

Complaint

Mr M says that TSB Bank plc (“TSB”) unfairly provided him with an overdraft and continued to allow him to use even when it was evident he was unable to repay to what he owed.

Background

One of our investigators looked into Mr M’s concerns. She thought that TSB ought to have realised that Mr M’s overdraft had become unsustainable for him from July 2021. So she upheld Mr M’s complaint and told TSB that needed to rework Mr M’s account balance so that all interest added from July 2021 onwards were removed.

TSB eventually accepted the investigator’s assessment. However, it said that once it refunded the interest and charges applied from July 2021, it would remove Mr M’s overdraft. Mr M doesn’t dispute the assessment that TSB should have stopped him from using the overdraft in the way he did from July 2021. However, he is unhappy at what TSB says it will do in relation to the overdraft going forward. As Mr M remained unhappy the complaint was passed to an ombudsman for a final decision.

As the parties accept Mr M shouldn’t have been allowed to continue using the overdraft in the same way from July 2021 onwards and now simply disagree on what should be done to put things right, I have solely focused on what fair compensation should be in this 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.

Having carefully considered everything provided, I’m in principle satisfied that what TSB has already agreed to do to put things right is fair and reasonable in the circumstances of Mr M’s complaint. I’ll explain why I think this is the case in a little more detail.

TSB has accepted that it shouldn’t have allowed Mr M to continue using his overdraft in the same way from July 2021 as it had become unsustainable for him.

Where a business accepts (or we decide) it did something wrong, we’d expect the business to put the consumer in the position they would be in if that wrong hadn’t taken place. And in an ideal world, we’d tell a business to put a consumer in the position they’d now be in if they hadn’t been given the credit they shouldn’t have. However, that’s not possible in cases where funds that shouldn’t have been advanced because typically those funds will have already been spent.

So we have to look at a way of asking a lender to put things right in some other fair and reasonable way. And where a business provided credit which it should have realised was unaffordable or unsustainable for a customer, we’d typically expect it to put the consumer in the position they’d be in now if they hadn’t paid any further interest and charges on that credit.

This means we'd normally expect a lender to refund the interest and charges added as a result of any credit that it should not have provided. And if those interest and charges were paid also add 8% simple interest per year. TSB has agreed to do this and it's fair to say that this part of the settlement is no longer the subject of any dispute between the parties.

However, as I understand it, TSB proposes to remove Mr M's overdraft says he shouldn't have. Mr M is dissatisfied at this proposed action.

I can to some limited extent understand why Mr M may be unhappy at his overdraft being removed and why he may see this as him being penalised for having made a successful complaint. That said, it may help to explain that it is effectively TSB's argument that it is proposes to remove Mr M's overdraft because it has a legitimate reason to cease lending to him – namely that the overdraft is by Mr M's own admission unsustainable for him.

In the first instance, I think it's probably worth me saying that I cannot direct a firm to lend to an individual in circumstances where it legitimately decides that it is not prepared to do so. Mr M may say (as he appears to be arguing) that there isn't a legitimate reason for TSB to cease providing him with an overdraft.

However, I am mindful of the circumstances in this case. And I cannot ignore the fact that the entire premise of Mr M's complaint has been that TSB should not have continued allowing him to use his overdraft from July 2021. We've accepted this and that is the reason why his complaint has been upheld.

In my view, it would be unfair to TSB and Mr M, as well as being wholly unreasonable in its logic if I were to say that these conclusions should be reflected in what TSB should do up until this point; direct TSB to pay compensation as result and yet in that same direction also take no account of these conclusions, in the position going forward, by also requiring TSB to continue making an overdraft available to Mr M. I would in effect be saying that TSB failed to act fairly and reasonably towards Mr M by failing to remove Mr M's overdraft and as part of it putting things right going forward, it should now ignore this as well as what Mr M told it as part of his complaint.

Directing TSB to continue providing Mr M with an overdraft in circumstances where all parties accept that it is unaffordable for him and it is likely to cause him significant adverse consequences, would be counterproductive and not in Mr M's best interests, or those of TSB as a lender. I'm also satisfied that TSB's response and proposed course of action is a proportionate response to what it now unquestionably knows about Mr M's circumstances, as a result of what it has learnt and what Mr M has said through the course of his complaint.

That said, TSB should ensure that it acts fairly and reasonably in the process of removing Mr M's overdraft. What this means is that TSB can use the amount of any refund to reduce Mr M's overdraft balance. However, if an amount remains after this, TSB must set up an affordable payment plan with Mr M to repay the remainder of what he owes. Any failure to take such action and leaving Mr M in an unarranged overdraft for an extended period of time, is likely to result in it failing to act fairly and reasonably.

Overall and having considered everything, I'm satisfied that what TSB has already agreed to do to put things right for Mr M is fair and reasonable in all the circumstances of this complaint. I appreciate this may prove disappointing for Mr M. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

Fair compensation – what TSB needs to do to put things right for Mr M

Having thought about everything, I'm satisfied that it would be fair and reasonable in all the circumstances of Mr M's complaint for TSB to put things right by:

- Reworking Mr M's current overdraft balance so that all interest, fees and charges added from July 2021 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made TSB should contact Mr M to arrange a suitable repayment plan, Mr M is encouraged to get in contact with and cooperate with TSB to reach a suitable agreement for this. If it considers it appropriate to record negative information on Mr M's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in July 2021. TSB can also reduce Mr M's overdraft limit by the amount of any refund if it considers it appropriate to do so, as long as doing so wouldn't leave him in an unarranged overdraft.

OR

- If the effect of reworking Mr M's account results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr M along with 8% simple interest† on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then TSB should remove any adverse information from Mr M's credit file. TSB can remove Mr M's overdraft as long as doing so wouldn't leave him with an unarranged overdraft balance.

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

My final decision

For the reasons I've explained, I'm satisfied that what TSB Bank plc has agreed to do to put things right is fair and reasonable in the circumstances of Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 13 January 2025.

Jeshen Narayanan
Ombudsman