

complaint

Mr and Mrs W are unhappy that TSB Bank plc hasn't kept them up-to-date with what's been happening on their current account and has shared their details with a third party without their permission.

background

In 2013 Mr and Mrs W's debit interest was added to their current account which took it beyond its overdraft limit. Mr and Mrs W say the first they knew about this was when a debt collection agency got in touch with them.

Mr and Mrs W don't think TSB had any right to give their details to the debt collection agency. They say they don't have a contract with the agency so won't pay any money to it and they want to arrange repayment directly with TSB. They also want an apology and compensation for their inconvenience.

TSB says it wrote to Mr and Mrs W about their account and the fact it was over the overdraft limit but it should also have sent an "enforcement notice" before closing and defaulting the account. It offered them £75 compensation for not sending the letter and removed the default from their credit file. But the account terms and condition allowed it to use a debt collection agency and it wasn't prepared to recall the debt from them.

Our adjudicator felt Mr and Mrs W should've been aware of the balance on their account. And TSB sent a formal demand letter to their address in December 2014. She also thought Mr and Mrs W were probably given the terms and conditions for their account when they upgraded it in 2007. And those terms and conditions allowed TSB to use a debt collection agency. She felt the bank's offer was fair.

my findings

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

TSB made a mistake when it didn't send the enforcement notice to Mr and Mrs W. So they didn't realise the account would be closed, a default marker added to their credit file and the debt passed on for recovery by a third party. But I don't think the bank needs to do anything more than it's offered – remove the default marker and pay £75 compensation. I say this because:

- Mr and Mrs W would probably have been sent monthly statements for the account at least until they switched to paperless correspondence towards the end of 2014. I've seen in 2013 that, on a few occasions, they paid small amounts into the account when debit interest took the account over the overdraft limit. So it looks like they were – at that time at least – monitoring the account. And they must have known they were close to the overdraft limit and, given the amount of interest they'd been charged each month in the past, that they'd soon go over the limit again. TSB also says Mr and Mrs W must have had internet banking in order to opt for paperless correspondence so they could also have checked on the accounts progress using that facility. Yet they chose not to pay any more money into the account after June 2013.

- Mr and Mrs W hadn't used the account since June 2013. So I don't think they suffered much inconvenience when the account was closed in January 2015. What closing the account did do was to stop any further interest or charges being added so the amount they owed hasn't increased since January 2015. In that way the account closure has worked in their favour.
- The bank's records show it wrote to Mr and Mrs W in December 2014 about the account and this letter probably gave some indication the bank wasn't happy to let the account continue as it was.
- TSB planned to put a default marker on Mr and Mrs W's credit files when it closed the account in January 2015, but it agreed to remove this when Mr and Mrs W got in touch in mid-February 2015. As it can take a few weeks for credit files to be updated, it may be the default never showed and Mr and Mrs W haven't said the account is showing as defaulted now. So although the account has been closed and defaulted – meaning no more interest has been charged – the usual adverse information I'd expect isn't now showing on their credit file. So the defaulted account won't be adversely affecting their credit score.
- TSB's current terms and conditions and its privacy statement allow it to pass on account holders' details to third parties. I also know it's quite common for bank's to use third parties to recover debts. So I don't think TSB did anything wrong, or needed to get Mr and Mrs W's permission, before passing their details to the debt collection agency. Mr and Mrs W would like to see the terms and conditions from when they first opened the account, but the bank no longer has a copy. That doesn't surprise me because the account was opened many years ago and I wouldn't expect the bank to keep historic, expired documents indefinitely. Also, it's not unusual for terms and conditions to be updated regularly and for the updated version to be sent to all account holders. I've little reason to think TSB didn't do that in this case.
- Mr and Mrs W might have repaid the debt on receipt of the enforcement notice and avoided the need to deal with the debt collection agency. But I've no reason to think it will be any more difficult for them to come to an arrangement to repay the debt with the agency than it would have been to arrange this with the bank's internal recovery department.

TSB sent Mr and Mrs W a cheque for the £75 compensation but Mr and Mrs W say they haven't cashed it. That cheque might have expired now. So if Mr and Mrs W now want to accept the money they may need TSB to send another cheque. I'll leave it to TSB and Mr and Mrs W to sort this out.

my final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 15 January 2016.

Ruth Hersey

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