

complaint

Mr M complains that TSB Bank plc (TSB) won't write off his outstanding credit card debt. He says because of his health issues he's unlikely to ever be in a position to pay the debt off.

background

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 16 April 2019 – a copy of which is attached and forms part of this final decision.

In my provisional decision I explained why I thought this complaint shouldn't be upheld and invited both parties to send any additional comments or evidence they wished to make.

TSB said it had no further information for me to consider and said it accepted the provisional decision.

But Mr M disagreed, and over a number of further submissions – including a telephone conversation with an investigator – he made the following summarised points.

- He didn't think we'd acted impartially.
- He isn't going to repay any of his outstanding debts to the banks as he doesn't have sufficient money to do so.
- He wanted us to be aware of the lifetime mortgage that he has in place on his property, which demonstrates that he doesn't have any assets either that could be used to repay the debt.
- He'd raised a new complaint about the letters he'd continued to receive from TSB about his account and wanted £100 compensation for that. But he doesn't believe that complaint's been addressed at all.

Mr M also provided a submission that had been made by his Member of Parliament (MP). In this submission the question of why I'd departed from the investigator's initial view – that the complaint should be upheld, was raised. Mr M's MP said it was unfair on Mr M for me to overturn the initial findings and in his view that initial outcome was correct. He thought it was clear Mr M wasn't able to ever repay the debt and shouldn't have been lent the money in the first place.

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my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having carefully considered what's been said I see no reason to change the conclusions I came to in my provisional decision.

I can understand the strength of feeling Mr M has regarding his complaint – especially as I've departed from the initial outcome that was reached. And I have sympathy with Mr M's position, that this change in outcome has caused him further distress. I can assure Mr M it wasn't my intention to cause him more worries.

Mr M has also said that we haven't dealt with his complaint properly, as he was told I would be investigating his complaint point about the letters he received from TSB after it said it wouldn't be contacting him anymore. In my provisional decision I did say that *"Mr M has made a further complaint about correspondence he is still receiving from TSB. This matter is being investigated under a separate complaint. So to be clear, what I'm considering here is Mr M's complaint about his request to have his outstanding credit card balance written off"*.

So I did make it clear what I'd be considering. But I accept that we haven't kept Mr M up to date with his other complaint so I can understand why he assumed it would be dealt with here. But I now understand Mr M has now been contacted – and updated – about his other complaint and it will be dealt with separately.

Mr M's MP has asked why I've changed the outcome of this complaint when he believes the investigator had a better understanding of the case and what the correct outcome should have been. He says it isn't fair for us to reverse an outcome as it causes further trouble and upset for consumers. And as I've said I understand Mr M's feelings here and accept he is unhappy with the change in outcome.

But as a service our job is to resolve individual disputes between consumers and businesses fairly and reasonably. Our process enables consumers and businesses to ask for a decision if either side isn't happy with the initial assessment. Such a process allows us to confirm if we've resolved things fairly and reasonably. So in this case I was able to review Mr M's complaint again and decide what I think was a fair and reasonable outcome. And I've given both parties the opportunity to make further representations because I came to different conclusion. Based on what I've seen I still believe my decision to be correct.

As I'd concluded previously there's no evidence that TSB didn't treat Mr M's medical and financial difficulties positively and sympathetically. Having done that I would also have expected TSB to have provided alternative ways to resolve this situation. I think TSB did that by asking Mr M to complete an income and expenditure form, stopping any interest and charges while its recovery team looked into the situation, and halting the whole recovery process while Mr M's complaint is considered.

But I don't think it's fair for me to tell TSB that it has to write off Mr M's debt when it's not obliged to, as long as it's treated Mr M sympathetically overall. That wouldn't be reasonable as it's for TSB to decide whether or not to write of the debt. I think TSB has acted according to how it said it would – in line with its terms and conditions, and has tried to be positive in its approach to discussions with Mr M.

Mr M has also raised the issue of the lifetime mortgage held over his property. He wants me to take that into consideration.

I have considered that point very carefully and I do accept that, based on the figures provided, it's unlikely Mr M's house can be used to repay his credit card debt. But there's no suggestion that Mr M's property is going to be used to repay the loan – that's why TSB want Mr M to complete an income and expenditure form, to determine what, if anything, he can afford to pay from his income. I know Mr M wants me to consider his overall inability to repay the debt – including the lack of equity in his property. But that's a matter for TSB to decide, as in my view it's acted positively and sympathetically in assessing Mr M's position so far.

my final decision

For the same reasons that I've already given in my provisional decision, I don't uphold Mr M's complaint against TSB Bank plc, in so much as I think what TSB has already paid Mr M is a fair and reasonable settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 July 2019.

Keith Lawrence
ombudsman

copy of provisional decision

complaint

Mr M complains that TSB Bank plc (TSB) won't write off his outstanding debt. He says because of his health issues he's unlikely to ever be in a position to pay the debt off and wants to avoid additional stress and anxiety.

background

Mr M held a number of credit cards – some of which had promotional interest rates applied. When these rates were coming to an end Mr M transferred some of the balances to a new card with TSB with a credit limit of £1,500. Mr M made a number of payments but then contacted TSB and explained that – because he'd previously been diagnosed with a serious medical condition, and with the likelihood that his income wouldn't be changing, he would be unlikely to be able to make any further payments. He asked TSB if it would write off the outstanding card balance.

TSB said that Mr M hadn't declared his medical condition when he took out the card – so it wouldn't write off his debt but would pass his account to the recovery team and would stop any additional charges and interest being applied in order not to increase the debt.

Mr M said the question he'd been posed when completing the application form asked if his circumstances were likely to change – and as he'd been diagnosed with his condition some months earlier his circumstances were unlikely to change.

TSB said that – while Mr M wasn't untruthful in answering the question, as his illness hadn't changed since the application, and as Mr M had made a number of payments towards his balance it was reasonable to treat his financial difficulties in the way it had. It said Mr M confirmed his income hadn't fallen but the interest rates on his cards had increased and it was this factor that caused him the problems.

As TSB wouldn't write off the debt Mr M brought his complaint to us.

In November 2018 Mr M complained to TSB about the service he'd received during his complaint and the time he had spent trying to resolve the matter.

TSB accepted it had sent Mr M's documents to the wrong address. It apologised for its error and paid Mr M £325 for the inconvenience this had caused him. It also paid him £50 for any expenses he'd incurred.

One of our investigators looked into the matter and said the complaint should be upheld. She thought Mr M was vulnerable and there was little prospect of him paying off his outstanding debt going forward. So she thought TSB should write off the debt to stop any additional stress and anxiety that might be caused over a debt that was unlikely to ever be repaid.

Mr M agreed with the investigator but TSB didn't. It said it wasn't fair for Mr M to rely on medical reasons to have his debt written off when he hadn't disclosed that medical information at the time of the application. TSB said it may have reached a different decision about lending if it had been aware of his medical situation at the time. It also said Mr M was aware his promotional interest rates on other cards were due to finish, and therefore he would have known that he might struggle to make payments going forward at the standard interest rates. TSB said it hadn't made any errors over this matter and was right to continue its recovery actions – whilst acting positively and sympathetically towards Mr M.

Mr M has confirmed to us that he isn't complaining that TSB was irresponsible in offering him the card. His complaint is about TSB not agreeing to write off his debt. And I can see Mr M has made a further complaint about correspondence he is still receiving from TSB. This matter is being investigated under a separate complaint.

So to be clear, what I'm considering here is Mr M's complaint about his request to have his outstanding credit card balance written off.

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.

I was sorry to hear about the serious health issues that Mr M is suffering from, and I can understand that this matter is causing him significant additional stress and concern. I can also see how strongly he feels about the situation and wants it to be resolved. And I have sympathy for the position Mr M finds himself in as he believes he won't be able to repay his debt because of the medical and financial issues he's experiencing, so considers it would be best for all parties to write off the debt.

But even with all that in mind, I don't think it'd be fair to tell TSB to write off his balance on the card in the way he'd like – which I know will disappoint Mr M, so I'll explain why.

Mr M transferred some existing card balances to TSB in March 2018 and made a number of payments before he contacted TSB and told it about his health issues and how that would affect his ability to repay his balance.

Having been made aware of the situation I would have expected TSB to have treated Mr M's medical and financial difficulties positively and sympathetically. And I think it did that by listening to Mr M, asking him to complete an income and expenditure form to look at his circumstances, and then by stopping the interest and other charges while TSB's recovery team considered his position. I note the recovery of the debt has been put on hold while this complaint is being considered.

I know Mr M wants TSB to write off his debt – but there's no obligation on TSB to agree to do that. It's a general principle that where a customer has borrowed money from a business, it's fair to expect them to pay this back on the terms that they borrowed it. There are a range of other options that can be considered to help a customer when they're experiencing difficulties, without writing off a debt.

I think TSB's approach of trying to establish Mr M's financial position when he told it he was unlikely to repay his debt, and then to suspend all charges and interest was a reasonable one. And I think if Mr M had completed the income and expenditure form as requested TSB may have considered a wider range of measures as well. So I don't think TSB acted unfairly there.

Mr M has confirmed that his medical condition was diagnosed before he transferred his other credit cards to TSB and that his income hasn't changed during that time. He says it's the interest rate on his cards that have caused the problem and his health issues prevent him from being able to improve his income position. But I note he was able to make a number of payments before he told TSB he couldn't make any more. That would've suggested to TSB that he could maintain the card as intended – so I think it's reasonable for TSB to have asked Mr M to confirm his income and expenditure position before it set out any repayment alternatives.

As I've already said TSB is entitled to decide whether or not to write off a debt. And ultimately here – I think TSB has acted fairly and reasonably towards Mr M and his financial situation. TSB has been sympathetic to Mr M and has laid out other options that are available and has also continued to take action to help him, including freezing any further charges. TSB does have duty to accurately record Mr M's credit activity with it which I think it has done here.

I note Mr M also complained about the level of service he'd had from TSB during his complaint and the extra time – and additional stress – this had cost him. But I note TSB has accepted this and paid him a total of £375 for the impact this had on him as well as the impact of sending documents to an incorrect address. In the circumstances I think that's a fair settlement to have made, and I'm not going to ask TSB to do anything further.

my provisional decision

For the reasons I've given I'm not minded to uphold Mr M's complaint, in so much as I think what TSB has already paid Mr M is a fair and reasonable settlement.

Keith Lawrence
ombudsman