

complaint

Mr and Mrs R complain TSB Bank plc ("TSB") is incorrectly pursuing them for a debt that isn't due.

background

During 2016 Mr and Mrs R received a letter from a debt collection firm seeking repayment of a debt of £155.07. After looking into the matter Mr and Mrs R established the debt was in connection with a bank account held with TSB. They say they were surprised to receive the letter because TSB told them in 2005 the debt was repaid and the account closed. And they hadn't received any contact from TSB for many years, including the period when they moved home and had arranged to re-direct their post for 12 months. Mr and Mrs R say the debt isn't due and complained.

TSB say the debt is in connection with an outstanding overdraft that Mr and Mrs R failed to repay. In 2015 TSB provided information to credit reference agencies that showed they had defaulted and passed the debt to the debt collection firm, which led to the letter being received by Mr and Mrs R in 2016.

Following our involvement, TSB says it took the following actions:

- Reduced Mr and Mrs R's debt from £155.07 to £41.84, by writing off, as a goodwill gesture, the accumulated interest of £113.23 that had built up during the period of non-contact; and
- Treated the default as if it occurred in June 2009, meaning the negative information has been removed from Mr and Mrs R's credit files.

Our adjudicator initially recommended TSB also write off the remaining debt of £41.84 as a goodwill gesture, but changed his mind after TSB said the debt is legitimately due and is not prepared to write it off.

Mr and Mrs R are unhappy with this outcome. To put things right, they want the remaining £41.84 written off. They believe the debt is statute barred because of the time that's elapsed, meaning the debt is no longer due. They requested the matter be referred to an ombudsman to issue a final decision.

my findings

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

Firstly, I'd like to deal with the change of opinion issued by our adjudicator, who initially recommended TSB write off the remaining debt so that there is nothing left for Mr and Mrs R to repay. I'm sorry for any upset this caused Mr and Mrs R. I can understand this must have been unexpected and frustrating for them. But our adjudicators' opinions are not final and if they receive additional evidence this can lead to a change, as happened in this case.

And I'd also like to deal with Mr and Mrs R's opinion that the debt is statute barred. We have no power to declare a debt as statute barred, since this is something only a court can do.

And in any event I haven't seen anything in this case that demonstrates a court has actually declared the account as now being statute barred.

We're an informal alternative to the courts and consider complaints on a fair and reasonable basis. My role is to consider whether TSB has done anything wrong or treated Mr and Mrs R unfairly.

As it stands, TSB say the debt of £41.84 is due. But Mr and Mrs R say it isn't. Where the evidence is unclear or conflicts, I'll look at what's available and the surrounding circumstances – to decide what I think is most likely to have happened.

TSB has provided documentary evidence that shows Mr and Mrs R had an outstanding overdraft of £41.84 in 2007. I haven't seen any evidence that in 2005 TSB told Mr and Mrs R the debt was repaid and the account closed, as they've stated. So in the absence of evidence to the contrary, I'm satisfied TSB's records are an accurate reflection of the account activity.

In my opinion, the key facts of this case are as follows:

- As at 20 November 2007 Mr and Mrs R's account balance was £41.84 in debit.
- Since that time TSB correctly applied interest to the debt of £41.84, in line with the agreed terms and conditions on the account, which ultimately led to the Mr and Mrs R using an unauthorised overdraft due to the accumulation of interest.
- By 2016, with the addition of interest of £113.23, the debt due had legitimately increased to £155.07 – TSB is entitled to pursue Mr and Mrs R for this debt. That interest of £113.23 had built up due to TSB failing to contact Mr and Mrs R for many years.
- But TSB has offered to write off the interest of £113.23 that had built up during the period of non-contact – I think this is a fair outcome and deals with the issue of TSB failing to contact Mr and Mrs R. This is very much to Mr and Mrs R's benefit as – strictly speaking – the interest of £113.23 is legitimately due.
- TSB had offered to treat the default as if it occurred in June 2009, so that the negative information is effectively removed from Mr and Mrs R's credit files – I think this is a fair outcome.
- TSB's actions have effectively placed Mr and Mrs R into the position they were in as at 20 November 2007, when the account balance was £41.84 in debit. Mr and Mrs R had the benefit of that £41.84 at the time. So I don't think it's unreasonable that TSB should expect Mr and Mrs R to repay this outstanding debt.

I realise this remaining debt of £41.84 is a small amount for TSB, but I can't say it should write it off as it has – rightly – argued that it is money Mr and Mrs R owe. I recognise Mr and Mrs R may have genuinely thought the matter had been dealt with. They had no contact from TSB for a long time. And they made arrangements for their post to be re-directed for 12 months after they moved home, so I understand their frustration that TSB didn't contact them during this time.

But taking everything into account, I think TSB has done enough in settlement of the complaint by writing off the outstanding interest of £113.23 and by removing the default information from Mr and Mrs R's credit files – so I don't consider it would be fair or reasonable in these circumstances for me to require TSB to write off the remaining debt of £41.84.

my final decision

My decision is that TSB Bank plc must, if it hasn't done so already:

- reduce Mr and Mrs R's debt from £155.07 to £41.84; and
- update Mr and Mrs R's credit files to treat the default as if it occurred on 1 June 2009

I make no further award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs R to accept or reject my decision before 3 July 2017.

Clint Penfold
ombudsman