

complaint

Mr K, represented by his mother, complained that TSB Bank plc had lent to him irresponsibly.

background

Mr K had previously had a TSB account for those aged under 19. This didn't have a lending facility. In April 2017, he went into a TSB branch and transferred to a different account. This had the possibility of an overdraft and TSB's notes record that a £200 overdraft facility was set up "*for peace of mind.*"

On 23 June 2017, Mr K had a credit balance of around £1,000. In the next few weeks he made over 40 online applications to increase his borrowing. By 10 August Mr K had a debit balance of £3,017.66 – a difference of over £4,000 in under seven weeks. At the time Mr K's salary varied, but his June income was around £1,400.

On 8 August, Mr K went to a branch, encouraged by his mother. Mr K told TSB he had addiction problems. He accepted he'd spent the money but didn't think TSB should have allowed the increases in borrowing. The branch looked at options for repayment, but said the interest rates were all higher than the overdraft. It set up a separate account for him to separate his spending from his debt. TSB said it wouldn't allow an overdraft on this second account for 12 months.

In reply to Mr K's complaint about irresponsible lending, TSB said it hadn't made any mistakes. It said Mr K had a regular salary paid in, and wasn't aware of his personal circumstances. It said that when a customer applied for lending in a branch or by phone, the bank helped decide what was the best way to borrow, according to the person's circumstances. But when a customer applied for an overdraft using internet banking, the bank assumed the customer has considered what he wants to borrow and in what way. TSB said it wanted to make things easier for customers, which was why it agreed increases online.

Mr K wasn't satisfied and complained to this service. His mother represented him. She said that he hadn't previously had a credit history, which was why there'd been nothing adverse when TSB checked his credit file. He'd been suspended from work in mid-August, and had then lost his job because of his addiction. He also had a shoulder injury which needed an operation, so with this and the addiction, he hadn't got another job. Mr K's mother said that Mr K had borrowed irresponsibly, and that the family would pay this even though they'd be left in financial hardship because of Mr K's debts. But she said TSB had lent irresponsibly, so they'd like the bank to pay the fees and charges. She said that if Mr K had been into a branch, they'd probably have given him some increases, but not as many as he'd been given online.

The investigator looked at the detail of Mr K's account and borrowing. She agreed there had been a lot of applications in a short time, which could have alerted TSB. But she said that online applications are considered to be the responsibility of consumers, and TSB doesn't look at frequency of borrowing applications, in order to flag accounts that may need attention. The bank had also said that it had followed its own internal credit guidelines which had said it was affordable for Mr K, and had set up a separate account without borrowing, once it found out about Mr K's personal circumstances. So the investigator didn't think TSB had lent irresponsibly, though she did suggest he should get in touch with TSB to see if there was a

better way to manage the repayment, as he's unemployed. And she also suggested he get in touch with a debt management charity.

Mr K, represented by his mother, said they understood the investigator's points, but still believe TSB made mistakes. They said:

- Over 40 applications for an overdraft increase within a few weeks should have triggered some caution;
- The contrast between branch attitude to lending and online attitude was miles apart, and the policies for both should be the same;
- If the applications had been done by a branch, they'd have picked up Mr K's personal situation and vulnerability swiftly, and much earlier. The online lending system, as opposed to the branch lending system, prevented recognition of irresponsible lending, so it delayed a customer's vulnerability being established – which needed addressing because it was ethically unacceptable. And Mr K couldn't afford the borrowing.

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 was fair and reasonable in the circumstances of this complaint.

I accepted that Mr K wasn't recorded on TSB's systems as vulnerable until he went to the branch on 8 August. And I also accepted that the bank could determine for itself what risk factors to take into account when deciding whether to lend. This service doesn't tell banks to change their internal commercial decisions or procedures. So if TSB chose not to use the frequency of applications as a risk factor, that was its own decision.

But when lending money, a lender has to ensure the customer can repay the borrowing in a sustainable way, without it adversely impacting on their financial situation. This involves getting enough information to make an informed decision about the lending. It's up to each lender to decide exactly how to do this, and the guidance and rules list a number of things lenders may wish to consider. Checks should be proportionate, based on the size of borrowing.

A lender can't opt out of its obligation to carry out proportionate checks. Having looked at Mr K's account, I didn't consider TSB could say its checks were proportionate. He made over 40 applications in a short time, going from £1,000 in credit to £3,000 in debit in under seven weeks, at a time when his income was around £1,400 a month. I hadn't seen Mr K's credit file, but as he'd previously been too young to borrow, he couldn't have built up a high score. Given the frequency of this borrowing, I'd have expected TSB to have asked further questions – not just about why Mr K was borrowing so much so quickly, but also how he was going to pay it back.

There was no evidence the bank had done that. In the final response TSB had said that for online applications *'we assume that you have considered how much you want to borrow and in what way. There is information online to help you decide.'* The bank had also said *"we want to make things easier for our customers so we will agree increases online... We wouldn't expect a customer to make an application if they didn't need to borrow the money."* In other words, TSB's process for online borrowing was that the bank left the customer to decide whether or not to borrow.

I asked TSB for a blank copy of its income and expenditure form, so Mr K could tell us what means he had at the time – so I could assess whether the lending had been affordable. But the bank said it didn't require an affordability assessment for an overdraft. So I asked Mr K's mother, as his representative, to tell us about his circumstances. She told us that he'd lost his job because of the addiction. He'd also built up a lot of other debts because of the addiction. The family had found out when he wasn't able to pay for his keep. Mr K had no savings, and he was now on benefits. But he then went overdrawn on the account with another bank to which these are paid, so his mother's taken control of that account. Mr K's family has borrowed to pay off the debts, but he currently owes about £5,000 as well as the debt to TSB.

I considered that it should have set alarm bells ringing at TSB, when a customer who'd just transferred from an "under 19" account to a first lending account had made so many applications in a short time. I looked at Mr K's circumstances when he took out the borrowing and I consider it wasn't affordable. His income, before he lost his job, varied but was around £1,400 a month. It was hard to see how this made it affordable to borrow some £4,000 in around 40 separate applications in under seven weeks. I noted that TSB's explanation was that it wanted to make it easy to borrow online, and let customers decide for themselves. I found that TSB did not carry out proportionate checks for the 40 loans which Mr K took out. And given the rules that lenders have to apply, I considered no reasonable lender would have lent in these circumstances.

I said that I could understand why Mr K's mother and representative had highlighted the difference between the branch, and online, systems for lending. It was possible that, certainly as time went on, Mr K's addiction could have been picked up straightaway if he'd gone into a branch, or made the applications by phone. I thought it was likely that the bank's policy of two very different lending systems directly disadvantaged a vulnerable person.

So my provisional finding – subject to any comments TSB or Mr K make by the date for responses to this provisional decision – was that TSB lent irresponsibly to Mr K.

I noted that Mr K and his family have accepted that Mr K had the money, and that this debt will have to be repaid. But I found that TSB should remove all the fees, charges and interest from June 2017. The bank should discuss with Mr K how he should repay this. This would include a sensible arrangement about how long it will take to repay, taking account of Mr K's vulnerability, for which he's currently receiving addiction counselling. Mr K will need to complete an income and expenditure form, and he may wish to get free advice from a debt charity. I said I'd expect TSB to act positively and sympathetically towards Mr K's repayment of the debt, as the rules require towards people in financial difficulties.

And I noted that Mr K's current account was set up in August 2017 as "*no lending for 12 months*". I noted that TSB said it'll review this nearer the time, consulting with Mr K and his debt charity advisers, and I considered this sensible. If the bank allows Mr K to borrow again at that point without doing proportionate checks, he'll be entitled to bring a new complaint.

I considered that Mr K had suffered distress and inconvenience from TSB's irresponsible lending. I recognised that his family has suffered too, and in particular I noted that his mother had had to borrow herself in order to repay some of Mr K's borrowing. That shouldn't have been necessary, if TSB had fulfilled its obligations to carry out proportionate checks. I explained that unfortunately I can only award compensation to the account holder. But I considered Mr K would have suffered upset from the distress this has caused his family, so

on this basis I said I also intended to award £300 compensation for distress and inconvenience caused by TSB's irresponsible lending.

responses to my provisional decision

Mr K's mother, as his representative, said she was delighted that the complaint had been upheld. She said it was exactly the outcome they'd hoped for, and she hoped the decision would be finalised in the same way.

TSB sent a long reply disagreeing very strongly with the provisional decision.

- TSB said I'd accepted that it wasn't aware of Mr K's personal issues until 8 August, and that this service doesn't tell banks to change its commercial decisions or procedures. It said these should be the starting point for this decision.
- It noted I'd said TSB had to ensure the customer could repay the borrowing in a sustainable way, but it was an overdraft with a defined limit. This meant that at the time TSB assessed the application, there wasn't an amount to repay. It said it also hadn't asked him to repay anything, before he exceeded the £3,000 overdraft limit. TSB said it would have asked questions if he'd applied for a £3,000 loan with a fixed monthly repayment, but not for an overdraft. It said this is industry standard. TSB asked if the decision would have been the same if TSB had agreed a loan or a credit card.
- TSB said it wasn't the number of applications but the amount of borrowing it considered. It pointed out that Mr K hadn't taken out 40 loans. He'd had one overdraft facility which he'd increased. TSB also said that Mr K's income was more than £1,400 a month. It said he earned about £1,600 a month. I note that, on the statements we have, Mr K's income varied significantly each month, but I accept the bank's assurance that £1,600 was a rough average.
- It used the same system and lending policy for all overdraft applications, whether they're made in a branch or online. The only difference was that more questions would be asked as part of a general conversation, and it's harder to mislead or lie. TSB said that by applying online, Mr K had avoided any difficult conversations about what he wanted to borrow the money for.
- TSB said it might have picked up Mr K's alleged vulnerability in a branch, but it questioned whether he'd been vulnerable at the time of the application, and whether it would have been evident to a member of staff. TSB said Mr K was still holding down a job when he applied, and his own family had been unaware at the time.
- TSB provided more information which it hadn't supplied before. It said having an under-19 account without an overdraft facility didn't stop some customers going overdrawn, but Mr K hadn't done so. He'd opened his previous account aged 16 and received an increasing salary over the next four years. He'd been nearly 20 when he applied for credit and he was an adult. TSB said this would have been picked up by its systems.
- TSB said that anything that happened after the borrowing had been agreed couldn't have been considered by the bank, so it shouldn't be considered in the decision.

- TSB told us it had been trying to find a way forward with Mr K since he stopped paying into the account in September 2017. The bank said Mr K had misled it on a couple of occasions, saying he was going to repay the money, and saying he had another job. The bank said that if Mrs K was intending to repay her son's debt, it would have expected her to speak to the bank's Collections team and make an agreement. It told us the account's now with its debt recovery team and interest has been frozen. TSB said its hands were tied if a customer isn't honest with it.
- The bank argued that it wasn't fair or reasonable to award redress when any distress is the direct result of Mr K's own actions.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've considered Mr K's response, and I've also looked in detail at TSB's long email. I have understood and looked into all of the points raised, but I've commented in my findings below only on what I consider is vital to my conclusions.

One of TSB's main objections to my provisional decision is that an overdraft is different from a loan or credit card, because there was no requirement to pay the money back on a set date. But the money would still have to be paid back eventually. So I consider that it's important for TSB to have complied with the requirement that lenders have to ensure a customer can repay the borrowing in a sustainable way.

TSB has now provided us with extra information. It's said that it considered Mr K's previous conduct of his earlier account, which he'd had for nearly four years and had conducted well. We haven't been sent statements, but TSB has told us that some customers do go overdrawn on that type of account even though there's no overdraft facility – but Mr K hadn't.

But TSB hasn't provided specific details of how or when it concluded that £3,000 was a suitable overdraft limit. It's implied that the £3,000 limit was set at the outset on the basis of a good account history, and that it was up to Mr K to decide when to use this. But the evidence I have doesn't show this. It shows that:

- TSB gave Mr K a £200 overdraft in April 2017;
- This was increased to £400 by telephone banking on 13 June.

Then the other applications were made online. From the statements which the bank has sent us, from July 2017 onwards:

- The statement dated 5 July shows an "*Account overdraft*" figure of £950.
- The statement dated 25 July shows an "*Account overdraft*" figure of £2,500.
- The statement dated 10 August shows an "*Account overdraft*" figure of £3,000.

So I can't agree that TSB set an initial maximum overdraft of £3,000 earlier in the year, at a time when Mr K was free from problems of addiction or debt – and that it didn't know what was going on because Mr K kept inside that limit until August. The evidence shows the overdraft limit was increased gradually and repeatedly. TSB has argued that anything that happened after the borrowing was agreed couldn't be considered. But the statements show that increases to the borrowing limit were made at the time when the extreme borrowing pattern was taking place.

The relevant rules are set out in rules called CONC 5.3 and 5.2.2.1. TSB has said it wasn't asking Mr K to repay anything at the time, and this is a strange argument, because he'd have to repay any lending at some point. I find that TSB hasn't shown that its checks were proportionate, or that it did sufficient checks for one-off borrowing of up to £3,000 as it is arguing.

Even if a single limit had been set at the start - which isn't borne out by the evidence - I consider the extreme pattern of borrowing should have raised concerns. There were 40 separate increases in lending over a very short period. Sometimes there were three or four on the same day. In the same way that unusual transactions are flagged on a credit card, I'd have expected this extreme pattern of lending to have been picked up. It's true that this service doesn't criticize a lender's systems and processes. But I'd have expected TSB to comply with the requirements to carry out proportionate checks. And this service can also comment if we think a business' commercial approach has meant that a consumer has been treated unfairly.

TSB has told us that it didn't require income and expenditure information from Mr K. In its reply to the provisional decision, it speculated that Mr K's credit file might have had a positive score. It's said that because Mr K's mother told us that Mr K has built up debts elsewhere as well - so TSB's suggested Mr K might have managed that well and built up a positive score. But this isn't evidence about what TSB did or didn't consider at the time, and whether or not it carried out proportionate checks on the multiple occasions it increased his overdraft limit. So I'm not persuaded that the bank obtained enough information to make an informed decision about the lending.

TSB has asked if the decision would have been the same for a loan or credit card. I can't answer a hypothetical question. But I'd point out that a loan or credit card would have required a robust up-front initial assessment, which isn't evidenced here.

So I find that both tests are met. TSB didn't do proportionate checks, and I consider that if it had done such checks it would have found it shouldn't have lent, because the lending was unaffordable.

Finally, I note that TSB's comments about its attempts to arrange repayment of the debt. That doesn't form part of this complaint, and I leave it to TSB and Mr K to arrange matters. But I'd point out that this is a two-way process, and both parties need to co-operate to achieve a solution. I'd expect TSB to act positively and sympathetically towards Mr K's repayment of the debt, as the rules require towards people in financial difficulties. If Mr K feels TSB doesn't do this, he may be able to complain to TSB and ultimately to this service. Similarly, there are obligations on Mr K. For example, he may have to provide TSB with more detailed information about his overall financial position. And if Mr K makes promises to TSB, he should keep to those promises.

my final decision

My final decision is that I uphold this complaint and I order TSB Bank plc to:

- Remove all fees, charges and interest from June 2017 onwards, on the debt owed by Mr K. If any interest or charges have already been paid, TSB should refund them;
- Work with Mr K and any debt advisers, positively and sympathetically, about a debt repayment plan for the capital owed;

- Pay Mr K £300 compensation for distress and inconvenience caused by the bank's irresponsible lending.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 16 April 2018.

Belinda Knight
ombudsman