

## **The complaint**

Mr H complains that TSB Bank plc registered a default in respect of two loan accounts he had with it and passed the accounts to a debt collections agency (DCA) whilst he had a payment plan in place.

## **What happened**

Mr H has two loans with TSB, one of which commenced in October 2018 and the other in August 2021. The monthly payment due on one loan was around £310 and on the other loan around £280. Mr H got into difficulties with paying the loans in January 2022. Subsequently it was agreed that he would make manual payments for the loans but believed he could get back to normal by March 2022. He was however unable to do this. TSB applied a temporary payment freeze on both loans. On 24 May 2022 Mr H agreed a payment plan with TSB whereby he would make monthly payments of £200 on each loan.

Mr H made the required payments each month and then in September 2022 he received letters advising that the payment plan was coming to an end. He spoke to an adviser on 27 September and was told to call back after the final payment under the payment plan had been made, to arrange a new payment plan.

Mr H subsequently received a default notice dated 29 October 2022 asking him to pay the arrears and warning him about the consequences if he failed to do so. At that stage he had kept to the payment plan. Mr H made several calls to TSB in early and late November 2022. I note from the calls in early November that an attempt was made to take details of his income and expenditure in order to set up a new payment plan. In those calls, particularly in late November Mr H did make it clear that he wanted the payment plan to start again in December 2022 as he could not afford the November payment due to having a large energy bill to pay.

Mr H also made it clear that it had been agreed that the payments he was making would be set off against the arrears on the account rather than the capital but that had not been done. In December 2022 Mr H tried to make the payment which he thought had been agreed but found that the account had been passed to a DCA. Subsequently because of poor service and the errors made, TSB agreed to pay Mr H £200, and to remove the account from the DCA back to its own payment services department.

TSB has said that it didn't make an error in respect of the setting up of the payment plans as the arrears would have continued to increase as Mr H was making payments less than the agreed monthly payments under the loans. It said that it followed its normal procedures in sending out the default notices and that it would not remove the default markers against Mr H's loans. On referral to the Financial Ombudsman Service, our Investigator said she didn't feel that TSB acted unfairly in applying the defaults and that she found no evidence that TSB had agreed to accept the late payment in December 2022. But even if it had, she found that the defaults would have been inevitable as Mr H was unable to clear the arrears.

Mr H did not agree and pointed out that he had kept to the payment arrangements. He also pointed out that there were a number of telephone calls which should be listened to as the

information on TSB's systems was not correct.

The complaint was referred to me. I obtained the telephone call recordings and, having considered them, issued a provisional decision. In it I said that TSB should pay Mr H a further £100 compensation. And that TSB should offset the payments made under the payment arrangement against the arrears. Further, that it should further remove any default markers on the accounts from its internal and any external databases, entered as a result of the default notice of 29 October 2022.

Mr H responded and asked that I consider:

- How for him the last 12 months have been a fight. And that an additional £500 redress should be considered. He doesn't feel that is unreasonable as that equals £42 for every month this has been ongoing.
- Any remaining arrears on the loans after they have been offset is cleared by TSB allowing him to start afresh.
- He has checked his credit file TSB registered the defaults in December not October.

TSB responded that :

It accepts the proposed increase in compensation.

It asked that I reconsider my other proposals. Whilst I've emphasised that I've only considered the position at 19 December 2022, it says clearly the situation has moved on within the last year. The account had defaulted before a new plan had been arranged but it could only have agreed an age out plan in December, so Mr H would not have been able to avoid "enforcement action" and he would not have been left with that impression. It also explained this to him when it spoke to him about the complaint in December. So with this in mind my proposed directions could potentially be detrimental for Mr H.

It acknowledges it had made notes and had discussions where it referred to the payments being made against the capital rather than the arrears, but said this technicality hasn't made a difference to the fundamental position for Mr H. He had a contractual agreement to pay the Normal Monthly Instalment (NMI). By May 2022, the loan was already in arrears. It agreed to accept a lower amount for six months to help him out and added an interest freeze, but that doesn't alter the CCA (Consumer Credit Act) agreement. Therefore, if it had applied the £200 payments he made to repay the arrears, the NMIs which were due in the meantime would create new arrears, because he wasn't making the contractually agreed payments.

It said that once the account is four months in arrears the default process will start. Customers' situations can change, so it can't predict or assume what will happen when a payment plan starts. Ultimately there was a debt owing and Mr H was not paying enough to reduce the arrears.

It further said that once the six months ended Mr H was not in a position to pay the NMI, so the accounts would have defaulted. On that basis, if it removes the default applied in 2022 and starts the process again - then this would likely mean a default being applied in 2023, or even 2024.

In either case it would be detrimental to have a later default date, TSB said, just because a letter was sent a bit earlier than expected, if the outcome would be the same.

It wants to make sure Mr H is aware that if he agrees to my proposed award and it removes

the existing default, a new default is the likely outcome based on the accrued arrears in December 2022.

I advised Mr H of the following:

Whilst TSB accepts the proposed increase in compensation, it has pointed out that if it removes the default registered in October 2022, because of the missed payment in the payment plan, it asserts that it can register the default as of December 2022. As I pointed out in my provisional decision, I can only look at the complaints up until the final response letter of 19 December 2022, so I can't review what might have been agreed so far as repayments were concerned in December 2022. Even if imposing a default in December could be said to be unfair (and I emphasise I haven't reviewed that point in my decision), if he has continued to pay less than the NMIs the arrears will continue to accrue. And TSB could at any time impose a default if it isn't prepared to continue with payment plans.

A default will remain on Mr H's record for six years, and if he's able to clear the arrears within that period, it will be removed after six years. To that extent I think it would be in Mr H's interests to have the default imposed as of an earlier date. I don't think it would be appropriate to ask TSB to waive either loan, so I don't intend in my final decision to ask TSB to remove the default.

### **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.

My provisional findings are set out below in italics:

*I should first of all say that I can only consider the position as at the time of TSB's final response letter of 19 December 2022. At that stage it had been agreed that Mr H's accounts would be brought back in house and a payment of £200 compensation made. I can't consider any agreed payment plans or any issues concerning the arrears on the accounts after that date.*

*I have, as Mr H requested, obtained recordings of the phone calls between him and TSB, particularly those on 27 September, 2 and 3 November and 29 November. I've also listened to the call on 24 May when the payment plans were set up.*

*From the evidence I've seen Mr H started to get into arrears with his loans in January 2022. Whilst TSB could have defaulted the loans by March 2022, it didn't do so but agreed to freeze the accounts and then agreed payment plans in May 2022. As set out above, the payments were to be £200 per month on each loan. The first payment to be made in June 2022, lasting six months, the final payment being made in November 2022. Crucially Mr H was told that he would not receive calls or letters from TSB's payment services during that time. I think that TSB acted reasonably in that respect.*

*Mr H did receive letters in September 2022 advising him that his payment plan was due to come to an end shortly and he would need to repay the arrears to bring his account up to date. However Mr H spoke to an adviser on 27 September who told him that he could contact TSB with a view to making a new payment arrangement after the last payment under the old arrangement was made on 21 November 2022.*

*I can see that Mr H did speak to an adviser on 29 November. That call lasted 90 minutes although a lot of that time Mr H was on hold. As far as I understand it the adviser said that he could stop the payment letters going to Mr H and whilst he did not specifically agree that*

*Mr H could miss the November payment and make a payment in December, he didn't tell Mr H that that would not be acceptable. Nor did he say the accounts would still be defaulted. I think that, considering that Mr H had specifically been told he would not be receiving letters from its payment services, TSB should not have sent a default notice in October 2022, or registered the default. And whilst its letters in September 2022 advised that he needed to pay the arrears, he was told by the adviser that he could set up a new payment arrangement. So whilst this may have been TSB's practice, it was contradicted by the advisers first of all when setting up the payment arrangement and then speaking to him about it in November 2022. Also I note that in the phone call on 2 November, the adviser told him that there was no payment arrangement set up on his record. Although she later checked the correspondence record and agreed that an arrangement had been set up.*

*I have noted that an adviser did attempt to go through Mr H's income and expenditure on 3 November and Mr H appeared to be uncooperative. However the call is unclear and both parties had difficulty in hearing each other. In my view, having told Mr H that a new payment arrangement could be set up, this should have been done in the 29 November call.*

*I am also unclear about exactly what the £200 compensation payment was for, and the final response letter doesn't help in that respect. It appears from the notes to be concerning an error in setting up the payment arrangement but TSB has subsequently said there was no error. The error appeared to be concerning whether the payments Mr H was making would be offset against the arrears or against the capital. And it appears that TSB accepted it shouldn't have passed the loan accounts to the DCA. Whilst TSB has said that the arrears would continue to increase whilst Mr H was not making the full monthly payments, if he was paying more than half the monthly payment in respect of each loan and the interest was frozen (as I understand it was) then the arrears would not increase but would decrease, albeit slowly.*

*My view is that Mr H was left with the impression of that a) he could make the November payment in December, b) set up a new payment arrangement in December, c) the payments he was making would come off the arrears, and d) TSB would not be taking any enforcement action whilst its payment plans were in place and he continued to pay them.*

*My view is that as Mr H was given contradictory information in his call with TSB, it should increase the compensation payment to £300, £200 of that sum having already been paid. It should also remove the default markers on his loan accounts from both its internal and any external databases. It can however register the payment arrangements on any such databases and Mr H should be warned that will affect his credit score. It should further take the payments Mr H was making under the payment arrangement off the arrears rather than the capital. TSB has taken the accounts back from the DCA, which I think was the right thing to do.*

*As I've said, I don't know what has subsequently happened with regard to Mr H repaying his loans. If it has agreed new payment arrangements with him, and he has kept to them, then TSB should not be defaulting the accounts. But I can't say what it should do with regard to the management of the accounts from January 2023 as that all depends on Mr H's circumstances at the time."*

*I made it clear in my provisional findings that I could only look at this matter up until 19 December 2022, which is the date of TSB's final response letter. Whilst TSB wants me to take into consideration what happened after that date I don't think that would be fair for Mr H without having all the evidence from both sides and investigating it. Equally I can't take into account how the matter has affected Mr H since then.*

*On the question of removing the default markers, I understand that a default was registered*

with a default date of 10 December. However this was following the notice given in October 2022. And, as I've said this was premature on TSB's part as Mr H was still making payments under an arrangement. So I still think it would be appropriate for TSB to remove that marker. I recognise however that if Mr H cannot repay the arrears in full and return to the full monthly payment, it's unlikely that TSB will be able to keep on making payment arrangements. I'm conscious that if a default is going to be applied it would be in Mr H's best interests to be done now rather than later.

However I don't know the full details of what has happened since the account was defaulted and TSB took the matter back from the DCA. And I think it would be unfair to assume that TSB was entitled to start the process again in December 2022, so I will still require TSB to remove the current default marker unless Mr H agrees to it staying in place, in lieu of another marker being applied later.

On the question of whether the payments Mr H has made since May 2022 come off his arrears, rather than the capital, I don't see this as a technicality, and clearly Mr H didn't. And referring back to the final response letter this merely set out that it had resolved Mr H's complaint without giving a full response to his complaint. So I don't have any details about what was explained to him when he made his complaint.

As regards compensation, I don't intend to increase this as I think it is a fair and reasonable award to make in the circumstances of this case. I have already advised Mr H that I don't intend to make an award to require TSB to waive any of the arrears. I bear in mind that this decision concerns the default markers, and not any wider issues surrounding the issuing of the loans.

### **Putting things right**

- TSB should pay Mr H a further £100 compensation.
- TSB should offset the payments made under the payment arrangement against the arrears.
- If Mr H requests it, TSB should further remove any default markers on the accounts from its internal and any external databases, entered as a result of the default notice of 29 October 2022.

### **My final decision**

I uphold the complaint and require TSB Bank plc to provide the remedy set out under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 December 2023.

Ray Lawley  
**Ombudsman**