

The complaint

Mr O believes TSB Bank plc unfairly defaulted his current account and he's unhappy with their delay in responding to his subject access request (SAR).

What happened

TSB defaulted Mr O's account in January 2020 when he didn't repay arrears and charges on an unarranged overdraft. At the time of the default the account was £435.51 overdrawn.

TSB wrote to Mr O in May 2023 to explain that they'd carried out a review and believed £320 worth of interest and charges had been incorrectly added to his account in 2019, after they had sent him an "arrears notice". So, TSB refunded this amount to Mr O's account along with 8% simple interest, reducing his outstanding balance to £36.21.

A year later, Mr O contacted TSB to complain they had defaulted his account unfairly. Mr O believed the defaulted amount had been made up entirely of invalid charges and so the account should never have been defaulted. He also raised a SAR.

TSB looked into the complaint but explained even with the refund and the added interest, this was not enough to cover the debt on Mr O's account. As no payments had been made towards the account since 2019 – the default remained valid, and so TSB couldn't agree to remove it. However, TSB did recognise there had been a delay in dealing with his SAR so offered Mr O £25 compensation. Mr O remained unhappy with TSB's response and with the delays in receiving his SAR, so he brought his complaint to our service.

I reviewed the complaint and issued a provisional decision. I've reproduced the findings from my provisional decision below.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'd like to say from the outset that I believe Mr O's account was fairly defaulted. However, from everything I've seen, this should have been done sooner. I'll explain why.

Default

From reviewing Mr O's statements, I can see that in March 2019 he made a payment of approximately £40 which exceeded the amount of money he had in his account. In line with the terms and conditions, to which the bank says Mr O agreed when taking out the account, TSB honoured the payment and provided him with a temporary unarranged overdraft. The bank's records also indicate they wrote to tell Mr O this on the same day the payment was made. The letter explained that the debt needed to be repaid within 30 days and, if that didn't happen, the bank would tell the credit reference agencies that the account was in arrears. The letter also set out the unarranged overdraft fees and interest.

TSB have shown they wrote to Mr O on numerous occasions about the outstanding balance on his account and warned about the possible impact to his credit file, including that the

account may be defaulted. As Mr O didn't repay the outstanding balance, charges were applied. The bank sent further letters to Mr O, starting in May 2019, which further explained what Mr O owed, the charges that had been added and the steps the bank would take if the debt wasn't repaid. This included the possibility the account would be defaulted and the account status reported to the credit reference agency. The letter also encourages Mr O to get in touch and explained that support was available if he needed money advice. The bank's contact notes also suggest they tried to contact Mr O by phone more than once. When no payments were received, his account was closed, and a default was reported to the credit reference agencies in January 2020.

Mr O has questioned the letters and notices that were sent to him and has asked for proof of delivery from TSB. However, we wouldn't expect a bank to send this type of correspondence via recorded delivery and as TSB have highlighted – it would be too costly to communicate in this way with all their customers, which I accept. TSB have provided us with copies of the letters that were addressed to Mr O and contact notes which detail some of the letters. It's not clear to me why TSB doesn't have contact notes – or simply hasn't shared them with me – from before June 2019 given the events in question started in March 2019. And I invite them to provide any other notes they hold in response to this provisional decision. But, in any event, I note all the letters are correctly addressed to the same address that we also hold for Mr O. And, on the balance of probabilities I think it's more likely than not these letters were sent. I also think it's unlikely that none of these letters were received by Mr O. TSB have also provided contact notes to show Mr O called and discussed the debt with them in October 2019. So, I'm satisfied Mr O was aware at that time there was an outstanding balance and the possible consequences and is likely to have been aware of the position for some time.

As noted above, in 2023 TSB proactively reviewed Mr O's debt and decided they shouldn't have added any further fees or charges to the debt after they had issued what they call an "arrears notice" in May 2019. The bank decided to refund £320 of charges which reduced the debt from the £435.51 defaulted amount to £115.51. This is just 2p less than the £115.53 debt that was reported in the 25 May 2019 "arrears notice" that the bank sent to Mr O. This amount was made up of the original £35.55 overdrawn amount that resulted from Mr O's payment and £80 worth of charges that were applied in line with the terms and conditions of the account, as he didn't repay the debt or contact TSB to make repayment arrangements. I'm satisfied those charges were fairly applied. With the added 8% interest that was applied to the refund, this brought down the outstanding balance further – but there remains, following TSB's review in 2023, an outstanding debt of £36.21 that Mr O needs to repay.

So, I can't agree with Mr O's suggestion that it was only due to the incorrect fees that the default was triggered on his account. Had the charges and interest been suspended after the May 2019 letters, the account would still have been overdrawn by £115.53. I'm satisfied TSB gave Mr O fair warning about the debt and offered him appropriate support before the account was defaulted. And I think it was fair for TSB to default the account when no repayments were received.

However, I do believe that TSB should have defaulted the account sooner. Normally I'd expect to see an account to default after a reasonable period without repayment or other engagement from the consumer and in line with the letters and deadlines the bank has set. As I've already said, I can see there were numerous attempts to contact Mr O after the account went overdrawn on 19 March 2019, but TSB received no response. On 2 July 2019 TSB explained they would be taking further action and would be defaulting the account if they hadn't heard back from Mr O within the next 13 days. So, I think they should have done so on 15 July 2019, because Mr O didn't get in touch.

TSB have noted that Mr O called them on 14 October 2019 and explained that he hadn't

been monitoring his account, but he would be able to repay the outstanding balance at the end of November 2019, so they allowed him further time to do so. But Mr O didn't make any further repayments and TSB later issued formal and final demand letters to him on 3 and 25 December 2019, which gave him a further 12 days to make repayment, but the account still wasn't defaulted until 15 January 2020. TSB haven't explained why they didn't follow through promptly after setting clear deadlines for repayment at various points in time. I also think the account should have already been defaulted by the point when Mr O got in touch in October, so I don't agree with TSB's arguments.

Given the above, I'm currently minded to instruct TSB to backdate the default to 15 July 2019.

Mr O has explained the impact the default has had on him financially over the past five years. But as I think the account was fairly defaulted, I can't fairly tell TSB to compensate him.

Subject Access Request (SAR)

I recognise Mr O is unhappy with the delay and the service provided by TSB in actioning his SAR. He's explained that this delay impacted his ability to bring a complaint to our service sooner and prepare his case effectively.

I agree, as does TSB, there was a delay in responding to Mr O's SAR. However, I've not been persuaded that the impact of this delay has caused Mr O any significant harm or impacted his ability to bring a complaint to our service.

It is also not our role to fine or punish a business where a mistake has been made. My role is to assess the complaint and if the business has made an error assess how I think they should put things right. And in the circumstances, I'm satisfied the £25 compensation the bank have already offered is fair.

Following my provisional decision, we wrote to both parties to correct a date in my summary and confirmed I intended to instruct TSB to backdate the default to 15 July 2019.

TSB responded – they accepted my provisional decision and provided the further notes I requested in my provisional decision. I have enclosed copies of these with my final decision, for Mr O's information – which I anticipate he may already have, following his SAR that he raised with TSB.

Mr O responded and whilst he was pleased I'd recommended a different outcome to that of our investigator, he didn't think my provisional decision had gone far enough. He said in summary:

- He was unhappy I'd reached a decision without complete notes from TSB.
- The decision didn't take into account the significant financial harm he's suffered from an inflated default balance, which impacted his ability to get credit.
- He believes the default should be removed altogether and he should receive meaningful compensation.
- The decision didn't recognise the severity of the delays he experienced when waiting for his SAR, which wasn't a "small" delay.

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've carefully considered all the points that Mr O raised in response to my provisional decision, but he's not said anything significantly different to what he's said previously. I've also reviewed the further notes from TSB, which I'll address below, but again these haven't caused me to reach a different conclusion to the one I reached in my provisional decision. I appreciate Mr O will be disappointed by this, but I'll explain why.

Mr O has questioned how a provisional decision was fairly reached with limited information from TSB. And I appreciate how strongly Mr O feels about his complaint. But where evidence is incomplete and matters are in dispute, my role is to make a decision based on what I think is most likely to have happened – keeping in mind everything I've seen and have been told by both parties. The notes and records TSB had previously provided persuaded me that it was more likely than not, they sent the relevant letters to Mr O about his account. The notes also detailed a phone call Mr O had had with TSB in October 2019. And so, even with limited notes from TSB at the time, I was satisfied on balance that Mr O was likely to have been aware of the situation of his account for some time.

The further notes TSB have since provided, from March 2019 onwards, show:

- That earlier letters were also more likely than not to have been sent to Mr O.
- Two other phone calls that took place between Mr O and TSB on 29 May 2019 and 13 June 2019. On both occasions, the notes say Mr O said he'd be able to make a payment at a later date – but no repayments were subsequently made. And on both occasions the notes say TSB told Mr O about the possible consequences and charges that may apply.
- At the time of the first call the outstanding balance on the account was £115.53, which was before any of the charges, that were later refunded, had been applied. And in the second call, TSB's notes say they agree to amend a recent £80 charge as Mr O has said he will try to clear the balance.

So overall, I remain satisfied that Mr O was likely aware of the status of his account for quite some time. And I also think TSB were actively trying to support Mr O and help him address the outstanding balance on his account in order to avoid further consequences.

Mr O has said he's suffered significant financial harm as a result of the default and this has impacted his ability to get credit – but it remains that I consider the default to be valid and fairly applied. I also haven't been presented with anything to demonstrate that in these circumstances a larger defaulted balance prevented Mr O from accessing credit, versus if the later charges hadn't been applied. I also note over the years Mr O hasn't tried to mitigate his circumstances by paying off some or all of the outstanding balance which may have improved his financial situation. So, it follows that I can't fairly tell TSB to compensate Mr O. But for the reasons outlined in my provisional decision, I do believe that TSB should have applied the default sooner.

Finally, as I've already acknowledged, Mr O did experience a delay in receiving his SAR. But I've not been persuaded this has caused any harm or impacted Mr O's ability to bring a complaint to our service or stopped him providing further information to us throughout our process. As I've already outlined, it's not our role to punish TSB for a delay in actioning a SAR. So, I'm satisfied the £25 TSB have offered is fair.

My final decision

My final decision is I partially uphold this complaint.

I instruct TSB Bank plc to backdate the default on Mr O's current account to 15 July 2019 and pay him £25 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 17 April 2025.

Laura Davies
Ombudsman