

The complaint

Miss L complains that TSB Bank plc unfairly closed her business account and put her bounce back loan (“BBL”) into default without giving her any notice.

What happened

Miss L opened a business account with TSB in May 2020, taking out a £12,000 BBL a month later. She told us:

- On 18 October 2023, she tried to access her online banking and could not. She phoned the bank and was told her account had been closed.
- She then discovered that the bank had been writing to her old address, so she hadn't received their letters.
- She had tried to change her address with the bank several times and had believed she had done so in September 2022.
- She had also paid Royal Mail to redirect her post until December 2022 to ensure she didn't miss anything.
- She had enough money to pay any missing BBL payments and would have done so had she known the seriousness of the situation.
- She would like her account reopened and to continue paying off her BBL as agreed.
- In October 2023, she had informed the bank of her severe anxiety, PTSD and other health conditions.

TSB said:

- Miss L first went into arrears on her BBL in November 2021.
- In July 2023, Miss L's BBL became three payments in arrears.
- It had contacted Miss L by phone three times in August 2023 and sent regular texts advising there was a BBL payment due.
- In August 2023, in accordance with standard procedures for arrears cases, it sent a letter of formal demand requesting full repayment of the loan. This letter said that TSB had used the credit balance of £124 in her current account to reduce the BBL balance. And it said that if she didn't settle the amount outstanding in full within 28 days, the bank would transfer the BBL to their Recoveries department and close her business account.
- In September 2023, it had closed Miss L's business account and used a further

balance of £335 to reduce the BBL debt. It had then transferred the BBL to an external debt collection agency.

- In October 2023, it had responded to Miss L's complaint. It had explained that they did not think they had made an error.

I issued a provisional decision on 4 July 2024. I provisionally upheld the complaint and said, in summary:

Was Miss L fairly notified about the arrears on her loan?

First, I thought it was clear that Miss L knew that there were arrears on the BBL. I said this because the first payment in arrears was in December 2021. I'd seen a copy of a letter sent by the bank reminding her that the arrears had not been cleared in April 2022. Miss L hadn't told us her exact moving date, but this letter was sent before any attempts that I'd seen to change her address. The bank had also sent evidence of a number of texts sent to remind Miss L, as well as emails. And I could see that one of her phone calls to the bank was prompted by the receipt of a text, so I was satisfied she was receiving the texts and phone calls at least.

I could also see that Miss L spoke to the bank in February 2022, May 2022, August 2022 and February 2023 about the arrears. In the May 2022 call, it's clear that Miss L wanted to repay the arrears (one month at that stage) but was told she could not do so until the bank had gone through income and expenditure checks. She declined to do this at that point, as she said she didn't have time.

All of this is to say that Miss L knew that she was in arrears and I thought the various communications and phone calls she received would have left her in no doubt that this was something that needed resolving. I appreciated that she thought the bank made it difficult for her to do that, with its affordability checks, but I don't think this took away Miss L's responsibility to keep the loan up-to-date. My provisional conclusion regarding the arrears was that the bank sent Miss L the appropriate notifications and made sufficient efforts to keep her informed by using different forms of communication.

Did the bank act fairly in exercising its Right of Set Off?

Miss L also complained about the bank's use of the balance on her current account (twice, in fact, once in August for £124 and once in September for £335) so I briefly explained why the bank was entitled to take that action. This is known as a Right of Set Off. In the case of Miss L's BBL, it was included in the agreement she signed in section 3, clause 7.4, which said:

"The Bank may use any credit balance there may be on any of your accounts held with the Bank towards payment of any amounts owed by you to the Bank under this agreement without notifying you beforehand, whether such credit balances are in sterling or any other currency or are deposited for fixed or determinable periods".

This clause in my view made it clear that no notice was required for the bank to exercise its right to set off balances in the current account against the BBL. I didn't think there was anything unfair about including this clause, since it is common banking practice. And I didn't think the bank did anything wrong in choosing to exercise its rights under the agreement.

Did the bank make an error regarding the change of address?

Miss L's main complaint seemed to be the closure of her business account, which she argues was without notice, as she didn't receive any letters from the bank.

TSB has provided a copy of the formal demand it sent to the address it had on record on 12 August 2023 regarding the BBL. This said:

“As a result of your failure to pay the amounts owed by you to the Bank, an Event of Default has occurred as set out at Clause 6.1 (a) of your BBL Agreement.

We therefore give formal notice to you that we have cancelled our obligations to lend money to you under the BBL, and that your loan is now repayable on demand”.

It went on to explain that they had used the balance of £124 in the business account towards repayment of the amount demanded. Later, it said:

“If you fail to pay the sum of £10,178.66 or fail to provide us with acceptable repayment proposals within 28 days of the date of this letter we will transfer your account(s) to our Recoveries department and report a default including your full name and address and details of the outstanding debt, to the following Credit Reference Agencies... Default information registered against you may affect your ability to obtain credit in the future.

If your account is sent to our Recoveries department, your business account(s) ... will be closed with immediate effect and we request you kindly return any cheque books and debit cards in your possession”.

I thought this wording was very clear and would have given 28 days' notice of the bank's intention to close Miss L's business account, if it was received. However, it was also clear that Miss L did not receive this letter. I said this because she was unaware that her current account had been closed when she phoned the bank in October 2023.

This brought me to the question of Miss L's address change and who was at fault in the formal demand going to the wrong address. I thought this complaint turned on this question. If Miss L failed to notify the bank, then it would not be fair to blame the bank for the fact that she didn't get any notice that her business account would be closed. However, if she did notify the bank, then the bank had unfairly failed to provide a notice of default to her.

After our investigator gave her initial opinion on Miss L's complaint, Miss L provided some additional evidence regarding changing her address with the bank. On 9 September 2022, TSB sent her an email saying “thank you for contacting TSB to update your business banking details” and explaining that there was a two stage process to do this, involving first confirming her identity and then completing a form. She had also provided a copy of the “update your business details” form, which should only have been sent to her if she had successfully completed the identity confirmation. This is signed and date-stamped 12 September 2022. There is then a further email from the bank, which says “you're done signing” the form.

I found this evidence persuasive that Miss L went through the correct process to change her address with the bank. I could also see that in a phone call to the bank in September 2022, Miss L mentioned having completed the change of address form, which is consistent with the above.

My provisional finding on this matter was that Miss L had completed the bank's process as far as she knew. There was no evidence to suggest that the bank had told her she needed to do anything further and if they had, I would expect this to be recorded in the bank's records. I also thought that when she mentioned the change of address in September 2022 on the phone, the bank should have double-checked the change had occurred at that point.

It's impossible to know exactly what happened that led to a partly automated process not being completed. But my conclusion was that it was more likely than not that there was either a technical "glitch" or a bank error that led to the bank not updating the address record. As a result, TSB had therefore effectively not informed Miss L of the default of her loan and not given her notice of their intention to close her business account.

And what were the implications of the change of address error?

At section 3, clause 6.1, the BBL agreement said:

"The events listed in (a) to 0 of this Clause 6.1 are called "Events of Default". As soon as an Event of Default happens or at any time thereafter, by giving notice to you, the Bank may cancel any obligations it has to lend money to you and may also make the loan become repayable on demand. When the loan is repayable on demand, you must repay the loan to the Bank together with all interest which has accrued on the loan and any other amounts owing under or in connection with this agreement as soon as the Bank requests you to pay these amounts. The Bank may do this at the time the loan becomes repayable on demand or at any later time.

Events of Default

(a) you fail to pay when due any indebtedness owed by you to the Bank within 30 days"

It was clear that Miss L had failed to pay when due indebtedness owed to the bank, because her BBL had been in arrears for some time. However, in the circumstances here, I had found that the bank did not give notice to Miss L, because the notice was sent to the wrong address. This meant that, whilst the bank was entitled to declare an event of default, it had not in fact done so. It followed that I didn't think it was fair for TSB to then close Miss L's current account or transfer the BBL to a debt collection agency.

I'd thought carefully about what the bank should do to put right its errors in this case. Miss L had suggested the bank should stop pursuing her for the loan. But she had had the benefit of the BBL funds and I didn't think that TSB's error affected her responsibility to repay her debts. Our usual approach was to seek to put complainants back in the position they would have been in were it not for the bank's mistake. In this case, that position would be that Miss L's BBL would still be with the bank, in arrears, and she would still have a current account.

My provisional thinking was therefore that TSB should recall the BBL from the debt collection agency and reinstate it as a “live” loan, albeit one that is now considerably further in arrears because Miss L has presumably not made any payments for some months.

Although I believe Miss L has made other arrangements for her business banking, TSB should also offer Miss L the option to reopen her business account if she still wished to do.

Having ensured that its address records are correct, the bank would of course be entitled to reissue its formal demand to the correct address if it so chose. This would give Miss L the chance to repay the loan in full, if she was able to do so, or provide the bank with acceptable repayment proposals within 28 days.

In this context, it was worth mentioning that Miss L was correct in making reference to the Lending Standards Board’s standards for business practice. TSB is a signatory to these standards and in any case, I considered they provided an indication of best practice in this area. I would expect TSB to follow these standards in deciding what action to take with Miss L’s loan. I was particularly mindful here of the information she had disclosed regarding her personal circumstances and mental health. (I hadn’t seen that the bank were made aware of this until after they had transferred the debt to external debt collectors originally).

In the event that acceptable repayment proposals were agreed, either with or without the reissuing of a formal demand, I thought that the bank should amend any information they might have applied to Miss L’s credit records to remove the event of default in August 2023.

That said, if Miss L was not able to take advantage of this opportunity to repay the BBL or provide the bank with acceptable repayment proposals, then I felt it would be fair for the default that TSB recorded in August 2023 to remain in place. This would, in my view, be in Miss L’s best interest if she was unable to pay.

I thought it clear that the bank’s actions in closing Miss L’s business account without providing the required notice had caused Miss L both distress and inconvenience. She had told us about the hours she had to spend updating her invoices and website because of the closed account. I thought if the bank had correctly updated its records and therefore issued the formal demand to the right address, she would have had notice of its intentions and therefore had a chance to open an account elsewhere. In terms of distress, I thought the bank’s actions had compounded the anxiety Miss L was already experiencing. Overall, I was minded to think compensation of £300 for the distress and inconvenience caused was warranted.

TSB did not agree with my provisional conclusions. It made some further comments, as well as providing two call recordings and confirmation that it had checked its mailbox and found no trace of Miss L’s change of address form.

Miss L did not make any further comments.

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 haven’t been persuaded to change my provisional view.

I have listened carefully to the phone calls the bank has sent and considered all its arguments, but I still think that the evidence provided indicates it is more likely than not that Miss L completed the bank's change of address process. The form is completed, signed and date-stamped. The final stage was to click "accept", which should have then sent the form automatically to the bank. I have concluded Miss L must have done that in order to generate the automated "you're done signing" email. If the bank did not then receive the form, then I consider this suggests an error in their process. If there was an error in the form that needed amending, then I would expect the bank's records to indicate as much.

The bank has sent me a phone call recording from the day after this form was completed, where the agent confirmed that the address had not yet been changed. But there was nothing in this phone call, in my view, that suggested the process had gone wrong or the form had not been received – merely that it hadn't been actioned yet.

TSB sent me another phone call recording from February 2023, when Miss L phoned up querying whether she had any missed payments. The agent explains clearly that she has arrears from December 2021 and July 2022. He also explains that she cannot simply let the loan run in arrears and make the payments from then on, but needs to make up those arrears. This call provides further evidence for the conclusion I had already reached that Miss L was aware of the arrears on the BBL.

My view remains that Miss L was aware she had missed some repayments, but not what the implications of those arrears were. Whilst it was her responsibility to manage her accounts and meet her repayments as they fell due, she had been in arrears for a considerable period without any apparent consequences. I don't think she had any idea that going three payments in arrears would result in the bank issuing a formal demand and closing her business account.

A formal demand is an important legal notice, which in this case, would also have given notice of an event of default. In the circumstances here, my conclusion remains that the bank did not give Miss L any notice of an event of default having occurred. I therefore don't think TSB should have closed Miss L's current account or transferred the debt to its debt collection agents.

Putting things right

My proposed method of putting things right is based on trying to put Miss L back in as close as I can to the position she would be in if the bank hadn't closed her account and put her BBL into default.

As part of this, it's important that Miss L would have been making monthly payments to her BBL for the last year, so she will need to make up that amount, which I understand totalled £1445 as at 22 July 2024, including the earlier arrears.

TSB has suggested that my proposal to put things right might not be in Miss L's best interests. I agree that it might not. If Miss L is not able to make up all the payments she has missed on her BBL, then it might not be in her best interests to resurrect it, only for a fresh event of default to occur. This is because this would then result in her credit file being impaired for longer. Miss L will need to consider this carefully when deciding on whether to accept my decision.

To put things right, TSB should:

- If the BBL has been transferred to debt collection agents, recall it. I note that TSB has said that it cannot physically change it back into a “live” loan, but I am content for the bank to run it manually if necessary, provided Miss L can make payments in the usual manner.
- Offer Miss L the option to reopen her business account if she still wishes to do so.
- Explain to Miss L by phone or email how to change her address and follow up to ensure it works.
- Once it has the correct address, write to Miss L to explain how much the BBL is in arrears and what she must do repay those arrears.
- In the event that acceptable repayment proposals are agreed, either with or without the reissuing of a formal demand, the bank should amend any information they might have applied to Miss L’s credit records to remove the event of default in August 2023.
- For the reasons set out in my provisional decision and detailed above, pay £300 for the distress and inconvenience caused.

My final decision

I uphold this complaint and direct TSB Bank plc to put things right as 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 23 August 2024.

Louise Bardell
Ombudsman