

## **The complaint**

Mrs K is unhappy with the service that she received from TSB Bank plc surrounding her request for a payment holiday on her loan account, including that TSB ultimately defaulted her account for non-payment.

## **What happened**

In March 2020, the day before the scheduled payment was due on her TSB loan, Mrs K applied for a one-month payment holiday on the loan account. Her application was accepted that same day, but TSB applied the payment holiday to the April loan payment, rather than the payment that was due the next day, meaning that Mrs K's loan account fell into arrears.

In April 2020, TSB tried to contact Mrs K about the missed March loan payment without success. Mrs K also attempted to telephone TSB during this period but was unable to get through. Mrs K has also confirmed that she had thought she had applied and been approved for a three-month payment holiday, rather than just a one-month payment-holiday.

In May 2020, the one-month payment holiday ended, and the May payment became due. A week before the May payment was due, with Mrs K at that point only one month in arrears on her account, TSB sent Mrs K a default notice advising that her account would be defaulted if she didn't clear the arrears on the account before 8 June 2020 – at which point, if Mrs K hadn't made any payment, her account would have been two months in arrears.

Following this, Mrs K didn't make a payment to the account by the given date, and her account then fell three months into arrears - totalling approximately £1,200 of arrears - when the payment scheduled for end of June 2020 wasn't made. Mrs K did then make payments a few days later totalling £600 to reduce the arrears on her account, but because Mrs K hadn't cleared the arrears on her account in full as TSB had required, TSB then defaulted Mrs K's loan account for non-payment. Mrs K wasn't happy about this, and she wasn't happy that she hadn't been granted the three-month payment holiday that she thought she'd applied for, so she raised a complaint.

TSB looked at Mrs K's complaint, but they noted that they'd written to Mrs K on 24 March 2020 following her application for a one month payment holiday and that the letter had confirmed that payment holiday would be for one month and would be for the April 2020 payment. TSB also felt that because of the arrears that had accrued on the account, they hadn't acted unfairly by issuing the default notice to Mrs K in June 2020, and so they didn't uphold Mrs K's complaint.

Mrs K wasn't satisfied with TSB's response, so she referred her complaint to this service. One of our adjudicators looked at this complaint. They felt that it had been evident that Mrs K had applied for a one month payment plan rather than a three-month payment plan as she believed, and so they felt that the arrears that had accrued on the loan account because of the missed payments were reasonable. However, our adjudicator didn't feel that TSB had acted fairly towards Mrs K by starting default proceedings against her at a time when her account was only one month in arrears, and so they recommended that this complaint be upheld in Mrs K's favour on that limited basis.

TSB didn't agree with the recommendations put forwards by our adjudicator, so the matter was escalated to an ombudsman for a 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.

I issued a provisional decision on this complaint on 4 March 2022 as follows:

*Mrs K recalls that in March 2020 she spoke with a TSB agent and verbally requested a three-month payment holiday, which was agreed by the agent at that time. However, TSB don't have any record of Mrs K speaking with at that time, but instead do have a record of Mrs K applying for a one-month payment holiday online.*

*It's also notable that at the time that Mrs K applied for the payment holiday, the type of three-month payment holiday which she thought she had applied for wasn't yet available, and didn't become available (following temporary guidance issued by the Financial Conduct Authority) until a few weeks later, and so the only type of payment holiday that Mrs K could have applied for with TSB at the time that she did was for a one-month payment holiday.*

*Additionally, the letter that TSB sent to Mrs K following her application for the payment holiday confirmed that the length of the agreed payment holiday was for one month only, and so I'm satisfied that the payment holiday that Mrs K applied for was a one month payment holiday and that she was notified by TSB of the length of that payment holiday and the date when the next payment would be required on the account.*

*However, it's notable that Mrs K applied for a one-month payment holiday the day before her March 2020 payment was due, but that TSB, having approved the payment holiday, applied it the April 2020 payment and not to the March 2020 payment which it seems obvious Mrs K was requesting the payment holiday for. This meant that even though Mrs K was taking action to try to avoid her account falling into arrears, because the payment holiday wasn't applied to the March payment, her account did fall into arrears the next day.*

*Furthermore, TSB sent a letter to Mrs K advising that her payment holiday request had been accepted and that it would be applied to the April 2020 payment, and not the March 2020 payment. But this letter wouldn't have been received by Mrs K until after the March 2020 payment date had passed and her account had already fallen into arrears. This doesn't feel fair to me, and I find it difficult to draw any conclusion other than TSB should have applied the one-month payment holiday to the impending March payment, and not to the later April payment.*

*TSB have explained that the reason that the payment holiday was applied to the April payment was because Mrs K made the request the day before the March payment was due, meaning that there wasn't time to set the payment holiday for that March payment. However, I've reviewed TSB's website in regard to how to apply for one-month payment holidays, and there's no mention of any requirement for a customer to have to make an application a set number of days before a payment is due. And having accepted Mrs K's request for a payment holiday, if it were the case that TSB were unable to prevent the scheduled direct debit request from completing, then I feel that TSB should have arranged to return the March 2020 direct debit payment if*

*it was taken, so as to honour the payment holiday that they agreed for the month that it was requested and needed.*

*This point may seem relatively minor, given the wider circumstances of the complaint here. But if it had been the case that Mrs K had been granted a payment holiday for the March payment, and given that the type of three-month payment holiday that Mrs K thought she was applying for would have been available to Mrs K by the time the April 2020 payment became due, it seems reasonable that Mrs K would have been able to benefit from that longer three-month payment holiday such that her account wouldn't have fallen into arrears.*

*It must be remembered that the three-month payment holidays came into effect as a result of temporary guidance published by the Financial Conduct Authority ("FCA") which was designed to protect eligible consumers who were experiencing difficulty meeting the payments due on their credit or loan accounts because of financial difficulties brought about by the impact of Covid-19. The FCA guidance also included that for these three-month payment holidays the reporting of these payment holidays to the credit reference agencies would be suspended, so that an eligible consumer who benefited from such a payment holiday didn't have their credit file impacted by doing so.*

*The FCA explained that the purpose of the guidance was to protect consumers who had been able to meet the repayments on their credit accounts until that time, but who were at risk of incurring adverse reporting for missed or late payments on their credit files solely as a result of the impact of Covid-19.*

*TSB have asked how Mrs K was financially impacted by Covid-19. But Mrs K had a cleaning business, and given the restrictions that were first announced by the government in response to the emerging Covid-19 pandemic on 20 March 2020 – which included the mass closure of shops and businesses so as to mitigate against close personal contact and potential viral transmission – it seems clear that Mrs K's business would be affected, given that these restrictions would likely involve affected businesses no longer requiring cleaning services.*

*Mrs K has confirmed that many of her clients did cancel their cleaning contracts, and it seems reasonable that Mrs K might be concerned about her immediate future income at that time. It's also notable that Mrs K contacted TSB a few days after that first government announcement, before the payment on her loan account was due, and requested a payment holiday.*

*It also seems apparent that Mrs K was in precisely the kind of difficult situation that the FCA three-month payment holidays were intended to mitigate against. And I say this because Mrs K hadn't struggled to maintain her loan account up to that time and had been directly financially effected by the unprecedented circumstances surrounding Covid-19, which had led to a sudden and drastic reduction in the need for the services provided by her business and therefore a corresponding sudden and drastic reduction in her projected income.*

*However, it also appears that TSB did attempt to contact Mrs K both before and after the end of the one-month payment holiday that she was granted but without success. And the call logs that TSB have provided in this regard show that more than two dozen attempted calls were made to Mrs K's number by their automated dialler system before the May 2020 loan payment due date, many of which were answered by Mrs K but where the call was quickly ended.*

*Mrs K has explained that husband suffered a heart attack while the one-month payment holiday was in place, which understandably meant that she wasn't paying as much focus to the status of her payment arrangement with TSB as she would have been otherwise.*

*Mrs K has also stated that she attempted to contact TSB during this time but was unable to get through. But if Mrs K was attempting to speak with TSB at that time, it's difficult to reconcile this with Mrs K not speaking with TSB on the multiple occasions that TSB called her. And it's also notable that Mrs K didn't apply online for any further payment holidays during that period either.*

*However, even taking Mrs K's not contacting TSB during this time into account, I do feel that when Mrs K did contact TSB on 3 June 2020, that her personal and financial circumstances should have been considered by TSB, and that TSB should have recognised that Mrs K was the type of consumer in the type of financial difficulty that the FCA prescribed three-month payment holidays had been intended to protect – and then retrospectively applied a three-month FCA prescribed payment holiday to Mrs K's account.*

*This potential course of action may have been more readily apparent to TSB had they applied the one-month payment holiday to Mrs K's March payment, as I feel should have been the case, so that it was the April and May payments that were outstanding at that time.*

*TSB may also contend that because Mrs K was two months in arrears when she spoke with TSB in June, that she wouldn't have been eligible to receive the three-month payment plan. But I feel that there are exceptional circumstances here in regard to Mrs K's difficult personal position, including the heart attack suffered by her husband, that reasonably allow for a degree of leeway in this instance. And it remains my opinion that a fair outcome in this instance is that Mrs K should have been afforded the FCA prescribed three-month holiday financial assistance that those FCA payment holidays were intended to provide.*

*Finally, I find it very difficult to conclude anything other than that TSB were acting unfairly and unreasonably towards Mrs K by issuing a default notice to her at a time when the loan account was only considered as being one month in arrears, and which included a deadline for payment at a time when her account would only be considered as being a maximum of two months in arrears. And it seems to me that having issued this default notice in such unreasonably short order, TSB had committed themselves to a course of action that prevented them from considering and providing the financial assistance to Mrs K that was merited by her personal and financial circumstances at that time.*

*Ultimately, I do feel that Mrs K should have benefited from the protection provided by the FCA prescribed three-month payment holidays, and I feel that how TSB managed Mrs K's initial application for a one-month payment holiday as well the unreasonably early notice of default that they issued to Mrs K contributed to TSB not effectively recognising this point and not taking the steps necessary to ensure that Mrs K wasn't adversely affected by Covid-19 in exactly the way that the three-month payment holidays were designed to avoid.*

*And, while I accept that Mrs K could have better communicated with TSB, I feel that her difficult personal circumstances at that time should be considered sympathetically such that reasonable adjustments should have been made, as described above.*

*All of which means that don't feel that TSB have acted fairly towards Mrs K in how they managed this ongoing situation, and it follows from this that I will be upholding this complaint in Mrs K's favour.*

*My provisional instructions to TSB are that they must amend their credit reporting to remove the default from Mrs K's credit file and retrospectively apply the one-month payment plan to the March 2020 payment and then two consecutive three-month FCA prescribed payment holidays starting April 2020. TSB must also recalculate the balance of Mrs K's loan account taking the above into account.*

*Finally, given the ongoing and preventable nature of what happened here, and given the trouble and upset that this matter has caused Mrs K at a time when she was already facing difficult personal and financial circumstances, TSB must also make a further payment of £300 to Mrs K by way of compensation. This further payment may not be applied by TSB as a credit to Mrs K's loan account unless Mrs K gives her permission for them to do so.*

In my provisional decision letter, I gave both Mrs K and TSB the opportunity to provide any comments or new information they might wish me to consider before I moved to a final decision. Mrs K confirmed that she had nothing further that she wished to raise, whereas TSB did provide some points for my consideration.

TSB have confirmed that they feel that because of the arrears that were present on Mrs K's account when she applied for the FCA prescribed three-month payment holiday that Mrs K wasn't eligible to receive such a three-month payment holiday, and that therefore her account was correctly defaulted by TSB for non-payment. Additionally, TSB note that there is nothing within the FCA guidance that allows for exceptional circumstances to be taken into account, and that Mrs K had a significant balance in her TSB savings account such that she could have reasonably made the payments and such that TSB don't feel that Mrs K was in financial difficulty at that time.

However, as previously explained in my provisional decision letter, the FCA prescribed three-month payment holidays were designed to protect consumers such as Mrs K who had been able to meet their credit commitments without significant incident until that time, so that such consumers didn't incur detrimental credit reporting, which would remain on their credit files for six years, as a result of the unprecedented and unique circumstances surrounding the Covid-19 pandemic.

As such, I don't feel that it was unreasonable for Mrs K to have wanted to retain a healthy savings balance during this period, given the considerable impact the pandemic had had on her business and the uncertainty surrounding potential future cashflows. That Mrs K didn't use all her savings at that time is evident in hindsight, but I don't feel that it was something that would have been reasonably predictable during the uncertainties of that time. And the fact remains that Mrs K's income had been significantly impacted by the Covid-19 pandemic and that she was the type of consumer that the FCA guidance was designed to protect.

Furthermore, it seems difficult not to conclude that the fact that TSB recognised that Mrs K held these savings weakens the need for TSB to have issued a default notice to Mrs K at the unreasonably early time that they did, while her account was only one payment in arrears. This is because TSB were aware that Mrs K had a savings balance that could potentially have been used to clear the arrears on the account, such that there seems to have been no need for TSB to have rushed into the process of defaulting Mrs K's account as they did.

However, this last point is somewhat moot, because it remains my position that TSB should have recognised that Mrs K was the type of consumer that the FCA guidance was designed

to protect here, and consequently that they should have backdated a three-month payment holiday on Mrs K's account, which would then have allowed Mrs K to benefit from a second three-month payment holiday as per the FCA's continuing guidance.

And while TSB state that there was no exceptional circumstances clause on the FCA guidance that would have allowed this, neither was there any clause preventing such reasonable action here, and the FCA guidance did make it clear as to the type of consumer it was designed to protect and the reasons that the guidance was being issued.

Ultimately, I feel that by issuing the default notice at the unreasonably early stage that TSB did, they locked themselves into a process which resulted in Mrs K incurring exactly the type of detrimental credit reporting that the FCA were concerned may occur and which they issued guidance to protect consumers such as Mrs K from.

TSB have provided further information such that I accept that when Mrs K first applied for the one month payment holiday the day before her March 2020 payment was due that TSB could only reasonably have applied that payment holiday to the April 2020 payment, but I don't feel that this acknowledgement detracts from my overall position here.

I say this because while the backdating of a three-month payment holiday may have been a more apparent course of action to TSB if the March 2020 payment had been covered by the one month payment holiday, I still feel that the backdating of a three-month payment holiday, and if necessary also the one-month payment holiday – worked so that Mrs K didn't incur any arrears on her account from March 2020 onwards – should still have been a course of action that TSB should fairly and reasonably have taken here.

All of which means I see no reason not to uphold this complaint in Mrs K's favour on the basis outlined in my provisional decision letter, and I can confirm that my final decision is that I do uphold this complaint on that basis accordingly.

### **Putting things right**

TSB must amend their credit reporting to remove the default from Mrs K's credit file and retrospectively apply the one-month payment plan to the March 2020 payment and then two consecutive three-month FCA prescribed payment holidays starting April 2020. TSB must also recalculate the balance of Mrs K's loan account taking the above into account.

TSB must also make a further payment of £300 to Mrs K to compensate here for the trouble and upset this ongoing matter has caused. This payment may not be applied by TSB as a credit to Mrs K's loan account unless Mrs K gives her permission for them to do so.

### **My final decision**

My final decision is that I uphold this complaint against TSB Bank plc on the basis explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 21 April 2022.

Paul Cooper  
**Ombudsman**