

The complaint

Mr J has complained that his overdraft with TSB Bank plc ("TSB") wasn't affordable and that the charges TSB applied kept him living in his overdraft and caused him financial difficulty.

What happened

Mr J had an account with TSB with an agreed overdraft limit of £3,000. TSB have told us the last limit increase was in May 2014.

Mr J complained to TSB that the overdraft lending was irresponsible. TSB said it couldn't look specifically at the last lending decision on the overdraft as Mr J's complaint was brought too late. But it agreed that on review of how the account was managed from September 2016 to August 2020 Mr J didn't see a credit balance and as such agreed to:

- Refund all overdraft fees and charges applied for this period amounting to £3,104.76.
- As this was enough to repay the overdraft TSB have removed the overdraft facility and applied a marker to the account to stop Mr J from applying for further lending.
- TSB also waived all pending charges due to be debited from Mr J's account.

TSB say Mr J received a number of large payments into his account from August 2020 which were enough to clear the overdraft and that it was his choice to once again utilise the overdraft facility and as such it was not willing to refund the charges for this period.

Mr J was unhappy with this and brought his complaint to this service. He says the money received in and out of his account was for bills through his wife's account.

One of our adjudicators looked into Mr J's complaint and thought that we couldn't look at the lending prior to September 2016 because the complaint was brought too late and that what TSB had already done to settle the complaint was in line with what we'd recommend when there were signs of financial difficulty and didn't think TSB should do anything more.

Mr J disagreed and has now asked that his complaint be progressed for an ombudsman's decision.

Why I can't look into all of this complaint

I can't look at all the complaints referred to me. The rules applying to this service say that, where a business doesn't agree, I can't look at a complaint made more than six years after the event being complained about – or (if later) more than three years after the complainant was aware, or ought reasonably to have been aware, of cause for complaint. This is Dispute Resolution rule 2.8.2R(2) – which can be found online in the Financial Conduct Authority's handbook.

And in this case TSB hasn't agreed. Mr J's complaint was made in September 2022. This is more than six years after the last lending decision TSB made on Mr J's overdraft and his limit was last increased in May 2014 - which is the event Mr J is complaining about here. To

be within the six year rule Mr J needed to complain at the latest by May 2020. So I need to think about whether the complaint was made within three years of when Mr J should reasonably have been aware he had cause to complain.

When applying this rule Mr J doesn't need to know the specifics of the complaint – just that something may have gone wrong. Mr J would have been notified prior to any overdraft charges being applied and I think likely would've seen from his bank statements the amount of time his account was overdrawn.

So I think it is likely Mr J would've known enough around the time he had his last limit increased to decide whether his overdraft was affordable and whether the charges were keeping him in debt when they were being applied as he says it was the charges for the overdraft which contributed to his financial difficulty.

As this was in 2014 and earlier than the six year rule referred to above it means Mr J needed to make his complaint about the lending by 2020 (6 years after the event complained about). As he didn't complain until September 2022 his complaint is out of time under the rules I have to apply and I'm unable to look into Mr J's complaint about irresponsible lending and the affordability of his overdraft before September 2016.

What I've decided – and why

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, I think that what TSB has already agreed to do to put things right for Mr J is fair and reasonable in all the circumstances of this complaint. I'll explain why I think this is the case.

It might help for me to start by explaining that 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. But for complaints about funds which shouldn't have been provided this isn't straight forward as the funds were provided and, in most cases – such as here, have long since been spent.

So we look to try and find some other way to put things right. And where a business increases or continued to allow a consumer to use a credit facility which it should have realised was unsustainable, 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 to any credit from the point the lender ought to have realised it was unsustainable.

In this case, after reviewing all the information on the account held by Mr J and his overdraft usage, I agree that for the period that TSB have refunded overdraft fees and charges for Mr J, he didn't see or maintain a credit balance on his account for a significant period of time. So it should've been clear Mr J was struggling financially and that his overdraft lending wasn't sustainable.

But following this Mr J received a number of credits into his account which paid his overdraft off (£10,000 and £4,677 in August 2020 and £7,302 in July 2022). Although some of the money received went to pay bills and other debt, my understanding is that Mr J still had funds surplus to this and it was his choice to spend this and use his overdraft facility again – rather than have it removed.

I can also see lots of discretionary, non-committed spending on the account and regular payments of around £2,000 out of the account which Mr J could've used to pay down his overdraft.

Mr J says that the money received in and out of the account was for bills via his wife's account. But there isn't any way of telling from the statements and information TSB had that this was the case or that it ought to have known at this point Mr J was in financial difficulty rather than perhaps mismanaging his financial affairs. So I don't think that TSB should have done more for this period based on the information it had.

TSB has already done what I'd expect it to do to put things right prior to August 2020 (when there were signs of financial difficulty) by refunding all of the interest, fees and charges caused by the overdraft facility. Furthermore, it has now removed the overdraft facility and added a marker to his account to stop this type of lending in the future, all of this is in-line with what I'd recommend.

So it follows that I don't think TSB needs to do anything further here and I'm not requiring it to do anything more.

My final decision

For the reasons I've explained, I'm satisfied that what TSB Bank plc has already done to put things right for Mr J is fair and reasonable in the circumstances of this case and I'm unable to look into Mr J's complaint about irresponsible lending and the affordability of his overdraft before September 2016 because it was brought too late.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 8 August 2023.

Caroline Davies
Ombudsman