

The complaint

Mr M complains TSB Bank plc caused him to suffer distress and inconvenience when it closed his bank account without notice. Mr M wants TSB to reopen his account and compensate him for the impact of its actions.

What happened

I issued my provisional decision on this complaint on 13 July 2021. The background and circumstances of the case and the reasons why I upheld it were set out in that decision. I have reproduced the provisional decision in italics below:

The complaint

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What happened

Mr M received an inheritance following the death of a family member and was sent a banker's draft for £1,700 drawn on a bank in Ireland. Due to Mr M's personal circumstances, he was not able to deposit the banker's draft into his account himself.

On 12 June 2019, Mr M's partner went into his local branch to deposit it on his behalf. Although the branch accepted it, Mr M's partner was told that she should not be using his debit card and that Mr M needed to obtain permission to formalise third party access to the account if he wanted her to help him manage his affairs. Shortly afterwards, Mr M started the process to set up his partner's access.

On 28 June 2019, TSB debited £1,700 from Mr M's account. His bank statement shows the debit as "FRAUD RECOVERY."

On 19 July 2019, TSB decided to close Mr M's account with immediate effect. It wrote to him and told him to make alternative banking arrangements. It enclosed a cheque for £457.51, which was the balance of Mr M's account at the time it was closed.

Mr M made a complaint. He highlighted that the immediate closure of his account had significantly impacted him. He explained he didn't have any other accounts that he could pay the cheque into and that he didn't understand what had happened to his inheritance money. He explained he'd been planning to use the money to settle an outstanding debt, to pay for legal services and to purchase basic provisions but was now unable to do so. He asked the bank to either reinstate his account and balance or pay his balance to a third party.

On 9 January 2020, TSB issued its final response. It said that it had closed Mr M's account following a central review and it was part of the process to issue the remaining balance of the account by cheque. It did not think the bank had made a mistake.

Unhappy with the situation, Mr M referred a complaint to this service. TSB then said it would be willing to pay £457.51 to a third-party bank account.

One of our Investigators began looking into the matter. She noted TSB had said it was concerned that the banker's draft was counterfeit but it had never asked Mr M anything further about it. She was able to obtain information from Mr M and his brother proving that the funds were from the deceased's estate. She was also able to establish that the banker's draft cleared when presented for payment and no fraud report or indemnity had been raised by the remitting bank. The Investigator established that the £1,700 still remained in one of TSB's suspense accounts almost a year later.

She said TSB should return the £1,700 to Mr M along with 8% simple interest on the funds as there was no evidence now to support the position that the banker's draft was fraudulent. She also thought TSB should pay the £457.51 if it remained outstanding, as well as £250 compensation for the trouble and upset the bank had caused. She felt the overall situation did not warrant the immediate closure of Mr M's account and the bank had not done enough to try to resolve the issue, although she felt that it was still fair for TSB to have closed the account because it was being used by a third party.

Mr M pointed out that TSB had never told him why it had closed his account. Mr M explained that he still wanted the bank to explain its actions, to reactivate his account and pay compensation for the full impact of its actions. He explained he did not understand why he'd been treated this way and said it was difficult to resist the suspicion that he was being subjected to discriminatory treatment because of his wider situation.

As Mr M did not accept the Investigator's view, TSB did not pay the compensation she had recommended. But it did pay the outstanding funds to Mr M's partner along with the interest the Investigator had recommended to try to alleviate Mr M's difficult financial situation.

As no agreement could be reached, the complaint has been referred to me.

My further enquiries

I contacted TSB to ask the bank more about its position on the immediate closure of Mr M's account. I had concerns that the bank did not unravel things properly at the time and had potentially "jumped the gun" with its actions.

I asked the bank that knowing what it knows now, i.e. that there were no issues with the provenance of the banker's draft deposited, on what grounds would it have taken the decision to close the account immediately. I pointed out that TSB was initially happy for Mr M's partner to have formalised third-party access to the account. I highlighted that the bank statements I had seen for the way Mr M's account typically ran did not indicate any evidence of high-risk credits or claims.

TSB responded to say Mr M had breached the terms and conditions by allowing a third party to operate the account without a formal authority being registered. It said it had also placed weight on the bank's staff having the impression that the deposit was counterfeit so felt its actions were appropriate at the time. If suggested that if I felt the action was disproportionate, I should consider this in my decision.

What I've provisionally 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.

Having done so, I am not currently persuaded that TSB's actions were fair and proportionate in all of the circumstances of this individual case. I think TSB treated Mr M unfairly when it closed his account with immediate effect and that he has lost out as a result. I'll explain why.

TSB says it closed Mr M's account immediately because it had concerns that the banker's draft was counterfeit and because Mr M's account was being used by a third party when it should not have been.

It's generally for banks to decide whether or not they want to provide, or to continue to provide, banking facilities to any particular customer. Unless there's a very good reason to do so, this service won't usually say that a bank must keep customer or require it to compensate a customer who has had their account closed.

TSB suspected that the banker's draft was counterfeit. As a starting point, I would expect a bank to be on the look out for potential problems with cheques and payments. A bank should seek to prevent its bank accounts from being used to further financial crime, so I don't consider it to be particularly unusual if a bank identifies a payment that it wishes to make further enquiries about.

I have seen a copy of the banker's draft. I appreciate that it is difficult to fully assess the security features built into a banker's draft from an image as a picture cannot convey the way the paper feels or its print quality. I accept that it is possible that the banker's draft may have stood out to the bank's staff because it looked and felt different to what they typically see day to day, especially as it was drawn on a bank based in Ireland. But I'm also mindful that banker's drafts are less commonplace these days.

I have no issue with the principle that TSB had concerns that the banker's draft may have been an attempt to obtain money using a false instrument. But I can't see that the bank took any further steps to establish whether its concerns were justified in the circumstances. I've not seen anything to show that TSB attempted to contact Mr M to ask him about his entitlement to the funds at any stage and I am satisfied that it had an up to date address to write to. Had it have done so, I think it is more likely than not that Mr M would have responded positively and proactively with the information he had, as he did when this service asked for more information about the circumstances surrounding the banker's draft.

The bank's notes from 19 June 2019 - before Mr M's balance was debited - state that it may need to contact the remitting bank to find out more, but there's no evidence to suggest it actually did so. The copy of the banker's draft clearly shows the bank and the branch it was drawn upon. It would have been easy for TSB to have made contact to attempt to verify details and potentially alleviate its concerns. I'm also mindful that when TSB made the decision to debit Mr M's account on 28 June 2019, the banker's draft had "cleared for fate" which means that it was not going to be returned unpaid. The only exception to this would be if it was involved in a fraud in which the customer was involved. But the remitting bank has not raised any concerns about the payment at any stage.

The bank has also said that Mr M was in breach of the terms and conditions of his account by allowing a third party to operate it. But the bank was aware of, and initially sympathetic to, Mr M's situation as it had discussed the process to allow his partner access to the account.

I'm not persuaded the available evidence supports Mr M posed a sufficiently higher risk to the bank to justify it being able to close his account with immediate effect. I've also got concerns about the breadth and depth of TSB's enquiries when it was investigating the banker's draft. It formed its conclusions without contacting Mr M or the remitting bank for more information. At the time TSB decided to close Mr M's account, I don't think it had sufficient evidence to support that decision. So I think it would be fair and reasonable for TSB to reopen Mr M's account.

I've thought about the impact TSB's actions have had on Mr M. TSB has since released Mr M's funds back to him and paid 8% simple interest on the £1,700 it debited from his account from the date it debited to the date it was sent to his third party.

But I also think it would be fair for TSB to pay 8% simple interest on the £457.51 that was in Mr M's account on the date it was closed from the date of the account closure to the date it was sent to his third party if it hasn't already done so. This is because Mr M was also deprived access to those funds too. He's explained that he needed the money to buy provisions and he has had to go without as a result of not being able to access it.

Mr M's wider circumstances meant he was not using the account as frequently as he might have otherwise done. He wasn't making any regular direct debit payments so it is fortunate that he did not have to make alternative arrangements to cover bills at the last minute as I anticipate that would have been very difficult for him to do. But I do still think he has been caused unnecessary distress and inconvenience. The sudden closure of the account would have been distressing for Mr M. I can fully appreciate that he would have been anxious to find out what had happened to his inheritance money. I've no doubt that Mr M was caused upset and frustration as a result of the difficulties he faced trying to gain access to the money that was already in his account in the interim too.

When our Investigator considered the matter, she awarded £250 compensation to acknowledge the impact of the issue with the banker's draft because she felt the bank should have done more to resolve that issue and communicate with Mr M. But I don't think this goes far enough. If the bank had investigated it concerns with the banker's draft more closely, and in line with the steps it indicated in its notes that it would take, I think it is more likely than not that the provenance of the funds would have been quickly established. As such, I don't think TSB would have then taken the decision to close Mr M's account, let alone close it with immediate effect. It was engaged in the process to add Mr M's partner to the account at that time. It was aware of Mr M's personal circumstances and I am not persuaded that it would have considered Mr M adding a third party to his account would expose the bank to higher risk. As such, I think TSB should also pay Mr M £500 compensation for the distress and inconvenience he has suffered.

In my provisional decision, I asked both parties to send me any further evidence or arguments that they wanted me to consider.

Mr M responded first. In summary, he said that he accepted the position and hoped that TSB would likewise accept it. He said that if the bank challenged or questioned the outcome, he'd like the opportunity to consider those points further.

TSB responded. It confirmed that it had reinstated Mr M's account and said that it would be willing to pay the 8% simple interest on the £457.51 as I had outlined. It pointed out that Mr M appeared to have banking facilities elsewhere as his partner is transferring funds out to him from her account. It asked whether I could reconsider whether the distress and inconvenience payment of £500 was still appropriate given that I am now aware that Mr M holds an account with another bank.

I made Mr M aware of the bank's response and asked him about the account TSB had referred to.

Mr M explained he'd opened the new account at the end of May 2021 and was unable to use it until he'd received a debit card in early June. He pointed out that opening the new account was a very stressful process due to not holding the necessary documentation. He highlighted that this would not have been required at all if he'd still had the TSB account to have his universal credit payments paid into.

Mr M was aggrieved at what he described as an "*unwarranted and uncaring*" approach shown by TSB and he pointed out the "*casual indifference*" TSB had shown when responding to my provisional decision. He felt that the way TSB had handled things from start to finish had been appalling. He pointed out the bank had not apologised, nor had it recognised that it had been at fault. He thought the bank's practice of looking at his partner's private financial records in an attempt to curtail any compensation or minimise the impact of its failings was inappropriate and could even contravene data protection legislation. He requested that I should consider revising my provisional award upwards and suggested £1,500 would be more appropriate.

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.

Having done so, I still consider the redress I proposed in my provisional decision to be fair and reasonable overall. I know this isn't the outcome that either side was hoping for, so I will explain why.

Given that TSB has now reinstated Mr M's banking facilities and agreed that it would be willing to pay the 8% simple interest that I outlined, the only matter that remains in dispute is the level of compensation that is appropriate to acknowledge the distress and inconvenience the bank's actions have caused. TSB considers my award to be too great if Mr M had access to alternative banking facilities and Mr M feels a higher amount is warranted in light of the bank's attitude and approach to my provisional decision.

My power to award compensation comes from our rules, namely DISP 3.7.2 R of the regulator's handbook, which says we can award fair compensation that's a proportionate reflection of the impact a business's actions (or inaction) had on their customer. But I am not able to tell TSB how it should deal with and handle complaints, nor can I make any order or award specifically for this, even if TSB's handling of the complaint has fallen short. In addition, The Financial Ombudsman Service is not a regulator and I am unable to make awards intended to punish or fine TSB.

It's also not my role to set TSB's internal policies and processes. In this case, I have reviewed whether TSB has followed its internal policies and processes fairly. As I explained in my provisional decision, at the time TSB decided to close Mr M's account, I don't think it had sufficient evidence to support that decision. I still think the decision to close Mr M's account when it did was unfair and that it had a serious impact on him.

I acknowledge Mr M's sentiments that the bank has failed to appreciate how its actions have impacted him. It's evident that he has faced obstacles and difficulties that could have been avoided if TSB had handled things as it should have done. In addition, seeking to reduce the compensation I'd provisionally recommended without a full understanding of recent changes to Mr M's personal situation and without knowledge of when he'd opened the other account was short sighted.

Mr M told me he'd opened the new account recently. Not having a bank account was restricting his access to essential benefit payments and I think it was appropriate for him to make alternative arrangements when he did because at that point his account with TSB remained closed. Mr M has explained that the arrangement to initially make the payments to his partner was put in place with support from the DWP. I've seen no evidence that leads me to think Mr M held the new account for any longer time and I note that Mr M was more than happy for me to contact the third party bank to verify these details if I wished to do so. It also seems unlikely that Mr M would have pursued this matter for as long as he has done if he'd had another way to access his money.

I've also noted Mr M's concerns about how the bank came to learn of the existence of his new account. But compliance with GDPR guidance and regulations is not an area that this service looks into. It is the role of the ICO to decide if TSB's actions have breached the relevant legislation. Mr M's partner will need to refer any concerns about how TSB has used her data to the office of the ICO if she wishes this to be decided upon.

Looking at everything, it's clear that the bank's decision to close Mr M's account when it did left him to navigate a difficult situation at a time when he was vulnerable. In situations like this one, where a business has made an error which has caused ongoing distress and inconvenience to its customer - it would be expected by this service that the business would agree to pay fair and reasonable compensation to that customer, given what's taken place. Ultimately, I think that a payment of £500 compensation is appropriate in all of the circumstances here. While I can understand that Mr M feels that it doesn't now go far enough, £500 is commensurate with what this service would expect in circumstances such as these.

My final decision

For the above reasons, I have decided it is fair and reasonable to uphold this complaint about TSB Bank plc — and I therefore require the bank to now action the remainder of my proposed settlement, namely to:

- Pay 8% simple interest on the £457.51 that was in Mr M's account on the date it was closed from the date of the account closure to the date it was sent to his third party if it hasn't already done so. It can pay this money directly into Mr M's reinstated account. If any tax is lawfully deductible from this element of my proposed award, TSB must give Mr M a tax deduction certificate if he asks
- Pay Mr M £500 compensation for distress and inconvenience within 28 days of receiving notification of his acceptance of my final decision, failing which interest will thereafter accrue on this sum at the simple rate of 8% a year until payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 September 2021.

Claire Marsh
Ombudsman