

complaint

Mr W complained that TSB Bank plc was irresponsible in lending to him. He said it means he can't apply for a mortgage. He wants an apology, his debt written off, and his credit file cleared.

background

Mr W opened an account with TSB in 2010. When he became 18 in 2013, the account was changed to a different type. He applied for a £100 overdraft facility with this account.

In August 2013, shortly after the initial £100 overdraft was agreed, Mr W rang to ask for an increase to £150. TSB refused this because Mr W had said his only income was from his parents.

So Mr W then applied online for further increases to his overdraft. He did this about six times and his limit went up to £750 in September.

From 20 September to 16 December 2013, job seeker's allowance payments went into Mr W's account. During this time, no more overdraft increases were approved.

From 20 December 2013 onwards, Mr W had wages paid in, usually around £120 a week. There were other credits to his account too.

In April 2014, TSB agreed an overdraft increase to £1,450, and to £2,000 in May 2014. At some point in 2014, TSB asked Mr W to complete income and expenditure information. This showed his monthly income exceeded his expenditure by £701.96 a month.

In December 2014, Mr W rang TSB and said he was finding it difficult to manage his overdraft. He told TSB he was up to date with his bills and wasn't in financial difficulties. TSB arranged a loan to pay off Mr W's overdraft affordably. But very soon afterwards, Mr W stopped paying. He told TSB he'd lost his job. So TSB wrote off and closed Mr W's loan and overdraft in August 2015, and registered a default against Mr W's name.

Mr W had opened another TSB account in August 2014. He didn't use it much until TSB gave him a contactless card. He then built up a debt on this account. This account was then written off and closed in October 2016. And a default was registered against Mr W's name.

In January 2018, Mr W complained to TSB. He said he'd borrowed from TSB without thinking what effect it would have in future. He said he had been unemployed when TSB gave him the overdraft and clearly he couldn't pay it back. He said TSB should never have lent to him, considering his circumstances. Mr W said the consequences of this unaffordable lending had affected him dramatically because he was now unable to apply for a mortgage, which had had a huge impact on his life and was part of the cause of health problems. So he asked TSB to clear the outstanding balance he owed and correct his credit file.

TSB explained that as Mr W's account was closed, it couldn't access full details of his various overdraft applications. But it could see that Mr W had made his first overdraft application by internet banking. As part of that, Mr W would have had to say what his employment status was. And if he'd said he was unemployed, the application would have been refused. As the first application was accepted, Mr W must have said he was either employed, or not seeking work, at the time. TSB pointed out that when Mr W rang in August

2013 asking for an increase, he was turned down because he'd said his only income came from his parents.

TSB went on to say that Mr W had made more applications through internet banking, which wouldn't have been agreed if he'd filled up the application saying he was unemployed. Mr W wasn't receiving job seekers' allowance – and when he did, there were no more increases until Mr W started his new job.

TSB pointed out that when people apply through internet banking, and choose not to discuss their finances with a member of staff, it's up to them to decide how much they want to borrow and in what way. It said there's information on the website to help, and Mr W had agreed to the terms and conditions.

TSB said it had agreed a refinance loan in December 2014 to help Mr W repay his overdraft in a structured way. The income and expenditure form Mr W filled in at that point showed he could afford the repayments. But very soon afterwards, Mr W told TSB he was unemployed again, and he stopped paying anything to his loan or to his current account. So TSB sent the account to its debt recovery team in August 2015 and correctly recorded a default on Mr W's credit file. It also sent Mr W's second account to debt recovery and recorded a default on that in October 2016. So it didn't think it had done anything wrong.

Mr W wasn't satisfied and complained to this service.

The adjudicator initially didn't uphold Mr W's complaint. He looked at TSB's lending policy and saw that it wouldn't approve overdrafts if customers said they were unemployed. As the accounts had been closed, there wasn't a record of what Mr W had put on his applications for the overdrafts and increases. But the adjudicator said he couldn't agree that TSB had made an error. And there was no record to show that Mr W was receiving job seekers' allowance when the overdraft was increased to £750. When Mr W had applied for the April and May 2014 increases, he was receiving regular payments from an employer.

But the adjudicator later revised his view. He said that when the overdraft increased to £750 in September 2013, Mr W wasn't working. And when the later increases happened, the work Mr W was doing was only temporary. So he upheld Mr W's complaint on the basis that TSB hadn't done an affordability check when it had increased his overdraft from £100 to £750.

Another adjudicator then took over the case and he, too, upheld Mr W's complaint. He said Mr W hadn't been working up to summer 2013 as he was at college. And there was no evidence TSB had done a proper affordability check when increasing the overdraft from £100 to £750. He thought that it was at that point that Mr W started to suffer financially, which he thought was irresponsible of TSB.

TSB was very unhappy with these conclusions. It said:

- the adjudicator had only considered the overdraft increase to £750 but there had been later increases at a time when Mr W was earning over £1,000 a month. So TSB said it wasn't right to remove the defaults in 2015 and 2016 without looking at what had happened after the September 2013 increase to £750.
- when the consolidation loan was agreed in December 2014, TSB would have asked questions about whether Mr W's circumstances were likely to change. It sent us a

copy of the script its advisors use, which require a customer to confirm they could afford the payments.

- it was only shortly after the consolidation loan was agreed that Mr W had told TSB he had “*lost his job.*” TSB argued that if Mr W had always been on a temporary contract with a fixed end date, he couldn’t honestly have said in December 2014 that he knew of nothing which was likely to change. So, if he’d answered honestly, he wouldn’t have known the job was about to end, so the lending wasn’t irresponsible. TSB pointed out that if Mr W hadn’t told the truth, it was up to him to bear the responsibility for his actions.

my provisional findings

I issued a provisional decision on this case. Before doing so, I considered all the available evidence and arguments to decide what would be fair and reasonable in the circumstances of this complaint.

I considered it was unfortunate that there wasn’t a full picture of all the evidence. For example I didn’t have evidence of what Mr W put on all his overdraft applications. That was is because the accounts were closed some years ago, and some key events took place longer ago than that.

When I don’t have full evidence, I make my decision on what’s most likely to have happened, taking into account the available evidence and circumstances.

Also, Mr W’s overdraft changed over time. It also wasn’t clear exactly which of the overdraft increases Mr W said were unaffordable. His complaint letter to TSB said he took out a loan of £2,000 on 1 August 2013. But the records show this wasn’t correct. He had a £100 overdraft at that point. It later changed several times. For completeness, I looked at the whole history of Mr W’s borrowing with TSB, as much as I could with the information I had.

Initial overdraft £100 August 2013

The initial overdraft in August 2013 was for £100, not £2,000 as Mr W said. For the three years up to that point, Mr W’s account had had a low balance but stayed in credit. There were credits to the account but mainly cash, so it wasn’t possible to see what the source of income was. Mr W told this service he was at college until summer 2013. At that point he wouldn’t have had any credit file information, and he’d had three years when the account had been well conducted. So I didn’t consider it was irresponsible for TSB to have given Mr W the relatively small amount of a £100 overdraft in summer 2013.

I noted that Mr W rang soon after this to ask for an increase to £150 but TSB refused, because he’d said his income came from his parents. I considered this indicated that TSB wasn’t acting irresponsibly about the amount it was prepared to lend Mr W. I also noted that, after that, Mr W made his applications for increased overdrafts online, and not by speaking to TSB. And in doing so, a greater level of responsibility lay with him and the information he provided, as well as the borrowing choices he made.

Increase to £750 overdraft September 2013

Mr W then made six applications – all online - leading to an overdraft limit of £750 in September 2013. It was very unfortunate that we didn’t have a copy of Mr W’s applications,

because they'd have shown a key point. TSB said that if Mr W had put "*unemployed*" on these applications, they would have been automatically rejected on affordability grounds. And if he'd put "*employed*" or "*not seeking work*" they'd have been accepted.

A job seeker's allowance payment first credited Mr W's account on 20 September 2013. From this point on, there were no more overdraft increases until Mr W was working and receiving wages into his account.

It wasn't possible to make a definite finding on the increase to £750, because of the lack of application evidence. But on balance, I accepted TSB's evidence that if Mr W had said "*unemployed*", the system wouldn't have given him the increase. Mr W had finished at college by that point, and I noted the increases stopped after the first job seeker's allowance payment. I also noted he changed to online applications after the August refusal when he rang up for an increase to £150. So I found that it was more likely than not that in Mr W's completion of the online form he didn't say that he was "*unemployed*".

Increases to £1,450 in April 2014 and £2,000 overdraft May 2014

Mr W had started to receive credits from an employer in March 2014, and these continued every week. The amounts varied, but were generally around £1,000 a month. Again, it was frustrating that we didn't have Mr W's application. But I saw an income and expenditure calculation from some point in 2014. It wasn't clear exactly when in 2014 it was first completed, but it showed a surplus of income over expenditure of £701.96 a month. I also noted that Mr W had previously generally stayed within whatever his overdraft limit was.

There was a consolidation of Mr W's overdraft into a personal loan in December 2014. This wasn't new lending, so I didn't consider whether or not it was irresponsible lending. But I saw that TSB's notes for 3 December record that Mr W said he was up to date with bills and had no financial difficulties, but found it difficult to manage an overdraft.

I didn't agree with the two adjudicators that TSB's lending was irresponsible because Mr W's employment was temporary. First, I saw no contract of employment to say it was temporary. So we didn't know that it was. And these days, workers make many different choices about the type of contract they do. Mr W worked for the same employer from March 2014 to January 2015 – which wasn't very temporary. And there was no evidence about the circumstances in which the job ended. As TSB pointed out, if Mr W was on a temporary contract when he agreed the consolidation in December 2014, he didn't tell TSB that.

Taking these factors into account, overall I didn't consider TSB lent irresponsibly to Mr W at any point.

Finally, I was sorry to hear Mr W say he's had health problems which he believed were partly caused by the borrowing and being unable to apply for a mortgage because of his credit file. But what I had to look at was whether or not TSB lent irresponsibly. Having found it didn't, I wasn't able to consider the impact on Mr W of its actions, and did not uphold Mr W's complaint.

responses to my provisional decision

TSB had no further comments.

Mr W didn't accept my provisional decision. He said:

- he didn't understand how I could assume he'd made an application saying he was employed without supporting documentation;
- he'd originally said his initial overdraft in August 2013 was £2,000 because this was his average idea of the amount;
- there'd been no assessment carried out to ensure he was able to afford the overdraft, especially when he was receiving benefits.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In particular, I've considered Mr W's reasons for disagreeing with the provisional decision.

- Where evidence is missing, I make my decision on what I consider is more likely to have happened. As I set out in my provisional decision, it's unfortunate that we don't have a copy of Mr W's applications to September 2013. But as I don't have this evidence, I have to consider what's more likely. TSB told us that the way its system worked, if Mr W had put "*unemployed*" on those applications, they'd have been automatically rejected on affordability grounds. But if he'd put "*employed*" or "*not seeking work*", they'd have been accepted. And the computer system did accept the applications. So I find it's more likely than not that Mr W didn't say "*unemployed*" on his online applications.
- I note Mr W's explanation for why he'd said his initial overdraft in August 2013 was £2,000, when actually it had been £100. But this doesn't affect my conclusions about whether or not TSB lent irresponsibly.
- As I set out in the provisional decision, TSB refused Mr W an overdraft increase when he rang up for an increase in August 2013. But after that, Mr W chose to make online applications instead. The bank's policy is that when people apply through internet banking, and choose not to discuss their finances with a member of staff, it's their responsibility to decide how much they want to borrow and in what way. I accept this, and I don't find that TSB lent irresponsibly.

my final decision

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 14 October 2018

Belinda Knight
ombudsman