DRN-3178758

## Complaint

Mrs W has complained that TSB Bank plc ("TSB") lent to her irresponsibly as it provided her with an unaffordable loan.

## Background

TSB provided Mrs W with a loan of £3,000.00 in March 2017. This loan had an APR of 18.9% and a 48-month term. This all meant the total amount repayable of £4,190.88 was due to be repaid in 48 instalments of £87.31

One of our investigators looked at this complaint and thought that TSB unfairly provided this loan as its checks ought to have alerted it to the fact that the lending was unsustainable for Mrs W. TSB disagreed with our investigator and the case was passed to an ombudsman to review the complaint.

## My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

We've set out our general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Mrs W's complaint.

Having carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Mrs W's complaint. These two questions are:

1. Did TSB complete reasonable and proportionate checks to satisfy itself that Mrs W would be able to repay her loan in a sustainable way?

    o If so, did it make a fair lending decision?
    o If not, would those checks have shown that Mrs W would've been able to do so?

2. Did TSB act unfairly or unreasonably in some other way?

*Did TSB complete reasonable and proportionate checks to satisfy itself that Mrs W would be able to repay her loan in a sustainable way?*

TSB provided this loan while it was authorised and regulated by the Financial Conduct Authority ("FCA"). The rules and regulations in place required TSB to carry out a reasonable and proportionate assessment of Mrs W's ability to make the repayments under this agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so TSB had to think about whether repaying the loan would cause significant adverse consequences *for Mrs W*. In practice this meant that TSB had to ensure that making the payments to the loan wouldn't cause Mrs W undue difficulty or adverse consequences.

In other words, it wasn't enough for TSB to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mrs W. Checks also had to be "proportionate" to the specific circumstances of the loan application.

In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);

- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);

- the *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and

- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may also be other factors which could influence how detailed a proportionate check should've been for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I've carefully thought about all of the relevant factors in this case.

*Were TSB's checks reasonable and proportionate?*

TSB final response suggests that it took into consideration how Mrs W managed her accounts with TSB as well as information supplied by credit reference agencies before deciding to provide this loan. It also said that if Mrs W had made a branch or telephone application it would have collected income and expenditure information to help her decide how much she could afford to pay.

But as Mrs W chose to apply for this loan online it assumed she'd decided how much she wished to borrow and she could afford to repay. The final response even goes on to suggest that Mrs W should have completed an online affordability guide to help her decide these matters. TSB says it has no record of the income Mrs W declared at the time of the application because the loan was applied for online.

Before I look in more detail at the checks TSB's says it carried out in this particular case, I have some observations about its general comments. It appears to have suggested that, as the application took place online, Mrs W was responsible for ensuring the monthly payments were affordable for her.

But I'm not aware of anything in the rules and regulations, or even the industry codes of practice, which state, or even infer, that lesser standards or a lesser duty of care applies to affordability assessments conducted for online applications. So to be clear and for the avoidance of doubt as the regulated firm here it was TSB's responsibility to assess whether the payments were affordable, notwithstanding the fact that Mrs W made this application online.

I now turn to what TSB says it did. I have given consideration to the fact that as the monthly payments were relatively low a 'lighter-touch' affordability assessment might have had the potential to have been proportionate here. But I'm mindful that TSB says how Mrs W managed her existing TSB accounts and credit reference agency information were key considerations in its decision to lend here. And I can see that Mrs W had been regularly using her overdraft and had at least one loan application, with TSB itself, declined in the months leading up to this application.

Bearing in mind TSB appears to have based its information on this and I can't see that it obtained anything else to indicate that the loan was affordable, I'm not persuaded that it did carry out reasonable and proportionate checks before providing Mrs W with this loan.

*Would reasonable and proportionate checks more likely than not have shown that Mrs W was able to sustainably make the repayments to this loan?*

As proportionate checks weren't carried out before this agreement was provided, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told TSB that it was unfair to provide this loan to Mrs W.

Mrs W has provided us with evidence of her financial circumstances (in the form of a common financial statement completed as part of an application for a debt management plan) not too long after her application for this loan. Of course, I accept different checks might show different things. And just because something shows up in the information Mrs W has provided, it doesn't mean it would've shown up in any checks TSB might've carried out.

But as the common financial statement provided was completed much closer to the application than TSB's more recently reconstructed assessments, and at least some of the information corresponds with what's on Mrs W's bank statements, I think it's perfectly fair and reasonable to place more weight on it as an indication of what Mrs W's financial circumstances were more likely than not to have been at the time of the application.

Having considered the information on the statement, it's clear that Mrs W's monthly living costs (not including her payments to existing creditors) far exceeded her income. And it seems to me that she didn't have sufficient funds to repay what she already owed, let alone make payments to further credit. In reaching my conclusions, I've noted that TSB has referred to further borrowing Mrs W took out after this loan. But notwithstanding the relatively low monthly payment on this loan, Mrs W simply didn't have enough to make the payments even if her payments to other creditors were and are excluded.

So overall and having carefully considered everything, I'm satisfied that reasonable and proportionate checks would have alerted TSB to the fact that Mrs W wasn't able to make the payments to this agreement. And so such checks, had they been carried out at the time, would more likely than not have shown TSB it shouldn't have provided this loan.

*Did TSB act unfairly or unreasonably towards Mrs W in some other way?*

I've carefully thought about everything provided. And having done so, I've not seen anything to suggest that TSB acted unfairly or unreasonably towards Mrs W in some other way. So I don't think TSB acted unfairly or unreasonably towards Mrs W in some other way.

*Did Mrs W lose out as a result of TSB unfairly providing her with this loan?*

As Mrs W paid interest and charges on a loan that she shouldn't have been provided with, I'm satisfied that she has lost out as a result of what TSB did wrong.

So I think that TSB needs to put things right.

**Fair compensation – what TSB needs to do to put things right for Mrs W**

Having thought about everything, TSB should put things right for Mrs W by:

- refunding any interest and charges Mrs W paid on this loan;

- add interest at 8% per year simple on any refunded amounts from the date they were paid by Mrs W to the date of settlement†;

- removing any adverse information recorded on Mrs W's credit file as a result of this loan.

† HM Revenue & Customs requires TSB to take off tax from this interest. TSB must give Mrs W a certificate showing how much tax it has taken off if she asks for one.

**My final decision**

For the reasons I've explained, I'm upholding Mrs W's complaint. TSB Bank plc needs to put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 18 February 2022.

Jeshen Narayanan
**Ombudsman**