusion. I also think that it isn't unreasonable for Mrs I to have used this card, within the borrowing limits she has. So it also wouldn't be unreasonable if there was no credit balance on this account at all.

TSB has also said that it paid Mrs I the extra costs of her holiday. She told it she had incurred these costs because she wasn't able to pay the balance of a pre-booked hotel room. So TSB paid the costs of booking the rooms which Mrs I could get, on a late booking. That was different accommodation, at a higher cost. TSB thinks that Mrs I didn't really prove that she had incurred these costs. It thinks it was generous. So it doesn't think it has to do any more. But just because TSB may have decided to accept Mrs I's word about her losses when the payment went missing, doesn't mean it can act unreasonably once the payment is found.

I don't think that TSB acted reasonably when it told Mrs I it would be taking the whole of the loaned amount out of one of her accounts, and then refused to consider alternatives. I realise that Mrs I acted rashly when she closed her accounts. That does look like she was seeking to avoid paying TSB back at all. But I must also bear in mind that if TSB had explored alternatives to taking all the money back from her account at once, then Mrs I would have been unlikely to have done this.

Because I think it was unreasonable for TSB to take the money from Mrs I's accounts, I agree with our investigator that TSB should refund any interest and fees that it has applied to this debt. And it should cease to charge interest and fees for two months from the date of this decision, to allow Mrs I to make arrangements to pay the debt off.

As I explained earlier, this money does still need to be paid back by Mrs I. After TSB removes the fees and charges, there should be £948.05 of the original debt outstanding. Our investigator said that TSB should debit Mrs I's credit card account for this money. TSB says it can't do that. And I don't think it should, because it can't be sure that Mrs I has that amount in available credit. Mrs I has offered to make this payment to TSB. So, I think that Mrs I should arrange to transfer £948.05 from her credit card account, into her TSB account. If Mrs I can show evidence that she has paid fees and charges to do this, and her other bank hasn't refunded those, then TSB must refund those fees and charges to Mrs I. TSB can then close Mrs I's account, as she requested.

Our investigator also said that she thought TSB should remove any negative markers from Mrs I's credit record that have been placed there as a result of this problem. I agree with that. Whilst I think it was irresponsible of Mrs I to close her accounts, I've already explained that I don't think she would've done that if TSB had explored other ways for her to pay it back. So I don't think that it's fair for her to have negative markers on her credit record as a result of this problem.

Finally, our investigator suggested that TSB should pay Mrs I £100 to make up for the stress that this has caused her. I agree that this is an appropriate amount to make up for the stress that TSB's collections action must've caused her, so I also think TSB should pay that.

This resolution all depends on Mrs I making the payment from her credit card to her TSB account that I understand she has agreed to make. I have asked TSB to refund the fees and charges it has already applied, and to pause all future fees and charges for her unarranged overdraft during this period. But if Mrs I hasn't made that payment within two months of this letter, then TSB doesn't have to do any of the other things I've listed above. It wouldn't have to remove the relevant markers from her credit record, or pay her any compensation. And it could start charging her for an unauthorised overdraft again.

my final decision

My final decision is as follows.

TSB Bank plc should refund any interest and fees that it has applied to Mrs I's unauthorised overdraft, so the debt is reduced to £948.05. It should then cease to charge interest and fees for two months from the date of this decision, to allow Mrs I to make arrangements to pay the debt off.

During this time, Mrs I should transfer £948.05 into her TSB account. If Mrs I can show evidence that she has paid fees and charges to her credit card account to do this, and her other bank hasn't refunded those, then TSB must refund those fees and charges to Mrs I.

If Mrs I makes that payment within the two month period, then TSB must do the following.

TSB should close Mrs I's account.

TSB should remove any negative markers from Mrs I's credit record that have been placed there as a result of this problem.

TSB should pay Mrs I £100 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs I to accept or reject my decision before 9 November 2017.

Esther Absalom-Gough
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