

## **The complaint**

Mr B complains about the service provided by TSB in relation to a current account that was held jointly by him and his mother, Mrs B.

## **What happened**

Mr B holds Enduring Power of Attorney (EPA) for Mrs B, which has been registered with the Office of the Public Guardian. He initially complained to TSB that, in late 2018, he had to go to branch to close Mrs B's ISA – and that it made an error with the postal address and a standing order for their joint current account. It upheld the complaint and sent him a cheque for £300, comprising of £50 for the cost of calling the bank and going to branch plus £250 compensation. It later sent Mr B a cheque for an additional £25.

TSB's response mentioned that the joint current account was now closed. Mr B was unhappy that it had allowed this to happen without his authority. He thought it should provide him with the details of Mrs B's sole account(s) and confirm that he can deal with them due to the EPA. He also wanted TSB to apologise and reimburse the fees he incurred obtaining legal advice.

Our investigator initially said that, although he wouldn't expect TSB to reimburse the legal fees as Mr B could have complained directly, he thought it should reinstate the joint account as it had been prior to Mrs B's request. TSB appealed. It said, if this were to happen, it would need confirmation from Mrs B. Mr B also responded that he had needed legal advice to pursue the complaint, so his fees should be covered.

On further review, our investigator concluded that TSB had acted fairly. He considered TSB's records about Mrs B's branch visit when she requested to close the joint account and transfer the funds to a sole account. Given TSB's duty of care to its customers, he thought it had acted within its broad legal and regulatory duties when accepting her instruction. And that the compensation it had already offered Mr B was fair.

Mr B disagrees. He says that Mrs B may have presented well in branch whilst still not having capacity. And that the EPA had been registered, which only happens when the donor has lost or is losing their capacity to make their own decisions – and there is no application underway to overturn this. So he has legal authority over her affairs.

As no agreement was reached, I'm now making the final decision on how this complaint should be resolved.

## **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.

For the reasons I'll go on to explain, I've decided that TSB acted fairly and reasonably in how it handled Mr B and Mrs B's requests about changing the account. And that the compensation and costs already paid fairly resolve the service issues.

As the current account was jointly held by Mr B and Mrs B, the starting point – in line with TSB’s personal banking terms – is that both have authority to withdraw money from and close the account. Mrs B gave TSB the instruction to close the account and transfer the money to a sole account. But the issue here is that Mr B holds EPA for Mrs B, which has been registered with the Office of the Public Guardian (which should be done at the point that someone has lost, or is losing, mental capacity).

As Mr B has pointed out, this does mean that he holds responsibility for managing Mrs B’s affairs – which is a key consideration in this case. But there are other factors I must also take into account. My role isn’t to judge Mr B or Mrs B’s actions, or to make a finding on what the Court of Protection or Office of the Public Guardian has decided. What I’m considering is whether *TSB’s* actions were fair and reasonable in all the circumstances.

As our investigator has explained, TSB has a duty of care to its customers. We’d expect it to act in its customers’ best interests and, if provided with any safeguarding concerns, to act on these. Mr B acknowledges that he’s received a verbal suggestion that Mrs B may challenge the registration of the EPA. Whilst I appreciate that he hasn’t been served with an application for this, there are still indications of a dispute about the EPA. Given what I know about the overall circumstances of Mrs B’s request, I consider it reasonable that TSB followed her instructions – and decided not to act on the EPA’s mandate.

I appreciate that Mr B felt he needed legal advice to work out how to proceed. But he could have complained to TSB directly and then referred the matter to our service if he disagreed or was unsure about TSB’s response. So, I wouldn’t expect TSB to cover his legal fees.

The initial service issues raised with TSB don’t appear to be at the crux of Mr B’s referral to us. But in the interest of completeness, I’m satisfied that the £250 compensation, £50 costs and further £25 payment TSB has given Mr B for these is fair. This is bearing in mind that our service can’t award non-financial compensation to third parties, nor do we have jurisdiction over complaint handling issues. I can consider the impact of the poor service TSB provided Mr B on his joint current account, such as the upset and confusion caused. And I’m satisfied TSB has fairly redressed Mr B for this.

### **My final decision**

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 10 March 2021.

Rachel Loughlin

**Ombudsman**