

## **The complaint**

The complaint has been brought to us by Ms B, Ms N and Ms S. They are directors of a limited company, M, and they act on its behalf.

M's complaint concerns around 60 bank accounts which were held with TSB Bank Plc. Over the last few years there have been difficulties in accessing the accounts, and most if not all of them are now closed.

## **What happened**

Ms B and Ms N completed one of our complaint forms in July 2020 and told us:

- As at that date, M managed over 60 trusts for disabled people. M's directors, along with others, are trustees of those trusts.
- Up until 2017/2018, each trust had a separate bank account with TSB. The accounts were in the names of the trustees, and not in the names of the disabled beneficiary. This was important for several reasons, including the beneficiaries' entitlements to benefits.
- In 2017/2018, TSB suffered an IT failure. Following that failure, TSB transferred the accounts into the sole names of the disabled beneficiaries.
- TSB appears incapable of returning the accounts to the state they were in before the IT failure. It did authorise a bank manager, a Mr K, to accept payments made out to the trustees into the accounts. It also allowed funds to be withdrawn on the signature of one (only) of the trustees, but said it could not change the names on the accounts because it was no longer offering trust accounts.
- TSB has threatened to close the accounts, but it is not clear where the bank intends to send the funds.

Ms B and Ms N asked for the Financial Ombudsman Service's help in resolving the matter.

In its initial response to the complaint, TSB told us:

- It does not have a complete record of all the relevant trust deeds associated with these accounts. It does have one trust deed from 1984, and it assumes the other trusts were set up in a similar fashion – but it does not have documentary evidence to support that.
- It is aware that there have been various changes of trustees since the trusts were created. It has some deeds of appointment/retirement showing those changes, but it does not have the complete picture.
- In 2014, Ms B and Ms N submitted a mandate request to change the authorised

signatories on the accounts to themselves as the new trustees. But in 2018, issues relating to its IT migration caused Ms B and Ms N's names to be removed from the accounts. They tried to regain access, and initially TSB put in place a "*branch solution*". That involved a particular branch manager, who I understand to be Mr K, being authorised to accept cheques made payable to the trustees into the trust accounts. It also allowed Ms B or Ms N to sign to authorise the withdrawal of funds to from the trust accounts.

- From TSB's perspective, the branch solution worked until May 2020. At that point Mr K went on holiday – but he did not make any arrangements for Ms B or Ms N to operate the trust accounts in his absence. The impact was that neither Ms B nor Ms N had any access to the accounts, and so they made a complaint.
- As a temporary measure whilst it investigated the complaint, from early July 2020 it agreed to allow Ms B (only) to continue transacting on the accounts in broadly the same way she had done before Mr K went on holiday, but with limits on the total that could be withdrawn.
- It wrote to Ms B in October 2020 to explain "*it was identified [in April 2018] that these types of historical accounts were opened on a retail platform instead of the business platform. During the transfer process the Trustee details did not pull through and the accounts now only show the Beneficiary name which is incorrect but unfortunately the system does not allow any amendments to be made on these accounts.*"
- TSB stopped offering trust accounts in 2019. These accounts should have been reviewed at that time, and the trustees should have been told that TSB was no longer prepared to maintain them as personal accounts. The trustees should have been told that they could either open new "not-for-profit organisation" accounts (the only account type TSB now has that is suitable for trusts), or TSB could give them 60 days' notice that it no longer offered these services and would be closing the accounts.
- In order to open new accounts, it would need to follow its standard account opening procedures – including anti-money laundering checks. Amongst other things, for each trust it would need to see a copy of the original trust deed, copies of any supplemental trust deeds, and identity and address verification for each trustee.

Following the initial referral, there was a significant amount of correspondence between our investigators and representatives of M, as well as between our investigators and the bank. I have not summarised all of that correspondence, but I confirm that I have read and considered it in its entirety. In particular, I confirm I have read M's response to our investigator's opinion of 3 December 2021.

Our investigator thought that the fairest resolution to this complaint would be for TSB to pay M £1,500. I agreed with his overall conclusions but not with his reasoning, so I issued a provisional decision in February 2022 explaining why I thought a payment of £1,500 represented a fair outcome. TSB accepted my findings, but M's directors did not – and they asked me to review the matter again.

### **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 have come to the same conclusions as I did in my provisional decision, for the same reasons. Those findings are:

- TSB was wrong to remove M's directors' access to the accounts in 2018, and it was wrong to put the accounts in the names of the beneficiaries.
- TSB was not wrong to ask the directors for more information about the trusts, or to ask for more identity evidence for the directors and the other trustees. In addition, TSB was not wrong to close the trust accounts. That means it would not be fair for me to order TSB to make a contribution to M's costs in dealing with those issues.
- However, TSB should have told M's directors at a much earlier stage that it was not willing to restore the trust accounts to their previous positions. If the bank had been clearer, M would have avoided significant inconvenience.
- M's directors' decision to close down M was not the result of an error by TSB, so it would not be fair for me to order TSB to pay M compensation for its loss of future profit.
- To resolve this complaint, TSB should pay £1,500 for the inconvenience that its mistakes caused to M.

I give further explanation for my findings below.

Everyone agrees that TSB should not have unilaterally put these accounts into the names of the beneficiaries of the trusts. That was clearly wrong, and TSB has not sought to justify its behaviour. But it has provided an explanation – that the name switches were due to an IT error – and I accept that explanation. I have seen nothing to suggest that the name switches were the result of a deliberate action by any of TSB's staff.

However, even if the IT issues hadn't happened in 2018, I still think that TSB would have discovered in 2019 that there were significant issues with the accounts. The way the accounts were set up immediately prior to the IT error was unsustainable over the longer term, because M's directors were named on around 60 TSB bank accounts despite TSB not having the documentation it needed to comply with its obligations. Overall, I think the impact of TSB's IT error was to bring to a head an issue that wouldn't otherwise have been discovered for perhaps another year or so.

M's directors and TSB disagreed about how the name switch issue should be resolved. M's directors preferred resolution was that TSB should simply put the accounts back to the way they were. TSB had at least two reasons not to want to do that: initially its reason was that it didn't have the relevant evidence showing the existence of the trusts and the identities of the trustees; and later its reason was that it was no longer prepared to allow trusts to use personal accounts.

M's directors say they do not understand how TSB could ever have administered the trust accounts without the original trust documentation and all identity evidence having been noted on their records. They have also suggested that TSB's decision to no longer offer trust accounts is remarkably convenient, and may have been an explanation put forward to forestall further investigation into TSB's errors.

As I said in my provisional decision, I accept that TSB does not in fact have the relevant documentation (including trust deeds and evidence of trustee changes) but it is not possible for me to determine why that is.

I apologise for the assumption I made about previous directors of M stepping down as trustees. M's current directors have explained that in fact the previous directors either died or were unable to act as a trustee for health reasons. M's current directors say they and their predecessor trustees provided TSB (and its predecessors) with full details of all trustee changes; TSB says it does not have that information.

These accounts were opened many years ago, originally as personal accounts with Cheltenham & Gloucester. They were then transferred to Lloyds, then to Lloyds TSB, and finally to TSB. It is possible that the documents were provided to a bank (or building society) at some point and then lost – but it is also possible that they were never provided in the first place. Evidence that a box or boxes of documents concerning the trusts was sent to a particular TSB office is not evidence that those boxes contained a specific trust deed, or indeed any other specific document. I am aware that M's directors have referred to documents “destroyed by TSB's IT error”, but I am not satisfied that TSB ever had the relevant documents – so I cannot conclude that the IT error caused TSB to lose them.

M's directors have asked me to explain how TSB managed to comply with banking regulations when it transferred the accounts into the names of the disabled beneficiaries. I cannot explain that, and as I've said I think the name switches were an error that should never have happened. But once it had become aware of the problem, TSB could not have left the accounts in the names of the beneficiaries indefinitely.

I am not aware of any bank that checks account opening documentation before carrying out each and every transaction; that would be impractical. It is possible for accounts to operate for some time –even for years – without a bank being aware that it does not have the documents it now requires to comply with its obligations. That means that whilst I accept that these accounts operated successfully in the past, I don't think that is evidence that TSB must have been in possession of trust deeds which it then lost.

I am also aware that banks' anti-money laundering procedures have changed over time, as have the relevant rules and regulations. It is very common for a bank to find that it does not have all the identity evidence it requires for an account that was opened many years ago. It is also common for banks to ask account holders for further evidence to prove their identity.

I do not have any concerns about TSB's explanation that it stopped offering specific trust accounts in 2019, and instead offers a more generic “not-for-profit organisation” account (open to a wider class of potential customers, not just trustees of trusts). I am aware of other customers who have been required to make changes to their accounts as a result of changes at TSB. I am also aware that banks do make changes to the types of accounts they offer from time to time – especially where, as in TSB's case, accounts from various different banks and building societies have been transferred to it over the years.

I am also mindful that TSB says these accounts were originally personal accounts opened by trustees – they were not originally ‘trust accounts’ in the sense of having terms and conditions that applied only to trusts. It was always open to TSB to decide that it did not want to allow personal accounts to be used by trusts. Regardless of whether the new account offered was an account specifically designed for trusts, or one designed for use by non-profit organisations more generally, TSB was entitled to request evidence to show the existence of the trust and the identity of the trustees.

M's directors also complain that TSB's staff said repeatedly that they didn't know what to do to fix the situation. That doesn't surprise me. Having 60 or so trust accounts wrongly transferred into the beneficiaries' names is a very unusual situation, and I think it likely that the bank staff in question had never come across it before. As I said in my provisional

decision, I think that led to a pattern of TSB's staff coming up with a series of short term attempts at solutions that failed to address the underlying problem. That meant M was subjected to further inconvenience when those attempts came up against easily anticipated difficulties, such as the sickness of a particular member of TSB's staff.

I cannot provide the explanations M's directors are seeking as to why TSB took so long to tell them that it was no longer prepared to allow their previous accounts to operate as trust accounts. I agree that they should have been told earlier – and that some inconvenience would have been avoided if TSB had been clear much earlier about what it was and was not prepared to do – but I cannot be certain exactly why it took so long. However, I do find TSB's explanation plausible and persuasive; it says its staff were trying to work with M's directors to find a mutually acceptable solution but were ultimately unable to do so.

M's directors are particularly unhappy about my provisional finding that TSB's IT error was not the cause of their decision to close down M. They say they had absolutely no choice, and the very last thing they wanted to do was close their company – with the result that they lost their jobs and their salaries.

I know how strongly the directors feel, but having taken all the evidence into account I remain satisfied that TSB's mistakes were not the cause of M's directors' decision to close their business. Even if TSB's IT error had not happened, TSB would still have reviewed the accounts at some point – likely within a few months, or at most a couple of years. I consider that as soon as TSB reviewed any one of the accounts it would have discovered that it did not possess the documentation it needed (the trust deeds, deeds of appointment and retirement, and so on). TSB would then have asked for those documents – and if they were not provided, I consider that ultimately TSB would still have decided to close these accounts.

In other words, I accept that the directors would probably not have chosen to close their business when they did if TSB had allowed the accounts to remain as they were in 2017 indefinitely. But I don't accept that the directors chose to close their business because of TSB's errors. I think TSB's decision to close the accounts was because of the lack of documents, leading to an inability on TSB's part to satisfy itself that it knew everything it needed to know about the trusts, the trustees and the beneficiaries. That is a separate issue to TSB's mistake in putting the accounts into the names of the beneficiaries. I will not criticise TSB for its decision not to open accounts without the documents it requested.

M's directors have previously suggested that they were either unwilling (or in some cases unable) to provide the documents TSB wanted. But in their response to my provisional decision, they explained that time was a large contributor to the difficulty in obtaining those documents. They said that if TSB had told them what documents were needed immediately after the IT error, they would have had nearly two years to obtain them – and that would have been sufficient time.

I agree that it would have been better customer service for TSB to have made its requirements clear to M's directors at an earlier stage. But I don't think it was required to give two years' notice that it intended to close these accounts if it did not receive the documents it asked for. I am satisfied that TSB did give M's directors a reasonable time to provide the documents, and it was the directors' decision to close M rather than attempt to obtain those documents.

The directors also say that they have been unable to open alternative accounts with other banks. They say they found only one bank prepared to discuss the matter, but that bank wanted each account to be opened with a minimum balance of £25,000. TSB did not recommend an alternative bank.

I am sorry to hear of the difficulties M's directors had in attempting to open bank accounts elsewhere, but I cannot say that those difficulties are TSB's fault. TSB was not in a position to give advice, so it could not have recommended an alternative bank. The account opening requirements of other banks are a matter for those other banks, not TSB – but as I said in my provisional decision, I would expect any UK bank opening a trust account to want documentary evidence to show the nature of the trust and the identities of the trustees and beneficiaries.

### **Putting things right**

This is a deeply unfortunate situation for all concerned. Whilst I do think several members of TSB's staff genuinely tried to help M, their efforts were not successful – and on occasions made things worse. TSB's customer service has been poor, and the problems have persisted over a long period. In the circumstances, I consider that £1,500 represents fair compensation for the inconvenience suffered by M.

My award is not intended to compensate M's directors personally. I appreciate that there has been some previous discussion about who the appropriate complainant ought to be, but this final decision concerns the complaint made on M's behalf. That means I can only make awards for M's losses. I cannot make awards for losses suffered by other people, including M's shareholder and directors/employees. Those people are not customers of TSB in respect of this matter, and so they are not eligible complainants under our rules.

### **My final decision**

My final decision is that TSB Bank Plc should pay M £1,500 to compensate it for the inconvenience TSB's errors caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 20 April 2022.

Laura Colman  
**Ombudsman**