

complaint

Mr S complains that TSB Bank plc allowed him to go overdrawn even though he had a basic bank account.

To settle matters Mr S would like the account to go back to how it was before the unauthorised overdraft.

background

Mr S carried out a number of gambling transactions with an online overseas casino for just over £2,000. At the time he says he had just over £2,000 in his account. It looks like the transactions were made around 29 January 2018 but they didn't debit his account until 2 February 2018.

Before making each transaction Mr S says he checked his app for pending transactions and to make sure he had available funds. He says these transactions were initially showing as pending but later in the week he says his available balance was approximately £2,000 with no transactions pending so he made further transactions and cash withdrawals. He later discovered he had an unplanned overdraft of more than £1,400.

Mr S says this is unfair and thinks the basic account has been mis-sold. When he opened his basic account he says he'd told TSB that he had a debt management plan and needed an account that wouldn't allow him to become overdrawn. He's also unhappy that he was able to withdraw cash without being told there were pending transactions on his account.

Our investigator didn't recommend Mr S's complaint should be upheld. She noted that Mr S's starting balance on 2 February 2018 – before the overseas casino transactions were processed - was £1,041 and not £2,000 as Mr S had thought. And she thought Mr S would have known his starting balance was much less than £2,000 because he'd transferred £1,000 to his savings account the day before. The transactions made by Mr S were for more than £1,041 so she thought Mr S would know he didn't have enough money in his account for them. She also noted that Mr S had a responsibility to manage his account.

Our investigator noted that some gambling sites used by Mr S referred their payments to TSB for authorisation prior to money debiting from his account. However none of the transactions Mr S made with the overseas casino were referred to TSB for authorisation. So there was nothing TSB could do to stop these.

She looked at the cash withdrawals Mr S had made and she noted that Mr S's account was still in credit at this point because the gambling transactions hadn't yet been processed. She could see Mr S had later deposited a further £1,000 into his account but by then his account was in an unplanned overdraft so the money he'd deposited was used to partly reduce his overdraft.

Our investigator couldn't see anything to suggest that Mr S had made TSB aware of his debt management plan when he opened his account. So she didn't think the account had been mis-sold. She couldn't conclusively say what he was told at the time he opened his account but he would have been provided with the terms and conditions relating to his account and these explain that the account doesn't have a planned overdraft but that it was possible for the account to go into an unplanned overdraft.

Mr S is unhappy with the investigator's view and has 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 done so I agree with the investigator's outcome and for broadly the same reasons. I'm therefore of the opinion that TSB hasn't treated Mr S unfairly by allowing him to go into an unplanned overdraft.

The terms and conditions make clear that the basic account doesn't have a planned overdraft facility. But they also make clear that an unplanned overdraft is possible where a transaction is made and there aren't available funds.

Here, Mr S doesn't dispute making the transactions which caused him to go into an unplanned overdraft. And TSB has told us that none of Mr S's transactions to the overseas casino were referred to it for authorisation. So I can't fairly find TSB to be at fault here because it had no control over the transactions Mr S made. And because the transactions weren't referred to TSB for authorisation - TSB wasn't able to stop them.

Even if TSB had stopped the transactions, I'm of the opinion that Mr S would still be in the same financial position. I say this because I consider it most likely that Mr S would still have been liable to pay the amount he owed to the overseas casino based on the terms and conditions of the overseas casino.

Mr S has a responsibility to manage his account. I realise Mr S says he checked his available balance but I can see that there was a delay between Mr S making the transactions and the money debiting his account so in these situations it's important to take into account transactions made but which haven't yet debited. Mr S was aware that he'd made transactions of approximately £2,000 so I'm of the opinion that Mr S ought to have been aware that he didn't have sufficient funds available for these transactions and the subsequent transactions he made.

I'm of the opinion that the basic account wasn't mis-sold. Although I have no way of knowing exactly what was said at the time, I haven't seen anything to suggest Mr S made TSB aware of his debt management plan when he opened his account. And I can see that Mr S confirmed in writing that he'd received a copy of the terms and conditions. As I've referred to above these state that whilst the basic account doesn't have a planned overdraft it's possible for the account to go into an unplanned overdraft. And there's nothing to suggest to me that Mr S was in financial difficulties as TSB's notes show that he receives a monthly salary into his account and there don't appear to be any utility bills, rent or mortgage payments going through his account.

From the statements I've seen it looks like Mr S regularly makes gambling transactions so I've also considered whether TSB should have done more to help Mr S. But TSB has told us that Mr S hadn't asked for any support before he contacted the bank's customer support unit in February 2018. TSB has also confirmed that Mr S's account has never been in collections. And, as I've said above, Mr S receives a monthly salary into his account but there don't appear to be any regular outgoings from his account. So there's nothing that obviously suggests that Mr S needed additional support or that he was in financial difficulties.

I've also seen that TSB's customer notes refer to TSB offering Mr S an ATM-only card but Mr S declined this. So in these circumstances I can't fairly say that TSB should have done more to help Mr S.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 September 2018.

Michelle Hayward
ombudsman