

The complaint

Mr M has complained TSB Bank plc hasn't properly considered his claim that fraud happened on his joint account with his ex-partner.

What happened

In December 2015 Mr M and his partner split up. He notified TSB that they no longer managed the account jointly on 9 March 2016. The account was blocked so no real spend took place after this date. Overdraft charges mounted up. In August 2016 TSB passed this debt to a third party to recover what they could from Mr M and his ex-partner (who I'll call Miss M).

The amount outstanding was £2,727.89. Limited payments (by Miss M) were made to the account.

In 2020 Mr M complained to TSB. He told them he'd been a victim of financial, emotional and physical abuse during the period of his relationship with Miss M. He didn't believe he should have to pay this debt. He shared with TSB what costs he felt he should be liable for.

TSB rejected this proposal. They said they'd taken the time to consider Mr M's specific personal circumstances. They confirmed Mr M and Miss M had held a joint account so the terms and conditions meant they were both individually liable for repayment of the debt.

Mr M had more recently realised the extent of the coercive control he'd suffered and was keen to have his finances sorted. His partner had taken out finance in his name as well as making use of their joint finances without his agreement. Mr M brought his complaint against TSB and other institutions to our service. Some financial institutions had agreed to waive debt in his name.

Our investigator reviewed the evidence but felt overall that TSB had acted correctly. She didn't think it was clear that any of the expenditure Mr M disputed hadn't also been for his benefit.

Mr M strenuously disputed this finding. He'd also explained to our service some of the abuse he'd been subject to before he and Miss M split up. He's asked an ombudsman to consider his complaint.

I completed a provisional decision on 27 January 2022. I believed TSB could have done more to assist Mr M. I asked them to waive overdraft fees and charges from the date Mr M notified them this was no longer a joint debt and to pay him £500 for the trouble caused.

Mr M provided a number of responses. He believed there was adequate third-party evidence to demonstrate physical abuse at different times, as well as the action taken by other financial institutions showed the financial abuse by his ex-partner. He accepted I'd noted action taken by TSB after he'd notified them that he could no longer be responsible for expenditure on the account. He believed TSB was limiting the ability of credit record agencies from disassociating his record from Miss M's.

TSB believed I'd come to the same conclusion as our investigator but was unsure why I'd asked them to pay redress. They pointed out that in cases like this they were often caught in the middle of two partners disputing responsibility.

I now have all I need to complete my final decision.

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 outcome as I did in my provisional decision. I'll explain why and cover any issues I need to take into account after receiving comments by either Mr M or TSB to my provisional decision.

I should point out that whilst TSB may have believed I'd come to the same overall conclusion as our investigator, this isn't the case at all. She didn't believe TSB had acted incorrectly whilst I do.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

To help me reach this decision, I've considered evidence provided to us by TSB and Mr M.

I've also noted the detail in our investigator's view of 8 September 2021 but feel no need to rerun some of the arguments made there. I'm also not going to run down the disputed transactions. Mr M provided us with a list of these and I've matched these with the bank statements provided to us by TSB.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. Mr M has drawn my attention to best practice on managing financial abuse. I confirm I've taken this into account.

The regulations which are relevant to Mr M's complaint are the Payment Services Regulations 2009 (PSRs). These primarily require banks to refund customers if they didn't make or authorise payments themselves.

But this isn't the only aspect that's relevant. There's no dispute that Mr M's account – that's the subject of his complaint – is a joint account. And that the terms for this account do specifically make Mr M – as well as Miss M – liable for any outstanding debt however that occurred.

When we consider complaints where payments are disputed, we look at whether the transactions were authorised. However I'd say here that there's no question Miss M made the transactions which makes them authorised in terms of the PSRs. I know Mr M disputes this but under the PSRs I'm satisfied this is the case. There is limited leeway within these regulations to consider the impact of abuse or duress or fraud within a partnership.

I appreciate this makes any resolution in Mr M's favour quite difficult. I believe it's clear the transactions were authorised but I do wonder how account terms and the PSRs help anyone – who has a joint account – to raise valid objections against how the account was used by the other account-holder. This would be where financial abuse best practice comes into play.

In these cases banks are able to consider whether the circumstances are appropriate to allow fair and reasonable redress to be given. Mr M has questioned why TSB didn't believe exceptional circumstances applied here. TSB noted Mr M let them know in March 2016 that the account was no longer to be considered as a joint account. I believe they placed blocks on account use at that time. They wondered why it wasn't until 2020 that Mr M raised a complaint concerning the abuse he'd suffered.

I suggest this may partly be explained by the fact that legislation around the offence of coercive control is reasonably recent. It's also true that victims of abuse take time to understand the extent of the experience they've gone through before they are able to tackle what happened. I'm not therefore surprised it took Mr M time to contact TSB about the disputed transactions.

I've seen limited evidence – despite TSB's confirmation – of their investigation into what had happened. It looks very much to me that they relied upon the terms and conditions of Mr M's joint account rather than the personal circumstances he'd gone through. I appreciate the points they've made about trying to follow a middle path but I'm not sure there's enough evidence to suggest they took appropriate action at the time.

I appreciate, however, that we have limited third party evidence of what Mr M went through. I don't doubt he has a number of grievances against his ex-partner and some of these relate to access to his daughter. Mr M mentioned evidence that we had seen and I confirm this has been considered.

I've specifically looked at the transactions that Mr M disputed. None of the transactions he's disputing look out of the normal for joint account use. None of these are high-value. Two salaries were being paid into the account. Mr M and Miss M have a child together so I can see child benefit payments and a lot of household expenses most likely related to their daughter. I can also see payments that Mr M did make during this period too. This was the point TSB made to me which I'd already noted.

Mr M questioned what I mean as for his benefit – I should confirm this doesn't mean items bought are directly for him or for his direct benefit but they could be seen as household costs shared between two individuals. This makes it difficult to decide what expenditure could be considered as part of the financial abuse. This doesn't mean there was no abuse just that I can't fairly distinguish the expenditure.

Putting things right

Like our investigator I can't see that the evidence is clear enough to suggest Mr M, either himself or as a father, didn't benefit from the expenditure. I believe it wouldn't be fair to ask TSB to refund the transactions he disputed.

I can however see that about £300 worth of overdraft charges were added to the account after Mr M notified TSB that the account wasn't being used on a joint basis. This can't help Mr M in getting his life together and trying to repay the debts he still has. I think it's fair and reasonable TSB waive all fees added to the account after 9 March 2016 when they knew the account use was in debate. I appreciate this will also benefit Miss M by reducing the joint debt but it will have an impact more importantly on Mr M.

TSB say the fees were added in line with account terms and conditions. I accept that is the case. But I do believe there are circumstances where these can be waived. In a case where there has been abuse, I think it's fair and reasonable to do this.

I also don't believe TSB gave proper consideration to the issues Mr M raised with them and

they seem to have acted dismissively. It's hard enough to raise such personal issues without then having them questioned. I don't think there's any doubt this has had an impact on Mr M. He continued to raise issues with TSB over a prolonged period and I'm sure this is because he believes they have not taken his concerns into account.

Overall I believe it's fair and reasonable TSB pay Mr M compensation. I think £500 is the right amount taking into account what happened.

My final decision

For the reasons I've given, my final decision is to instruct TSB Bank plc to:

- Waive all overdraft and interest fees and charges allocated to Mr M and Miss M's joint account from 9 March 2016; and
- Pay Mr M £500 for the trouble caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 29 March 2022.

Sandra Quinn
Ombudsman