

## **complaint**

Mr R complains that TSB Bank plc closed his bank account without explanation and asked him to repay his overdraft in full. He's also unhappy that TSB recorded a default on his credit file. Mr R says TSB didn't tell him about the default.

## **background**

Mr R had a current account with TSB which had an overdraft limit.

In March 2017, TSB wrote to Mr R to let him know it was closing his account. At the time Mr R's account was £3,096.81 overdrawn. TSB asked Mr R to repay the debt in full within 21 days.

Mr R says TSB hasn't treated him fairly because it didn't give him enough notice to repay his overdraft. And it didn't send him a default notice. Mr R also says TSB applied the default too soon and wouldn't allow him to repay his overdraft by making instalments. He says this made things hard for him financially and he wants TSB to remove the default notice from his credit file.

Mr R complained to TSB. On 20 April 2017, TSB issued a final response letter. The letter addressed Mr R's complaint about the closure of his account and repayment of his overdraft. In the letter TSB also told Mr R that it wasn't able to set up a repayment plan so that Mr R could repay his overdraft via instalments. The final response explained that Mr R could refer the complaint to the Financial Ombudsman Service if he wasn't happy with TSB's response to his complaint. And that he had six months to refer his complaint to us.

TSB issued a further final response letter to Mr R on 4 December 2017 which addressed the default being applied to Mr R's credit file. Mr R complained to us on 22 December 2017.

An investigator looked into Mr R's complaint. The investigator didn't think we could consider Mr R's complaint about the closure of his account and overdraft repayment because it wasn't referred to us within six months of TSB's final response letter. However, she said we could look into Mr R's complaint about the default notice.

The investigator didn't uphold the complaint. She said although TSB hadn't issued Mr R a default notice, the bank had written to him on a number of occasions since March 2017 with details of the balance and issued a final demand explaining the consequences of not repaying the debt, which included that legal proceedings could be started to recover the debt and credit reference agencies would be informed about Mr R's failure to repay the money.

The investigator concluded that the bank had acted correctly in applying a default to the account because Mr R hadn't repaid his overdraft within the timescales set out in the final demand letter. Mr R didn't agree. He said he never received a default notice so TSB haven't complied with the Consumer Credit Act. He said if TSB had sent him a default notice, although it would've been difficult he would've cleared the debt. So TSB shouldn't be allowed to register a default against him. As no agreement has been reached the complaint has come to me to decide.

## my findings

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

Mr R says TSB should remove the default from his credit file because it didn't send him a formal default notice. He's also said TSB didn't give him 30 days to repay the debt as required under the terms and conditions of the bank account.

I can understand why Mr R is upset. I'm sorry this experience has made him feel anxious. And that this has been a stressful situation. I also appreciate that Mr R is understandably worried about how this will affect his future. And that it would help him if TSB removed this from his record

Having looked at what's gone on here, I'm satisfied that TSB didn't send Mr R a default notice. Where something has gone wrong we look to see if a consumer has lost out. And to put the consumer back in the position they would've been in had everything gone as it should have. So I've looked to see if there has been any financial loss or detrimental impact for Mr R because he didn't receive a default notice as he should have.

The default was applied to Mr R's account on 19 April 2017. I can see that TSB's account closure department wrote to Mr R on 7 March 2017. It explained that TSB had decided to close his account and that he would need to make arrangements to repay the outstanding balance. The letter explained that it was 'a formal demand' and if payment wasn't received within 21 days TSB may take legal action to recover the debt.

On 15 March 2017, TSB wrote to Mr R again. The letter told Mr R to repay his overdraft within two days. And until payment is made Mr R's account would be passed to their collections centre. The letter also explained that if payment wasn't made Mr R's ability to obtain future credit might be affected. On 31 March 2017 TSB sent Mr R a further letter about his outstanding balance. The letter told Mr R he needed to repay the debt within 14 days. The letter explained that if Mr R didn't repay the money TSB would notify credit reference agencies.

TSB wrote to Mr R again on 20 April 2017 and told him that his account was now being passed to its recoveries department and that a default would be registered on his credit file. I can see that the account was passed to a third party debt recovery agent in April 2017.

Mr R says TSB has breached the terms and conditions of his bank account because he wasn't given 30 days' notice to repay his overdraft. I've looked at the terms and conditions. They state *'overdrafts are always repayable "on demand". This means we can ask you to repay all or part of your overdraft at any time...if we can reasonably do so without prejudicing our interests, including our regulatory position, we'll give you at least 30 days' notice.'* TSB first wrote to Mr R on 7 March 2017 asking him to repay his overdraft. And again on 31 March 2017 giving him 14 days to repay the overdraft, which means Mr R had up until 14 April to repay the debt. So I can't say TSB didn't give Mr R 30 days' notice or treated him unfairly. In fact TSB gave him a little longer to try and repay his debt.

Mr R says because TSB never issued him a default notice it has breached the Consumer Credit Act (CCA) so he says TSB should remove the default from his credit file. The letters TSB sent Mr R don't contain the words *'default notice.'* But in this particular case, even though TSB didn't send Mr R a formal default notice, I've taken the view that it's fair and

reasonable for TSB to have taken the action it has. I say this because all the correspondence sent to Mr R gave him clear information about what would happen to his account. And his credit file accurately reflects that.

I've noted that Mr R rang TSB on 18 April 2017, about his account being closed. From the call note I can see that Mr R told TSB he would repay his account, but he told TSB his account was closed and his credit file was affected. So I'm satisfied Mr R was aware that he had an overdrawn balance which he was liable to repay.

All in all I'm satisfied Mr R ought reasonably to have known his account was in default and the consequences of not repaying his debt. I've also noted that Mr R wasn't in a financial position to be able to repay the outstanding debt until November 2017. So even if TSB *had* sent Mr R a default notice, I've not seen enough persuasive evidence that Mr R would've been in a position to repay the debt within the required timescales. So I can't not receiving a default notice had a detrimental impact on Mr R.

TSB has a responsibility to report financial information accurately. So I would only ask TSB to remove the record if I thought it been registered in error. The circumstances of this complaint are that Mr R had to repay his overdraft. I think TSB communicated clearly with him about the consequences of not repaying the debt. And I also think TSB gave Mr R enough notice before it registered the default. So while I sympathise with Mr R's situation I think TSB were entitled to decline Mr R's request to remove the default from his credit file. The default recorded on Mr R's credit file is an accurate reflection of the account. So I won't be asking TSB to remove it.

### **my final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 19 August 2018.

Sharon Kerrison  
**ombudsman**