

The complaint

Mrs J and Mr J complain that TSB Bank plc (TSB) defaulted their joint account and passed it to a debt collection agency (DCA).

What happened

Mrs J and Mr J opened their account with TSB in 2011. By 2019, they had an overdraft limit of £3,000. They ran into financial difficulty and in January 2021, the balance was £3178. TSB agreed a payment plan for six months. This was an agreement with no interest or charges. And payments were to be made into the account to reduce the limit to £3160 by 1 July 2021.

In April 2021, TSB cancelled the overdraft limit in error but then reinstated it. The letter said the payment plan was for another six months – to October 2021.

By 1 July 2021, the balance reduced to £3082.

On 17 August 2021, TSB wrote to Mrs J and Mr J. The balance was £3059 debit. The letter said to repay the balance to bring the account up to date. Mrs J and Mr J complained that this wasn't fair.

On 2 September 2021, TSB apologised and said (in their final response) that the overdraft limit (of £2978) would be reinstated. TSB paid compensation of £125. But, due to an error, the limit was not put back on.

On 8 September 2021, TSB wrote to Mrs J and Mr J again and said the balance of £2969 should be repaid to bring the account up to date.

On 1 October 2021, TSB wrote again to say £2954 should be paid, or the debt would be transferred to a DCA to collect. Mrs J and Mr J complained again and TSB said the account would be recalled from the DCA. But – that wasn't done. The debt remained with the DCA and Mrs J and Mr J made payments to the debt. Between 2 November 2021 and 2 September 2022, they reduced the debt by £237 (from £2939 to £2702).

Mrs J and Mr J complained. They said the default was unfair. They'd adhered to the payment plans as agreed. And there had been several errors in putting in place the payment plans and then cancelling them. Because of the default, their credit rating had been affected and they couldn't get affordable credit, nor apply for a mortgage.

TSB made two final responses. In September 2021, they agreed to reinstate the limit of £2978. And paid compensation of £125. In November 2021, TSB said the account had been passed to their collections department – which meant a transfer to a DCA and a default registered on their credit file. The balance was then £2954. But because the limit should have been put back in place in September 2021, TSB said they would recall the account from the DCA and consider further compensation. No further response was sent after that time.

Mrs J and Mr J brought their complaint to us. Our investigator said that he had had information from TSB which said Mrs J and Mr J couldn't afford the debt when interest and charges were reintroduced. TSB had done an income and expenditure analysis which showed that. Therefore, it was correct to pass the debt to a DCA to manage. And therefore, he said the default was fair.

But there had been a number of miscommunications – which meant that TSB should pay another £75 compensation – a total of £200.

Mrs J and Mr J didn't agree and asked that an ombudsman look at their complaint. So – it has come to me to do that.

I reached a provisional decision which said:

Mrs J and Mr J were in financial difficulty. In such circumstances, firms have an obligation to treat customers in financial difficulty sympathetically and the Financial Conduct Authority (FCA) says that businesses like TSB should treat customers in difficulties with forbearance and due consideration. For example, a business might suspend or waive interest, accept lower payments or defer them, and allow customers more time to repay their debt.

And in this case, that's what TSB sought to do – as they agreed a payment plan for Mrs J and Mr J in January 2021 – they suspended interest and charges and agreed a reducing balance plan through to July 2021. So – that was a reasonable thing to do.

But – throughout 2021, there were several errors by TSB, which I have reviewed. And in summary, I can see that Mrs J and Mr J must have been very confused by what happened, to the extent that I think the default that followed wasn't reasonable.

In January 2021 – the payment plan was set up. The plan said interest and charges were stopped, and the balance (then £3178) should reduce to £3160 by July 2021. And I can see that by then, it had been - as it was then £3082 debit. So – Mr J and Mr J stuck to the agreement.

In April 2021, TSB told us that they cancelled the limit in error – and then reinstated it. But the letter dated April 2021 said it was in place for six months – i.e. to October 2021 – and not the original end date of July 2021. So I think Mrs J and Mr J were entitled to think the plan was to run until October 2021.

It then appears that the payment plan remained due for review in July 2021 after all as TSB wrote to Mrs J and Mr J in June 2021 to say it was due for renewal at the original date of July 2021.

On 17 August 2021, TSB wrote to Mrs J and Mr J to say the balance was £3079 and this needed to be repaid to bring the account up to date. The letter said “*..It's important you make a payment of at least £3,059.53 as soon as possible, to bring your account up to date...*”

I can see that Mrs J and Mr J then complained – they said they had an overdraft limit and therefore the letter wasn't fair. TSB investigated it and their final response dated 2 September 2021 said “*..I have requested the reinstatement of your £2978 overdraft....you can (then) contact our Financial Support Services team to arrange a new repayment plan....*” TSB paid compensation of £125.

I listened to the call from the complaint manager on 2 September 2021 – and the call confirmed the same conclusion and actions. He also said he would check the limit was put in

place. There wasn't any mention of interest and charges. So – I think Mrs J and Mr J were entitled to think their limit was back in place and all was well going forward.

But then, on 8 September 2021, TSB wrote “...*You must pay at least £2,969.53 into your current account straight away...The amount you owe us on your Unarranged Overdraft may change. This is because you will be charged interest on your Unarranged Overdraft which will increase the amount you owe us*”. The overdraft limit was shown as zero – so this was contrary to what TSB had told them a few days earlier – and the application of interest and charges was also new information to them. So – this was another error from TSB and contradicted what they had told Mrs J and Mr J on 2 September 2021.

I listened to the call made by Mrs J to TSB on 14 September 2021 – which she made after the letter dated 8 September 2021 was received, as she was confused. She was told there wasn't an overdraft limit showing and another complaint was raised.

Mrs J called TSB's complaint team again on 23 September 2021 – as the overdraft limit still hadn't been reinstated. I heard TSB make arrangements to call Mrs J back. We were provided with the call back to Mrs J – but she wasn't available and TSB said they'd call again. But there are no further calls provided.

On 1 October 2021, TSB wrote again – the balance was £2954 debit. The letter said “...*You must now repay the full amount you owe us...In order to avoid further action, you must repay the full amount you owe us straight away.*”

Mrs J and Mr J complained again and TSB then wrote “...*I have asked for your account to be recalled to CDR (debt recovery) as per our discussion as I agree the above (transfer to a DCA) wouldn't have happened had we reapplied your arranged overdraft limit of £3,000 as promised on 2 September 2021...events since 2 September will be addressed as we need to ensure this matter is investigated further on your behalf...*”. I haven't seen a further letter or final response which then said anything more, so there wasn't a further investigation done by TSB. Therefore, I think Mrs J and Mr J were entitled to think that the transfer to a DCA, and the default, would be cancelled.

As it was - the account was passed to a DCA and Mrs J and Mr J made repayments to the DCA. I looked at the account, and they reduced the debt by £237 between November 2021 and 2 September 2022 – the balance by then was £2702. So - they were making payments and the account was within the previous limit. This does show that Mrs J and Mr J want to meet their commitments and pay off the debt. TSB told us that they'd completed an income and expenditure form in July 2021 and this showed surplus income of £31 per month – therefore they concluded the debt couldn't be afforded - once interest and charges were applied. But equally, Mrs J and Mr J told TSB (and us) that to pay off the debt, they would get help from their family. TSB – reasonably – said that wasn't a sustainable source of income for them to make a decision on - which I accept. But – the way in which Mrs J and Mr J have made the payments over the period in question suggest to me that they want to find a way to pay the debt off.

In summary, because of the number of errors made by TSB over a long period of time, Mrs J and Mr J must have been very confused about what their banking agreements were with the bank. They were told the overdraft limit would be put back in place, but it wasn't. And they were told that TSB would stop the transfer to the DCA – or at least that would be reviewed, but it wasn't. I can also see they did try to engage with TSB to sort matters out – in the calls they made. And they've shown their intentions are good in the way they've paid money to the DCA since November 2021.

Therefore, I intend to ask TSB to remove the default, take back the debt from the DCA and agree a mutually satisfactory repayment programme with Mrs J and Mr J. In responding to this provisional decision, I'd ask Mrs J and Mr J to ensure they are comfortable with this – as it they can't afford to do that, then it will only lead to further problems for them. And I agree with our investigator – TSB should pay a further £75 compensation for the distress and inconvenience caused by the errors and poor communications.

Responses to the provisional decision:

Mrs J and Mr J agreed with it. They confirmed they can afford to meet the repayment of the debt – over a period, including interest and charges.

TSB didn't agree. They said:

- The default had been accurately recorded on Mrs J and Mr J's credit files – they have a responsibility to report accurate information.
- Mrs J and Mr J weren't able to maintain their account within the limit and there were arrears.
- They didn't think Mrs J and Mr J can afford to make repayments – once interest and charges are applied.
- If they can't and this then leads to a default in the future – this would then run from that future date, which won't help Mrs J and Mr J.

I now need to consider these points and make 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.

On TSB's points – which I acknowledge and I have considered.

I agree that accurate information should be recorded at the DCAs. But we consider each case on its merits, and in the circumstances of the complaint. And here, on balance, I think the errors in cancelling the limit and then reinstating it – and the errors in communications resulted in an unfair outcome for Mrs J and Mr J. I think I've set these out clearly in the provisional decision, so won't repeat them here.

And in these circumstances, I don't think the default was fair.

On TSB's points about affordability - I wanted to make sure that Mrs J and Mr J are aware they will need to pay interest and charges on any agreed repayment arrangement. They confirmed they can do so and can afford the payments. But I'd emphasise – that the repayment schedule must be mutually satisfactory to both Mrs J and Mr J, and TSB. It wouldn't be helpful or reasonable for TSB to insist on a repayment plan which is unaffordable.

Putting things right

Therefore – I uphold this complaint and my final decision is in line with the provisional decision.

My final decision

I uphold this complaint. TSB Bank plc must:

- Remove the default from Mrs J and Mr J's credit file.
- Take back the debt from the DCA and agree a mutually satisfactory repayment programme with Mrs J and Mr J.
- Pay compensation of £75 for distress and inconvenience. This is in addition to the compensation of £125 already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J and Mr J to accept or reject my decision before 16 June 2023.

Martin Lord
Ombudsman