

Complaint

Miss L says that TSB Bank plc ("TSB") unfairly defaulted her current account.

Background

Two of our adjudicators looked at Miss L's complaint. The first adjudicator thought it was unfair that TSB recorded a default on Miss L's credit file in circumstances where she didn't know about the debt. The second adjudicator referred TSB to the Information Commissioner's Office's ("ICO") *'Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies'* and also thought the complaint should be upheld.

TSB didn't agree and although it didn't ask for an ombudsman's decision as the parties were not in agreement and it is the usual next step in our process, the complaint was passed to an ombudsman for a final decision.

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 upholding Miss L's complaint. I'll explain why in a little more detail.

It isn't in dispute that Miss L owed an outstanding amount on her overdraft by the time she stopped using the account in late 2018. The parties (as well as the first adjudicator) have very much focused on whether Miss L received notifications of this growing debt and the consequences of non-payment. That said, TSB could only send correspondence to the address details that it held for Miss L. And I've not been provided with sufficient evidence to persuade me that Miss L did update her details with TSB in 2017.

So I'm satisfied that TSB didn't do anything wrong or that it acted unfairly when it sent the correspondence in question to the address it did.

However, our adjudicator referred TSB to the Information Commissioner's Office's *'Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies'* ("the principles"). And on page 7 of this principles, the ICO lists examples of circumstances where a lender should not file a default against a consumer. One of the examples listed is where *"If the amount outstanding is solely made up of fees or charges"*. And I've thought about TSB's actions in defaulting Miss L's account in light of this principle.

The amount of returned direct debits on Miss L's statements in November 2018 and December 2018 make it difficult to discern the precise order of payments on the account and what exactly caused Miss L's account to go overdrawn. But TSB's response to the first adjudicator's assessment appears to accept that Miss L's final credit to her account was to cover a direct debit due and didn't take into account charges that had, or were about to be, debited from her account. And this is what led to her account being £16.73 overdrawn. So, it

seems to me that Miss L's initial overdrawn balance may well have been solely made up of fees and charges.

But even if I'm wrong on this, it isn't in dispute that this overdrawn balance of £16.73 grew to an amount of £469.21 by the time TSB sent its final demand for payment to Miss L in June 2019. Given all parties appear to accept that Miss L had no further spend on her account, this means that Miss L's initial debt of £16.73 had over £450 worth of fees and charges added to it before TSB decided to make a final demand for payment of the debt.

The final amount TSB demanded from Miss L was approaching 30 times the amount of her initial overdrawn balance. So even though fees may not have made up the initial debt (I'm not necessarily persuaded by this as they almost certainly caused it) they were certainly what made up the overwhelming majority of (approaching 97%) the amount defaulted. In my view, the example I've referred to in the principles was introduced to ensure that recording a default was a proportionate response to a borrower having failed to repay a debt in line with the terms of an agreement, rather than a far more disproportionate response to a customer failing to pay a debt made up of escalating fees and charges, where the customer was 'lent' little to no funds.

In this case, even if Miss L debt wasn't entirely made up of fees and charges, for the sake of completeness I'd add I'm not making that finding here, it's, in any event, clear that fees and charges were the direct cause of Miss L's outstanding balance and the default recorded on her credit file – after all, little to none of the £469.21 was made up of funds which TSB actually lent to Miss L. And, in these circumstances, I'm satisfied that TSB's actions in registering a default on Miss L's credit file ran contrary to the guidance set out in the principles.

As this is the case, I find that TSB unfairly recorded a default on Miss L's credit file and that it failed to act fairly and reasonably towards her. So, TSB needs to put things right.

What TSB needs to do to put things right for Miss L

As TSB shouldn't have recorded a default on Miss L's credit file because of the fees and charges that it added, I'm satisfied that it should now remove all the fees and charges in question and remove this default. This means that TSB should remove the default from Miss L's credit file once Miss L pays the initial £16.73 she owed at the time she appears to have abandoned the account.

I'd normally consider making an award for any distress and inconvenience caused by a respondent firm unfairly registering a default on a customer's credit file. However, I do think that this matter may well have been resolved much sooner and without a default being recorded, had Miss L updated her correspondence details with TSB.

I know Miss L says she did but I've already concluded that she's not provided me with enough to make that finding here. And I'm also not persuaded by her arguments on why she didn't check her online banking when prompted to either. So, I'm satisfied Miss L's actions (or her inaction) significantly contributed to any distress and inconvenience she may have experienced. And I'm satisfied that no further award is warranted here.

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

- Reducing Miss L's outstanding balance back down to £16.73. And Once Miss L pays the £16.73, TSB should remove the default it recorded on her credit file.

TSB may have sold the outstanding balance on Miss L's account to third-party debt purchaser. If it has, it will need to either buy the account back from the third-party concerned and make the necessary adjustments, pay an amount to the third party in order for it to make the necessary adjustments, or pay Miss L an amount – such that she can settle the debt with the third-party on the appropriate terms - to ensure that it fully complies with this direction.

My final decision

For the reasons I've explained, I'm upholding Miss L's complaint. TSB Bank plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 18 March 2022.

Jeshen Narayanan
Ombudsman