

## The complaint

Mr L and Ms L complain that TSB Bank plc registered a default on their credit files.

## My provisional decision

I issued my provisional decision in January 2021, setting out the background to the case and what I was minded to conclude. Please note I've spotted and corrected two typos, which for ease I've put in bold:

*"Mr L and Ms L held a current account with TSB. The account had an overdraft facility with an authorised limit of £3,000.*

*In early 2018, Mr L called TSB to enquire about how to remove Ms L from the account as they had separated. The call notes suggest he was told they'd each need to go to branch. Mr L has told us that he and Ms L agreed that she wouldn't use the account anymore.*

*On 26 March 2018, Ms L transferred £4,000 out of the account – leaving it almost £3,000 overdrawn. Mr L called TSB, which then put a block on the account due to the dispute between the account holders. Mr L complained that TSB should have done this when he'd first told it about the separation. We've already decided/explained on a separate case that we can't consider that complaint – as it was referred to us outside the time limits that apply to using our service.*

*Following the £4,000 withdrawal, Mr L transferred some money between accounts, and some debit card payments were taken. These took the overdrawn balance to exactly £3,000. Then on 3 April 2018, £6.43 for overdraft fees and interest was applied – meaning that Mr L and Ms L exceeded their authorised overdraft.*

*Mr L says he'd been told that no charges would be applied, and no more payments could be taken from the account, following the freeze. And that he (and/or Ms L) had tried to make a payment into the account – but it had been blocked. Ms L has since clarified that she didn't attempt to make any payments.*

*No payments were received into the account after March 2018. In July 2018, TSB sent both Ms L and Mr L a formal demand for the money owed. This referenced previous contact about the outstanding overdraft. Both Ms L and Mr L called TSB about this – and it seems a 30-day hold was agreed.*

*I can see that, by September 2018, Mr L advised TSB that he was trying to get the funds needed to pay off the account. Then in October 2018, he told TSB he would ignore any letters it sent about the account. Following further formal demands and default notices, TSB moved the account to its recoveries department and recorded a default on both its customers' credit files.*

*Mr L complained to TSB, but it maintained that the default had been applied correctly and fairly. He and Ms L then referred the matter to our service. Our investigator found*

*the only payments debited from the account since the freeze were debit card payments that had already been authorised. And the interest and fee applied related to an earlier period. She didn't find any evidence that payments had been made or attempted since March 2018. So she didn't tell TSB to remove the defaults.*

*As requested, another investigator then reviewed the case – but reached the same outcome. He explained that overdrafts were payable on demand. He thought Mr L and Ms L had been given a fair opportunity to repay the overdraft before the default was applied. And he explained that, regardless of the dispute, they were still obliged to repay TSB the money it had lent them. At Mr L's request, the investigator asked TSB if it would remove the default and set up a payment plan – but it didn't agree.*

*As no agreement was reached, I'm deciding how to resolve this case. Mr L has provided further evidence and points for me to consider. In summary, he submits that:*

- *overdraft charges were incorrectly applied on 3 April 2018 – as the overdraft wasn't used in February 2018*
- *no fees or interest should have been applied following the dispute*
- *the debit card payments taken after the freeze should have been declined. And he disputes these.*
- *TSB should have given more explanation about how the freeze would work*
- *he and Ms L legally separated in December 2017, so any debt incurred after then isn't his liability*
- *he tried to transfer £1,000 into the account on 9 April 2018 – but found out a few days later that it had bounced back. He's provided evidence of a £1,000 faster payment being attempted and returned from his business account to support this.*
- *the account was in dispute, so that – as well as the failed payment and separation – is why he didn't pay. He says he would have made further payments if the £1,000 payment had been accepted.*
- *he's unhappy that TSB hasn't been able to provide the call recording from when the freeze was added. He says no pending fees were mentioned during this call.*

### ***What I've provisionally decided – and why***

*Before explaining my findings, I'll set out the scope of what I can (and can't) consider. As our investigators explained, I'm only looking into the complaint about this account that was raised with TSB and then referred to us in time. Namely, the complaint about the default and April 2018 charges applied to the account. As another ombudsman has already explained, our service can't consider the previous complaint Mr L raised about whether a freeze should have been applied earlier.*

*I also can't consider any new, separate complaints that TSB hasn't been given the opportunity to look into. Mr L says he disputes all the payments taken after the freeze. If he means that he didn't authorise the debit card payments – I can't consider that, as I can't see that he's raised a dispute with TSB about them. But I can, and will, consider whether they should have been stopped as a result of the freeze.*

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm not currently intending to uphold it. I'll explain why.*

*Regardless of any civil dispute between the account holders, or their separation, it's clear from the terms and conditions that joint account holders are jointly and severally liable for the account:*

*“You and each person named on the account are responsible for any money you owe us, such as if you have an overdraft. This means we can ask any of the following people to repay any of the money you’ve borrowed on your joint account:*

- You*
- Any joint customer that you have a joint account with*
- Both you and any joint account holder”*

*As the terms go on to explain, a joint account holder can, without telling the other(s), remove any or all money from the account. And all account holders must give their permission to remove a joint account holder.*

*Although Mr L says he can’t be held liable for any debt since December 2017 – it seems he continued to use the account after that date. And from what he’s told us, it seems he was intending to keep the account himself – as he’s told us that he and Ms L had agreed that she’d no longer use it. Ultimately, both Mr L and Ms L jointly entered a contract with TSB. I’m satisfied that means they can both be pursued for the debt – and that TSB can, if warranted, register a default on their credit files.*

*I’ve considered the £6.43 debited from the account in early April 2018 for overdraft usage. Mr L says the overdraft wasn’t used at all in February 2018. But the charging period TSB told us this relates to runs from 2 February to 1 March 2018. And the account was around £900 overdrawn on 1 March 2018. So I’m satisfied the fee and interest were applied correctly.*

*Although Mr L is unhappy that TSB can’t provide a call recording for 26 March 2018, I accept its explanation that this is due to a subsequent change in its IT system. In any event, where evidence is incomplete, I must decide what’s more likely to have happened. I’ve considered Mr L’s recollections from the call as well as the notes TSB took at the time. I’ve seen nothing to suggest that the pending fees were discussed. But I don’t consider this in and of itself a failing. It may not have been the main point or focus on the call – and I can’t see anything to suggest, for example, that Mr L asked about this and was given a misleading response. Regardless of whether they were drawn to his attention during the call, I still think it was fair for TSB to charge them for the earlier use of the overdraft, prior to the freeze being applied, in line with the terms of the account.*

*Similarly, although I don’t know whether the pending debit cards were asked about or discussed, it seems these related to debit card payments that had already been authorised – so Mr L and/or Ms L should already have been aware of these. It’s not uncommon when paying by card that the payment doesn’t leave the account immediately. But by using the card, the account holder is instructing the bank to make the payments – which were likely for goods and services already received. And it has a duty to act on their authorised instructions. So again, I don’t think the freeze should – or could – have stopped these preauthorised payments.*

*Following this activity, the amount owed on the account exceeded the authorised overdraft. Mr L says he tried to transfer £1,000 into the account on 9 April 2018. He’s provided a statement for a business account I understand he and Ms L held (also with TSB) to support this. I’ve sent a copy to TSB. Although not definitive, this does show a £1,000 faster payment leaving the account on 9 April 2018 – and a faster payment for that same amount then being returned.*

*This evidence doesn't immediately make it clear that the payment was intended for the frozen account. The initial description refers to a loan payment – and the returned payment description doesn't (for example) seem to include the details of the frozen account. Additionally, it's not clear why the payment was unsuccessful – so I don't know whether this was an error by TSB. But even if I were to accept that Mr L did try to transfer £1,000 into the frozen account, and TSB erroneously blocked this – I don't consider that sufficient to direct it to remove the default. I'll explain why.*

*The returned payment was on 9 April 2018 – and Mr L says he found **out** about this a few days later. So he and Ms L ought reasonably to have known that they owed money on their frozen account in excess of their authorised overdraft. Although TSB had stopped them withdrawing more money due to the dispute between them, I wouldn't reasonably expect it to forego the money it was owed – or wait for the account holders to agree before pursuing this. The notes from when Mr L called on 26 March 2018 suggest TSB did explain at that point that both he and Ms L were liable for the money.*

*I can see that TSB contacted Mr L and Ms L about the outstanding money owed in July 2018. These letters said there had already been prior contact explaining that, if they didn't bring the account up to date, TSB could demand payment of the full outstanding balance rather than just the unplanned amount. As no payment had been received, TSB was now demanding payment of the full amount. It's worth noting that overdrafts are a form of credit that are repayable on demand – although we'd normally expect banks to give sufficient notice first (as TSB appears to have done here). The letters also reiterated that both account holders were jointly and separately liable for the payment of what was owed.*

*TSB's contact notes show that both Mr L and Ms L called in about the letters. TSB agreed a 30-day hold on the account before taking further action. But again, no payment was received following this hold – nor was a payment plan agreed.*

*Following this, TSB wrote to Mr L and Ms L again in late October 2018 – explaining it would report a default to the credit reference agencies unless the money was repaid. Around that time, I can see that Mr L also spoke to TSB on the phone and said he would ignore its letters. As no payment was received, TSB registered the defaults in December **2018**.*

*Ultimately, there was a gap of over eight months between Mr L's payment attempt and the defaults being registered. In that time, I can see that TSB showed forbearance for the account holders' circumstances, such as by agreeing holds to allow them "breathing space" to resolve the dispute. It also made the consequences clear before taking further action. I've seen no evidence to suggest that, prior to the defaults being reported, further payments were attempted but erroneously rejected. To the contrary, both Mr L and Ms L told TSB at points that they wouldn't pay. And TSB has told us that payments could have been made – which would have been in its interest, given that it was owed money.*

*I appreciate this will be disappointing for Mr L and Ms L, but I'm not intending to direct TSB to remove the defaults. Ultimately, it's clear that the agreement was breached. And I think TSB gave the account holders a fair opportunity to resolve this breach before reporting the defaults."*

I invited both sides to respond before I made my final decision. TSB has responded to explain that, due to its IT system change, it no longer has details about the unsuccessful

payment. Ms L hasn't provided any further comments. Mr L has submitted some further points, which I've summarised below:

- He wants TSB to consent to us considering his complaint about whether the account should have been frozen earlier
- The pending charges should have been mentioned during the call and he was never notified of them. So the default should be removed as the account would not have gone into an unauthorised overdraft if they hadn't been applied.
- The pending payments should also have been discussed in the call
- The attempted payment should never have been blocked, so it's not fair to base my decision on what did or didn't happen after this
- He's been in regular contact with TSB, which was fully aware of the circumstances, yet it didn't help. The liabilities for joint accounts should be defined further and there should be processes to assist with ongoing disputes between the account holders.
- The defaults should be in dispute pending the outcome of the complaint. Overall, had TSB kept him better informed, he thinks the situation could have been avoided.

### **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 done so, I've come to the same conclusion as I did in my provisional decision.

I've already explained to Mr L that I can't ask TSB to consent to the complaint that was addressed under a separate case and found to be outside our jurisdiction. As an impartial service, we can't advocate on consumers' behalfs about whether businesses should consent to us considering complaints. And TSB has already confirmed that it won't.

My provisional decision already explained why I don't consider it significant whether the charges or pending transactions were discussed when Mr L called about the transfer. The account holders should have been aware, and were responsible for, any transactions they'd requested which hadn't been processed. TSB may not have received the requests from the merchants yet. And the charge for overdraft use was in line with the terms and conditions of the account. We've also seen (and shared with Mr L) the format of TSB's statements, which have a section for forthcoming fees. If Mr L and Ms L didn't know what the fees were for, I think they had sufficient time to check and (if they wished) challenge these before the default was applied. Ultimately, for the reasons I've given, I don't agree that the fees were applied unfairly and so I don't agree that the default should be removed as a result.

I've considered Mr L's argument that, had his attempted payment gone through successfully, the account would have been within its authorised overdraft. Given the time that's passed, there's limited information available about why this payment didn't go through – so I can't safely say it was a bank error. I'm conscious that TSB did ask Mr L about an attempted payment he mentioned prior to the default being applied, but he didn't provide the details he's now given us at the time – prejudicing its ability to look into this further.

There is a reasonable expectation for consumers to mitigate their losses when something goes wrong. Despite being aware that the payment hadn't gone through, meaning they retained the funds, I've seen no evidence that either account holder attempted to make further payments. So they still owed TSB over £3,000. And the overdraft was payable on demand.

Following the one failed payment attempt, I consider it reasonable that TSB attempted further recovery. I'm satisfied it gave the account holders sufficient opportunity to repay the debt – making the consequences clear if they didn't – before applying the defaults. Ultimately, TSB had a duty to accurately report the status of the account. I consider it fair and correct to report the defaults to reflect that no payments had been made and that the relationship had effectively broken down.

Mr L says TSB were fully aware of the circumstances but didn't help. Whilst he thinks there ought to be a specific process to assist in disputes between account holders, I'm satisfied TSB treated him and Ms L fairly in light of their situation. I say this because it prevented further withdrawals and allowed them additional time to pay. As my provisional decision explained, I can't reasonably agree that TSB should have waited indefinitely for the account holders to settle their dispute before expecting them to repay the money it had lent. In line with the terms of the account, it's entitled to pursue Mr L and/or Ms L for the money owed on the account. Based on the call note I've seen, TSB explained this to Mr L when he called about the transfer.

I realise this is a sensitive complaint which the consumers understandably feel strongly about. I've considered their circumstances carefully when reaching my final decision. I appreciate the points Mr L has put forward about possible opportunities for the defaults to have been avoided. But the events he's mentioned – such as the attempted payment and the fees – occurred a long time before the default was applied. And I've not found (on balance) that these were bank errors. In any event, as I've explained, there is an expectation on consumers to mitigate their losses. Mr L and Ms L would have needed to take further action to avoid the defaults once the account breached the overdraft limit.

Overall I'm satisfied TSB allowed Mr L and Ms L ample time to pay before taking further action – and only did so after making the consequences clear. From TSB's perspective, it hadn't received any payments towards the outstanding debt for around eight months and both account holders said they wouldn't pay. In all the circumstances, I'm satisfied the defaults were applied fairly and so I'm not directing TSB to remove them.

### **My final decision**

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L and Mr L to accept or reject my decision before 9 March 2021.

Rachel Loughlin  
**Ombudsman**