

The complaint

Mr C and Miss K complain that TSB Bank plc reported a default to Mr C's credit file following Miss K entering into an Individual Voluntary Arrangement (IVA). The complaint relates to an overdraft in joint names.

What happened

Miss K entered into an IVA in December 2023. The joint overdraft account was included as part of the IVA.

Mr C and Miss K say they weren't told that the default would be reported on Mr C's credit file. Miss K says she spoke to TSB on many occasions, where this wasn't explained to her, and she was told to ignore the letters TSB was sending about repaying the debt.

An Investigator considered what both parties had said but they didn't think the complaint should be upheld. They said it was the role of the Insolvency Practitioner (IP) to provide advice about the IVA. They also said that both Mr C and Miss K were jointly responsible for the overdraft – so when it wasn't repaid in line with the letters TSB sent, it wasn't unfair of it to have defaulted the account and reported this to the Credit Reference Agencies (CRAs).

Mr C and Miss K didn't agree with the Investigator's view. Miss K said she'd made many calls to TSB to question why they were receiving the letters, and she was told this was usual when an IVA was granted. She said if they'd have been made aware that Mr C was still responsible for the overdraft, the situation would have been rectified.

Because an agreement couldn't be reached, the complaint has been passed to me to decide on the matter.

Before coming to this decision, I contacted TSB to see if it would consider removing the default for Mr C, given that Mr C and Miss K have provided this Service with a letter from Miss K's IP that says it didn't inform Miss K about Mr C's joint liability to repay debt that was jointly owed. TSB responded and asked Mr C to provide some more information before it would consider the request. Miss K responded on behalf of Mr C. I put this information to TSB, however it hasn't responded by the deadline, so I've taken this to mean that it won't 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.

Having considered all of the available evidence, I won't be upholding Mr C and Miss K's complaint. I appreciate this decision will come as a disappointment to them, however I will explain my rationale below.

Mr C and Miss K have provided a copy of a letter the IP addressed to Mr C. This states:

“...Mr C was not informed that his joint and several liability to repay a debt owed jointly and severally by Miss K and Mr C did not cease following the approval of Miss K’s IVA. Because of this misunderstanding Mr C ceased repayments of this debt which has then resulted in a default on Mr C’s credit file and a CCJ being applied...”

So, I’m satisfied that the IP didn’t explain to Mr C and Miss K what would happen if repayments towards the overdraft ceased.

But this complaint is about TSB, and whether they acted fairly and reasonably in defaulting the account, and I’m satisfied it did.

The terms and conditions of Mr C and Miss K’s overdraft facility was that they are jointly and severally liable to repay anything owed on the account. This means that TSB can request repayment of the facility from either party, which is repayable on demand at any time.

When TSB was notified Miss K had entered into an IVA, it stopped chasing Miss K for repayment of the debt, but instead pursued Mr C. As I’ve said, the terms and conditions of the joint account allow it to do this. TSB sent Mr C letters regarding repayment of the overdraft. The letters made it clear that it required repayment of the outstanding overdraft balance, and failure to do this could result in information being reported to the CRAs. So, overall, I think the letters TSB sent to Mr C made it clear that not repaying the overdraft could result in an impact to his credit file and it subsequently reported a default to the CRAs.

Miss K says she called TSB on many occasions since January 2024. She says she wasn’t told that a default could be recorded for Mr C, and she was told to ignore the letters she was receiving. We have asked TSB to locate the calls Miss K has referred to, and it has been able to provide a copy of two calls Miss K had with it. One is from April 2024, and the other from May 2024.

Miss K called TSB in April 2024 following one of the letters it sent about repayment of the overdraft balance. She asked why TSB was still sending letters when the account formed part of her IVA. The agent explained to Miss K that these letters were for her records. The agent didn’t tell Miss K to ignore the letters, as she’s suggested. The letters that were sent about the repayment of the overdraft were addressed only to Mr C – that’s because he was the only party who was being pursued for the debt given that Miss K had entered into an IVA. So I don’t think the information the agent provided Miss K over the phone was incorrect. Had Mr C contacted TSB, I would have expected it to have let him know that he was still liable to repay, but based on the evidence I have, I don’t think he did this.

The call from May appears to have happened after the debt was passed to a debt collection agency and was following the complaint Miss K made to TSB. This call doesn’t appear to be following the letters Mr C and Miss K received and I’m satisfied the agent didn’t provide any incorrect or misleading information on this call.

I understand Miss K says she made many more calls to TSB since January 2024, however, TSB doesn’t have a record of these, so it’s difficult for me to know with any certainty what they were told about the debt. In any event, TSB was contacting Mr C about repayment of the debt, not Miss K.

Even if I were to accept that TSB told Miss K to ignore the letters (for clarity, I’m not saying it did), I would need to consider what the impact this information would have had on Mr C and Miss K. Mr C and Miss K said that the information they got from TSB caused them to take no action when they received the demand for repayment. They’ve explained that if they had known Mr C would have a default recorded against him, they would have taken action to rectify the situation.

While I accept that Mr C and Miss K might have tried to rectify the situation, I don't think it likely they would have been able to rectify the situation in the way TSB asked them to – by repaying the full amount. I've seen no evidence to suggest that the full outstanding balance could have been repaid at the time. So even if I accept that the information TSB provided could have been better, I'm persuaded the account would likely have defaulted regardless. I have noted that TSB's letters did say it 'may' come to a payment arrangement, however, there is no guarantee that this would have avoided the account defaulting.

In addition to what I've said, when I wrote to Miss K, I asked if they would be able to repay the debt in full, without leaving them in financial difficulties, in the next 30 days. Miss K confirmed that they wouldn't be able to do this. While I accept that I have asked the question about their circumstances now, and not at the time of the default, this does lead me to find that on balance, and in the context of all the other information I've seen, I don't think it likely Mr C would have the means to have been able to repay the overdraft balance at the time TSB was demanding it.

My final decision

For the reasons set out above, I don't uphold Mr C and Miss K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Miss K to accept or reject my decision before 2 May 2025.

Sophie Wilkinson
Ombudsman