

The complaint

Mr F complains TSB Bank plc has acted unfairly in relation to an account and overdraft he held with it.

What happened

Mr F held a current account and overdraft with TSB. In 2016 TSB closed his account and passed the outstanding overdraft debt to its recoveries department.

In 2017, Mr F raised a complaint with TSB, in summary saying:

- TSB unlawfully demanded repayment of the overdraft as it did not send a notice as required under Section 76 of the Consumer Credit Act 1974 (CCA)
- It unlawfully terminated his overdraft facility, following its decision to close his account. As it didn't provide notice as required under Section 98 of the CCA.

It issued its first of several final response letters in December 2017. In summary this said:

- The Consumer Credit Act 1974 CCA, didn't apply to Mr F's current account so there had been no mistake in the process it followed in defaulting and closing the account.

Mr F didn't agree and continued to correspond with TSB, explaining why he considered the CCA did apply. He later raised concerns that the debt had been passed to a third party. In April 2018 TSB issued a further final response letter. Among other issues, this said:

- The account remained with the third party and Mr F would need to contact it about repayments. However, it agreed it had provided incorrect information about this previously and offered £25.
- It also said, in relation to his previous complaint: *"I can confirm a final response was issued on 7 December 2017 and your further points have been added to this concern which will be addressed in due course."*

Mr F says, conscious of the limited time to refer a complaint to this Service, he contacted us around June 2018. He says at the time it was agreed our Service's investigation would be put on hold until he'd received what he considered to be a sufficient response from TSB. As no response was received, Mr F contacted TSB in February 2024 to raise a further complaint. In this he said he was complaining about two matters:

- TSB had failed to do what it said it would in April 2018, namely respond to the further complaint points he raised when he received TSB's final response in December 2017.
- TSB hadn't added one of his emails to his complaint file – which he'd become aware of after making a Subject Access Request (SAR) in 2023.

TSB issued a further letter in March 2024. In summary this said it had responded to his complaint in December 2017 and unless he raised any new issues it wouldn't be responding again on this matter.

Unhappy, Mr F contacted this Service and initially raised two issues:

- TSB hadn't done what it said it would in April 2018, by responding in further detail to his complaint
- TSB hadn't added one of his emails to his complaint file

TSB said it didn't give consent for this Service to consider Mr F's original complaint, as it had been more than six months from December 2017 and April 2018, when it issued its final response letters. So it considered Mr F had brought the matter to this Service too late.

An Investigator here reviewed matters, but concluded this Service didn't have the power to investigate, as Mr F's complaint was about complaint handling. They also later said our Service wouldn't be able to consider Mr F's original complaint about the overdraft due to the time that had passed.

Mr F didn't agree. He said while the matter about emails being added to his complaint file had been resolved, he still considered our Service should investigate the initial complaint from 2017, which he'd initially raised with this service in June 2018. This being that TSB had acted unfairly by demanding early repayment of his overdraft, terminating the facility without the correct notices, closing the account and passing it to its recoveries department. And where the account was subsequently sold to a third-party.

Our Investigator further explained it wasn't appropriate for this Service to consider a complaint so long after Mr F had initially brought it to us. And had he wanted us to look into things, we would have expected Mr F to contact this Service within a reasonable timeframe – which he didn't do. Later confirming they were recommending Mr F's complaint about this be dismissed under DISP 3.3.4AR.

Mr F didn't agree and in summary said:

- Under CONC 7.5.3R TSB were required to respond with clear justification and/or evidence to his complaint. And he was assured a response would be received. So he considered this Service had the jurisdiction to consider this.
- Our Service could not dismiss his original complaint under DISP 3.3.4AR as more than three weeks had passed since this Service received a complete complaint file, and as such, it was now too late.

As no agreement could be reached, the complaint was passed to me to decide. I issued a provisional decision that set out the parts of this complaint I thought this Service could and couldn't consider. And what I thought a fair outcome, to those parts we could consider, would be.

In relation to this Service's jurisdiction, in summary I said:

- Mr F raised his complaint with this Service within six months of TSB issuing its final response letter. And as such, on this point, we could consider it.
- Parts of Mr F's original complaint we couldn't consider: TSB didn't address his complaint in sufficient detail; it didn't respond to further complaint points when it said it would; and failed to add emails to his complaint file, weren't something this Service could consider. That's because they related to complaint handling, which isn't an activity listed under our rules.

Both TSB and Mr F confirmed they accepted my provisional decision in relation to this Service's jurisdiction and what we could and couldn't consider. Mr F also confirmed he'd

previously withdrawn his complaint about information added to the complaint file and that it now wasn't necessary to issue a jurisdiction decision relating to the remaining aspects.

As all parties agreed on what this Service could and couldn't consider, there's no need for me to make further comment on that. I think it's therefore appropriate I move forward to issue a final decision on the aspects of this case this Service can consider.

I also explained that I thought it was appropriate to consider these aspects of Mr F's complaint, rather than dismissing them – as our Investigator recommended. I said that because, even when there is limited information, this Service can still consider a complaint. And based on what I'd seen, this wasn't a complaint that had been considered previously.

In relation to what I thought this Service could consider, my provisional decision in summary said:

"What we can consider and my response to that

Mr F says:

- *TSB unlawfully demanded repayment of the overdraft as it did not send a notice as required under Section 76 of the Consumer Credit Act 1974 (CCA)*
- *It unlawfully terminated his overdraft facility, following its decision to close his account. As it didn't provide notice as required under Section 98 of the CCA.*

While there is very limited information available in this case, given the time that has passed, that isn't unreasonable.

Based on what I do have, Mr F held a current account with TSB and in 2015 it appears to have made a decision to end that relationship with him, after temporarily increasing his overdraft limit.

I've seen a letter from 7 December 2015 where TSB explain it had temporarily increased his overdraft limit to £3760. But that it would be reduced regularly, by six monthly reductions, and then removed completely. However, a few days later it writes again to say, as its banking relationship with Mr F has "irreversibly broken down", it would be withdrawing his banking facilities.

It appears this happened in February 2016, at which point TSB wrote to Mr F again explaining the overdrawn amount of £3,735.99 needed to be repaid in full within 21 days.

Mr F says TSB didn't send notice, as required and subsequently defaulted the account and passed it to a debt collection company. While I think the CCA does apply to overdrafts, unlike TSB said, I'm not currently persuaded the parts Mr F has referenced, namely section 76 and 98 apply here as these only apply where a period of the agreement is specified – which isn't the case for overdrafts. I appreciate Mr F's argument is that here, TSB had defined the overdraft period as being six months – although it's not clear why that was.

But in any case, whether the sections he's referred to apply or not, doesn't change the outcome here. That's because the letter of 10 February 2016 does reference it to be a formal demand and it seems fair and reasonable that because TSB had chosen to close his account any subsequent overdraft would also be repayable. TSB were required to send a formal demand of payment, and based on what I've seen I think it did that here.

What I don't know here, is why Mr F's relationship with TSB had broken down to such an extent it decided it would close his account. But that is something it's entitled to do, in the same way Mr F could have chosen to end his relationship with TSB.

I appreciate this will come as a disappointment to Mr F, as he's put a considerable amount of time and effort into this complaint. That said, it's also difficult to understand how Mr F wants matters resolved here. Due to the time that's passed it's simply not possible to say why TSB made the decision it did.

But as I've explained, based on the limited information that is available, while TSB chose to close his account, and recall the overdraft within the six-month timeframe it had previously set out, I haven't found that it made an error in doing so. And as repayment wasn't made, the account was defaulted and eventually sold – which isn't unreasonable. As such, I don't intend to uphold this complaint.”

Responses to my provisional decision

I invited both parties to respond to my provisional decision with anything further they wanted to add.

TSB responded, accepting my provisional decision and didn't have anything further to add. Mr F also responded but didn't agree with what I'd said.

Mr F provided a substantive response, in which he set out in detail, why he didn't think TSB had acted fairly. In summary he said he was complaining that:

- TSB closed his current account unfairly in 2016, saying it didn't do so in line with industry guidance and considers this was due to the number of complaints he'd raised with it.
- TSB acted unfairly in terminating the overdraft for several reasons. Most notably, he said TSB acted unlawfully by failing to serve a notice of default under Section 87 (1) of the CCA. In addition, he says TSB: Demanded payment when the account was still open; demanded payment within 21 days, rather than 30; miscategorised the security of his overdraft; and alleged he owed more than he ultimately did.

Overall Mr F considered this meant TSB acted unfairly.

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've reached the same outcome as set out in my provisional decision.

As explained previously, I have read and taken into account all of the information provided by both parties, in reaching my decision. This includes the additional information Mr F has provided. As such, where I've not mentioned something that's been said, it's not because I didn't see it, but because this reflects my informal role in deciding what a fair and reasonable outcome is. As a result, this also means I don't think it's necessary to get an answer, or provide my own, to every question raised unless it is relevant to the crux of the complaint.

As part of his response Mr F has raised several legal arguments and considers some of the failings by TSB mean it acted unlawfully. However, the regulator the Financial Conduct Authority (FCA) sets out the rules for our Service to follow. These rules are set out in the Dispute Resolution: Complaints (DISP) Handbook. DISP 3.6.1 says:

The Ombudsman will determine a complaint by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case.

And DISP 3.6.4 says:

In considering what is fair and reasonable in all the circumstances of the case, the Ombudsman will take into account:

(1) relevant:

(a) law and regulations;

(b) regulators' rules, guidance and standards;

(c) codes of practice; and

(2) (where appropriate) what he considers to have been good industry practice at the relevant time.

The effect of these rules mean I'm required to take into account the information, laws and legislations Mr F has mentioned, but I'm not bound by them. This reflects our informal nature as an alternative to the courts.

Mr F has said TSB has acted unlawfully by failing to serve a notice of default under section 87 (1) of the CCA. On this point TSB said the CCA doesn't apply. Whether TSB has been legally compliant, or not, isn't something I can decide – only a court can. If Mr F wants a decision on whether TSB was legally compliant, he may wish to seek legal advice.

Instead, my role is to consider complaints on a fair and reasonable basis and in doing so I also need to think about whether there has been an unfair or unreasonable impact on Mr F. So even if I could decide whether TSB has acted unlawfully by not serving a notice of default, which I can't, I would also then need to be satisfied Mr F was impacted by this.

As explained, in its letter from February 2016 TSB said:

"This letter is a formal demand for you to repay the balance shown above".

It went on to set out what would happen if payment wasn't made. So based on this, Mr F was aware of what was happening at the time. So while it's entirely possible Mr F may be legally correct in everything he's said, I think this letter, along with other correspondence from TSB clearly set out what would happen, if payment wasn't made. I should also say, by this point TSB had notified Mr F it would be closing his account, it did so in December 2015. It also said the overdraft would be repayable upon closure – 60 days later.

I'm aware Mr F has also said TSB miscategorised the security of the overdraft, by saying in this letter it could use security, such as his house, to repay the outstanding amount. It's not clear why TSB said this, as it appears this was an unsecured overdraft. But ultimately, I can't say it's caused detriment to Mr F, as aside from being mentioned in this letter, TSB don't appear to have treated Mr F's overdraft as secured lending in any case.

Mr F has also pointed to terms and conditions for payment which he says meant he should have been given a 30-day notice period. While I can't see the period of time these terms and conditions refer to or the context in which they would be applied, I agree they say in most cases 30-days' notice will be given before making a change. However, the terms also say "If

we can reasonably do so without prejudicing our interests...". Here TSB had made the decision to close his account, so as explained, its reasonable it also asked for the overdraft to be repaid. But in any event, even had TSB given Mr F the additional nine days he's mentioned, I don't think it would have made a difference, as I've not seen anything to suggest he would have been able to make repayment in any case.

I think it's important to say, while Mr F has pointed to several terms he says TSB hasn't complied with, these should be taken in the context of which they are written, rather than in isolation. For example, he's said the overdraft should only have become repayable in the event of account closure and pointed to terms he considers say this. But on this point, I don't agree. While the terms say TSB will ask for repayment of overdrafts when an account is closed, it doesn't mean it was unable to ask for repayment at an earlier date also. But that said, as explained above, TSB initially told Mr F it would be closing his account in February 2016, that the account wasn't ultimately closed until April 2016 doesn't change the outcome here and in fact means Mr F benefited from having the account open for longer.

I also don't think TSB acted unfairly in demanding repayment of an amount that many years later it decided to reduce. I'm looking at how TSB acted at the time and it wouldn't be reasonable to take into account events that happened many years later when coming to my decision.

Overall, taking everything into account, I don't think TSB acted unfairly in terminating and asking for repayment of Mr F's overdraft when it did. Even if it made mistakes in some of the correspondence it sent, doesn't change the outcome here, as I haven't seen this caused Mr F unnecessary detriment or had a significant impact. Ultimately TSB was able to ask for repayment of the overdraft and explained to Mr F the impact of him not repaying it.

I've also thought about what Mr F has said about the reason TSB closed his account. Broadly speaking he considers this was as a result of the number of complaints he'd made, so says TSB didn't close his account in line with industry guidance. However, on this point, I don't agree.

I say this because, while the letters Mr F has provided show he had raised several complaints with TSB, which it acknowledged, I haven't seen anything to say this was the sole reason it decided to close his account. As explained, TSB can decide to close a customer's account, in the same way a customer can choose to end its relationship with a bank. Here TSB have given Mr F sufficient notice, and I haven't seen it acted unfairly in doing so.

For completeness, I'm aware Mr F has referred to other decisions issued by this Service as well as other documents he's been sent by TSB relating to other accounts he held. However, I must look at every complaint individually, and on its own merit as the individual circumstances can result in a different outcome. And here, having done that, I haven't found that TSB has acted unfairly, for the reasons explained, in either terminating Mr F's overdraft or closing his account.

It might also be helpful to explain, for general understanding, if a default was applied by TSB, I'd have expected that to happen around 2016. And as defaults are only applicable for six years, then I'd expect that to have since been removed from Mr F's credit file.

Taking everything into account, I haven't seen that TSB's actions have caused Mr F detriment, as based on what I've seen, he was unable to make repayment when required. And overall TSB acted fairly and reasonably in asking Mr F to repay the overdraft and close his account. As such, I won't be asking TSB to do anything here.

My final decision

For the reasons explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 10 February 2026.

Victoria Cheyne
Ombudsman