

complaint

Mr B complains that TSB Bank plc did not write off his overdraft debt when his account was defaulted and passed to their debt recovery department in the way they had promised.

He is also unhappy that TSB later told him that he had six to twelve months to update them of his circumstances but then passed his debt on to a debt collection agency before this time had expired.

background

Mr B has an overdraft on an account with TSB which he says he is unable to pay back. He says that TSB told him that they would write off the outstanding balance if his account was defaulted and passed to their debt recovery department.

Mr B's account was closed in August 2016. But instead of writing off the debt in the way Mr B says they had said they would, TSB passed the debt to a debt collection agency.

When Mr B complained about what had happened, TSB recalled the debt. But they wrote to Mr B in September 2016 saying that they did not agree that there had been any agreement to write off the debt. And they said that there is no automatic right for a debt to be written off if a customer is unable to offer any payment, or if no payment has been made before the account is closed.

TSB said they were – at that point – unable to agree to write off Mr B's debt and asked for further information about his income and expenditure, along with any other information that Mr B wanted to be taken into consideration.

And TSB said they would not contact him about payment but that Mr B had to make contact with them in six to twelve months to update them on his situation.

Approximately eight months later in May 2017, Mr B's debt was passed to a debt collection agency again. TSB say this is because they had not heard anything from him. Mr B says this is unfair because he had understood that he had up until twelve months to get in touch with TSB.

Mr B wants the overdraft debt written off and compensation paid for the stress and inconvenience caused by TSB's errors.

Two investigators have considered this case. They both were unable to conclude on the evidence they'd seen that TSB had agreed to write off the debt. And they explained that our service could not tell TSB that they had to write off the debt at this stage. But they did think that TSB should not have passed the debt to a debt collection agency in May 2017. TSB had told Mr B that he had up to twelve months to contact them and they did not wait until this time had passed. It was suggested that TSB pay Mr B £50 compensation to put things right.

TSB was willing to pay this amount. But Mr B did not agree and so this case was passed to me.

I issued a provisional decision in February 2018 where I partially upheld Mr B's complaint.

my provisional decision and findings

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

I explained at the outset that I was aware that Mr B had raised other complaints in relation to this TSB account and that my provisional decision dealt only with whether TSB had agreed to write off his overdraft debt and whether they had passed his debt on too quickly to a debt collection agency in May 2017.

I appreciated that Mr B felt very strongly about this matter. And I was sorry to hear that he had been experiencing financial difficulties and health issues. But I was unable to fairly conclude on the evidence I'd seen that TSB had agreed to write off Mr B's overdraft debt. And I could not tell TSB that they had to write off his debt at this stage.

However, I did think that TSB should not have passed Mr B's debt on to a debt collection agency in May 2017. So I was minded to ask that they take steps to put Mr B back to the position he would have been in had they done what they had said they would in their September 2016 letter. I also considered that a higher sum of compensation was appropriate. I knew Mr B had said that this complaint was not about the money, but I thought TSB should pay a sum that fairly reflects how their actions have impacted him to put things right. I explained my reasons.

writing off the overdraft debt

Mr B and TSB disagree about whether he was told that his debt would be written off if his account was defaulted and passed to TSB's debt recovery department. I had to make my decision based on the evidence and when this appears to be conflicting I have to decide what is most likely to have happened on the balance of probabilities.

TSB had provided their notes on contact with Mr B and also a recording of a phone conversation they had with him. I didn't think this evidence showed that TSB promised to write off the overdraft debt. I appreciated that Mr B said that we do not have phone recordings of every conversation he had with TSB, but I had no reason to consider TSB's contact notes to be inaccurate.

However, I considered what other evidence existed on this point. And I hadn't seen anything in writing that showed that TSB agreed to write off the debt. This would be a significant step for TSB to take and the absence of such evidence added to the difficulty of concluding that any such agreement was reached.

So I was minded to say that on balance I couldn't fairly conclude that TSB had agreed to write off the debt. I appreciated that Mr B would be disappointed. And I also knew that he would've liked me to tell TSB to write off the debt now. But this is not something I was able to do in the circumstances at this point.

Lenders are required to treat consumers sympathetically when a consumer is in financial difficulty and explore options to help get their finances back on track. But this doesn't mean the money borrowed is no longer owed – it remains a legitimate debt. So TSB isn't required to write the debt off, although they may consider it. And I could not tell TSB what decisions they should make about a debt that is owed to them.

passing the overdraft debt to a debt collection agency in May 2017

Following the debt being recalled for the first time, TSB wrote to Mr B in September 2016 and told him:

"...In the meantime our CDR department will not contact you about payment. They will, however, require you to contact them in six to twelve months to update them of your situation. At this point I am unable to say if the debt will be written off".

It would be reasonable to understand from this letter that Mr B had a minimum of six months and a maximum of twelve months to get in touch with TSB. And the whole point of TSB giving him this time and saying that they would not contact him for payment must have been to give Mr B some breathing space. So I didn't think it was fair that they had passed his debt to a debt collection agency in May 2017 before twelve months had expired.

In order to decide the level of compensation that should be awarded for this, I considered the evidence on the impact of TSB's actions on Mr B. The fact that the debt had been passed to a debt collection agency at all must of itself have been stressful. And I could also see that Mr B had made a number of calls to the debt collection agency to try and get the debt back to TSB. I had read the contact notes from the debt collection agency and it appeared they had last contacted Mr B in August 2017. Their notes also said that they had asked TSB to accept the return of his account around this time.

But in an email to our service in November 2017 the debt had still not been recalled and TSB told us then that they would ask for the debt to be dealt with internally. In the same month they said in another email that there was no guarantee that Mr B's debt would not be passed to an external debt collection agency in the future.

In December 2017 they confirmed to our service that the debt had been recalled. And then in that same month, Mr B received a letter from a *different* debt collection agency because TSB had passed the debt on again. Mr B had to get in touch with this debt collection agency and was subsequently told that the account had been recalled.

Taking all of this into consideration, I was minded to find that TSB's actions in managing Mr B's debt had not been fair. So I was thinking to increase the level of compensation that TSB should pay him to £250 in order to reflect the stress and inconvenience caused by their actions over a number of months, as well as the time and expense of any phone calls Mr B had to make.

And if TSB had not already recalled the debt, I thought that this should be done. And I was thinking that Mr B should be given a further four months from the date that he is told that the debt has been recalled, or the date of the final decision in this complaint (whichever comes later), before TSB contact him again to seek payment. This is to give him the overall benefit of the twelve months breathing space TSB had promised in their letter. Before the end of this period, Mr B is to update TSB on his situation with a view to reaching a mutually acceptable agreement on how to deal with his debt.

But I was unable to tell TSB to write off the debt at this point. But I reminded them of the need to deal with Mr B positively and sympathetically when they came to review his circumstances. And I encouraged Mr B to provide TSB with all the information he would like them to take into account, including any relevant medical evidence in addition to information about his financial situation. I said that Mr B needed to be aware that if he did not engage with TSB at that point, TSB may decide quite fairly to pass his debt on to a debt collection agency.

responses to my provisional decision

Mr B accepts my provisional finding that TSB passed his debt to a debt collection agency sooner than they should have. But he does not accept what I said about TSB not having promised to write off the debt. He says that this issue has been ongoing since before October 2015 and this complaint is linked to a previous complaint he had brought to our service. He wants me to listen to all his calls with TSB during 2014, 2015 and 2016. He is unhappy that TSB have previously indicated they will not write off the debt.

TSB accepted my provisional findings. They agreed to pay £250 compensation to Mr B. And they say that Mr B's account is currently held internally. TSB also agreed not to contact Mr B to discuss his account for a number of months, suggesting a date of 6 July 2018. But they reserve the right to follow their normal process after this date which may involve the account being passed to a debt collection agency.

my findings

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

And I have carefully considered what Mr B and TSB have said in response to my provisional decision. I know Mr B will be disappointed, but my findings remain the same.

I am aware that Mr B has expressed concern about our service showing bias towards TSB. And I want to reassure him that this is not the case. We look at evidence from both sides impartially and if a bank has got something wrong, we ask them to do something to put things right. This is what happened in a previous complaint related to this account that Mr B brought to this service.

And in this current matter, I am partially upholding his complaint. I remain of the view that TSB's actions in sending Mr B's debt to debt collection agencies in the way they did were not fair. So I am asking TSB to take steps to put things right.

But having considered everything, I am unable to fairly say on the evidence that TSB promised Mr B that they would write off his overdraft. I shall explain my reasons.

writing off the overdraft debt

I appreciate that Mr B has experienced a number of issues with TSB and that the cumulative effect of this is that he feels he has not been treated well at all. And he wants me to listen to all calls he has had with TSB over a three year period. But this suggests overall dissatisfaction with TSB, rather than a specific point that he was promised that the debt would be written off. And previous complaints about the service provided by TSB have already been dealt with.

Some of the calls Mr B refers to relate to a previous complaint he brought to this service in 2015. This included a complaint that TSB had not offered to write off his debt which was not upheld. This seems to contradict the complaint he is making now, that TSB *did* say they'd write off the debt but went back on that promise.

And TSB's contact notes show Mr B was asking for a settlement quote over the phone in March 2016 which is also not consistent with a promise having been previously been made to write off the debt. I've no reason to consider these notes to be inaccurate. So on balance, it seems most likely that no such promise was made.

However, I consider it likely that TSB mentioned in conversations with Mr B the *possibility* of writing off his debt when discussing the range of options on how his debt might be managed. But this is not the same as a promise being made that this is what they will definitely do.

I appreciate that this is what Mr B would like to happen. And I know he is disappointed that TSB indicated in their September 2016 letter that they would not do this because he did not – at that time – fulfil their criteria for a write off. And they asked for further information on his circumstances. While TSB need to treat him positively and sympathetically and explore ways of getting his finances back on track, this does not mean they are obliged to write off the debt, although they may consider it. But writing off a debt is generally a last resort. And I am unable to tell TSB that this is what they must do at this point.

passing the overdraft debt to a debt collection agency in May 2017

As both parties have accepted my provisional decision on this part of Mr B's complaint, I have little to add here.

TSB have agreed to pay to Mr B £250 compensation. They have also accepted my proposal that they not contact Mr B for payment for some months to give him the breathing space he should have had before. So he will need to get in touch with them by the end of this period to update them on his circumstances.

I remind TSB again that they must deal with Mr B positively and sympathetically when they reassess his account. I appreciate Mr B is frustrated because he says he is in financial difficulty and is experiencing health issues. So I encourage him to provide TSB with all the information about his situation that he would like them to take into account, including any medical evidence. This is with a view to both parties considering all possible options and attempting to reach a mutually acceptable agreement on how to deal with Mr B's debt moving forward.

my final decision

I partially uphold this complaint and direct TSB Bank plc to:

- pay compensation in the sum of £250 to Mr B;
- recall the debt if they have not done so already;
- give Mr B a further four months to run from the date he is told the debt has been recalled, or the date of this final decision (whichever comes later), during which no payment should be requested. This is with a view to Mr B updating TSB about his situation before the end of that period.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 23 April 2018.

Sonia Kalsi
ombudsman