

The complaint

Mr B and Mr S, respectively the Treasurer and Secretary of a micro-enterprise I'll call "C", complain on behalf of C that changes to TSB Bank Plc's internet banking system made it inaccessible to Executive members of C who needed to use it as part of their role. Mr B has explained they're now unable to authenticate online payments to new payees and have to rely on cheques, causing disruption and inconvenience to C's activities.

What happened

C held two bank accounts with TSB which they used to deposit membership fees and pay invoices. C registered for internet banking in December 2012. Mr B was the main user of these accounts in his role as C's Treasurer.

Between April 2018 and March 2019 Mr B made several complaints on behalf of C about TSB's internet banking facilities. Many of these complaints related to the well-publicised problems with TSB's IT upgrade. As such, a number of the problems he complained about in 2018 (for example login difficulties and incomplete account statements) have now been resolved. And in responding to these complaints TSB paid C various amounts of compensation.

But one issue that Mr B first raised in 2018 continues to be a problem for C, and that's the changes TSB made to the way they authenticate their customers when making online payments. It's on this issue C's complaint focusses.

In 2018 TSB made changes which meant customers would have to authenticate themselves for online banking activities using TSB's banking app installed on a mobile device. This replaced a previous system of using card readers. TSB's Ways to Bank User Guide to Business Banking explains:

"Accessing Internet Banking ...

1.4 When using Internet Banking for certain transactions, the App will be required to complete those transactions. The User will need to download the App and then use it to generate a One Time Password ("OTP") which will be available in the menu ... The App is required for these transactions, whether or not you wish to use the wider functionality of the App ..."

The User Guide goes on to explain that an OTP is required to complete the setup of new payees (para 4.5).

When TSB made this change, they supplied C with a smartphone free of charge so that they could download the app.

In May 2018 Mr B complained that he couldn't use the smartphone's touch screen so couldn't use the app. TSB responded saying:

"... this is the only product that TSB has for its customers to carry out internet

banking ... I do understand the fact that you are unable to use touchscreen devices. I can recommend you try and use a touchscreen pen which should resolve the situation for you."

TSB also awarded C £50 compensation.

In August 2018 Mr B complained again as he still couldn't use the touch screen, even with a stylus. He explained that telephone banking wasn't a suitable alternative to online banking due to his hearing loss. TSB offered a further £100 compensation.

Mr B restated the complaint in March 2019. He said he was unable to do anything other than view statements through internet banking now because the screen of the smartphone was impossible for him to use. He said he couldn't hear well enough to use telephone banking and didn't use textphone or similar. He also explained that branch transactions wouldn't be possible as this would require the presence of both account signatories. He said:

"Despite my informing TSB at various times of my not unusual needs nothing has been done to make reasonable adjustments to allow me to continue using TSB Internet banking ... If nothing is done very quickly to ameliorate this situation then we may be forced to close ... because we cannot guarantee to pay suppliers in good time if other funds become exhausted. Already some ... operations have been suspended because we cannot rely on TSB."

TSB responded to C on 28 March 2019. They suggested Mr B call their digital team if he was having trouble using the app.

Mr B and Mr S brought C's complaint to us in September 2019. They said they want TSB to provide an alternative to authentication by app (for example, provide a card reader).

What TSB told us

TSB said they recognise that some customers have accessibility limitations and feel they have offered C a number of alternatives for banking. Whilst they appreciated that these had not met Mr B's needs, they noted that C has another signatory on the accounts who could authenticate payments on behalf of C. They also noted that the accounts are rarely used. So, TSB considered that what'd happened had had minimal impact on C, that the £1,050 they'd paid in compensation across all of C's complaints since April 2018 was "*generous*", and they didn't think they should do more. TSB said:

"... We cannot revert back to a card reader, so if Mr B can't use the alternatives and does not want to give up his role or share responsibilities with another member we can only suggest they consider moving their banking ..."

TSB also explained they don't offer the same authentication methods to their business customers as they do their personal customers because often there is a requirement for more than one signature on business account transactions.

What C told us

In August 2020 Mr B let us know there had been no change and that TSB had still not made "*reasonable adjustments*". In November he said C was "*still managing without ready access to TSB accounts by using alternative means to pay bills*". Mr B has since clarified that he can log in to view statements and pay existing payees, but he can't set up new payees without using TSB's app to generate a one-time passcode. And he can't use the app because it's only available on touch screen devices.

Our investigator's view

Our investigator didn't think TSB had acted fairly by not offering C an alternative to the app for online authentication. She concluded that TSB should develop an authentication solution for customers who are unable to use the app.

TSB didn't agree. They said C has members who are able to use the app and/or telephone banking and they'd expect C to appoint those members to authenticate online payments. They added that there is minimal activity on C's accounts and it's not clear why Mr B can't use telephone-based services with or without textphone. They said they believe they've offered "reasonable alternatives" to C.

As no agreement could be reached, the complaint was passed to me to decide.

My first provisional decision

I issued a provisional decision on 3 September 2021. I began by setting out the considerations I thought relevant to my decision. I wrote:

"I'm required to determine this complaint by reference to what I consider to be fair and reasonable in all the circumstances of the case. When considering what is fair and reasonable, I am required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

With that in mind I'll start by setting out what I have identified as the relevant considerations to deciding what is fair and reasonable in this case.

The Payment Services Regulations 2017 (PSRs) Reg. 100, which came into force on 14 September 2019, says that a payment service provider (PSP) must apply "strong customer authentication" where a "payment service user" accesses its payment account online, initiates an electronic payment transaction; or carries out any action through a remote channel which may imply a risk of payment fraud or other abuses.

Strong customer authentication (SCA) is defined in the PSRs. It means:

"authentication based on the use of two or more elements that are independent, in that the breach of one element does not compromise the reliability of any other element, and designed in such a way as to protect the confidentiality of the authentication data, with the elements falling into two or more of the following categories—

(a) something known only by the payment service user ("knowledge");

(b) something held only by the payment service user ("possession");

(c) something inherent to the payment service user ("inherence");"

Payment service user (PSU) is also defined. It means "a person when making use of a payment service in the capacity of payer, payee, or both". And a person, under the Interpretation Act 1978, "includes a body of persons corporate or unincorporated".

The FCA and UK Finance have both issued guidance to PSPs on the implementation of SCA. The FCA in its guidance document "Payment Service and Electronic Money – Our Approach" explains that the requirements for SCA apply regardless of whether

the PSU is a consumer or business. The FCA's guidance continues:

"We encourage firms to consider the impact of strong customer authentication solutions on different groups of customers, in particular those with protected characteristics, as part of the design process. Additionally, it may be necessary for a PSP to provide different methods of authentication, to comply with their obligation to apply strong customer authentication in line with regulation 100 of the PSRs 2017. For example, not all payment service users will possess a mobile phone or smart phone and payments may be made in areas without mobile phone reception. PSPs must provide a viable means to strongly authenticate customers in these situations."

In its statement of expectations published in September 2019, the FCA said:

"We expect firms to develop SCA solutions that work for all groups of consumers. This means that you may need to provide several different methods of authentication for your customers. This includes methods that don't rely on mobile phones, to cater for consumers who don't have, or won't want to use, a mobile phone."

UK Finance has also issued guidance to businesses detailing a non-exhaustive list of authentication methods a PSP can employ to satisfy the "possession" element of SCA. These include:

- Possession of a device evidenced by an OTP generated by, or received on a device (such as OTP by SMS text message)
- Possession of a device evidenced by a signature generated by a device (hardware or software)
- App or browser with possession evidenced by device binding
- Card or device evidenced by QR code scanned from an external device
- Possession of card evidenced by a card reader
- Possession of card evidenced by a dynamic card security code
- OTP received by email account associated, bound or linked adequately to the cardholder
- OTP received by landline number associated, bound or linked adequately to the cardholder

Also, in its guidance on authentication methods and vulnerable customers, UK Finance has said:

"... The move towards digitisation of financial services offers many benefits including: increased access to services at all times of the day or night, lower costs and improved accuracy and efficiency, enhancing customer outcomes, however it is vital to ensure that no one is left behind ... Under the Equality Act 2010, banks must provide customers with access to all their products and services which may require providers to design-in reasonable adjustments ..."

"Card issuers should offer a range of options for customer to authenticate, that will address a proportionate range of vulnerabilities ..."

Specifically, with regard to customers who are unable to authenticate through SMS OTP or mobile app, perhaps because of access to mobile devices or unreliable mobile network coverage, UK Finance explains:

"UK Finance notes that customers unable to use authentication methods such

as SMS OTP or Mobile App do not meet the definition of vulnerability in the context of this guidance. Card issuers are specifically asked to provide suitable alternative authentication options that enable customers to authenticate ...”

Having set out the relevant considerations I went on to explain my provisional findings. I said:

“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’ve reached the same outcome as our investigator, and for broadly the same reasons, I think C’s complaint should be upheld. To resolve it I think TSB need to work with C to find a way that C’s treasurer, Mr B, can continue to make online payments for C. I’ll explain why.

I think the above relevant considerations make it a requirement that TSB implement SCA. They should also do so in a way that maintains the accessibility of their services for a broad range of customers. PSPs should be designing SCA processes with all their customers and potential customers in mind, not designing processes which exclude those who don’t have access to, or can’t use, a particular method of authentication. I think the FCA has made it clear that PSPs should provide several different methods of authentication for customers, precisely to avoid excluding any groups of customers from banking online.

Although the FCA have said “We expect firms to develop SCA solutions that work for all groups of consumers” and consumers usually refers to “natural persons acting for purposes outside their trade, business or profession”, I think this guidance should also apply to PSUs like C, a micro-enterprise. The SCA requirements apply to microenterprises as they do to consumers, and SCA is not something either type of PSU can opt out of. Also, microenterprises can be expected to employ, or have as members, individuals with protected characteristics and to include individuals who are unable to use some authentication methods.

By offering only one method of authenticating online payments I think TSB puts C in the position of having to select their Treasurer with their ability to use that single authentication method in mind. And that has the potential to unfairly exclude some of C’s members from that role, or at least make it more difficult for them to perform that role. Club members like Mr B.

Both the FCA’s and UK Finance’s guidance say that PSPs are expected to offer more than a one-size-fits-all approach to SCA. But in this instance TSB have offered exactly that; one option for authenticating online payments – an app. It’s an option that causes C difficulty because their Treasurer, Mr B, has a physical condition which means the use of a touch screen is not possible. The answer to this predicament shouldn’t be that C must appoint a different Treasurer, find a workaround involving other Executive members, or move PSP. I think the answer should be that TSB offers different methods of authentication which have been designed with a proportionate range of customer characteristics and vulnerabilities in mind. Mr B, for example, is able to use a simple mobile phone without a touch screen (i.e. a mobile phone that doesn’t have a complex mobile operating system such as Android or iOS) to receive OTPs. He’d also be able to receive OTPs to email or authenticate using a card reader. So, I think there are several options TSB could potentially use to ensure C’s Treasurer can continue to use online banking.

TSB have said that they have offered C a suitable alternative; telephone banking. But as that's an alternative way of banking rather than an alternative way of strongly authenticating a customer for online banking, I'm not persuaded that's good enough. It's also not a way of banking that Mr B can easily use with his hearing impairment.

Overall, I don't currently think TSB have acted fairly or reasonably by only offering C one way of authenticating for online banking. To put things right I provisionally think TSB should offer C a viable alternative for its Treasurer, Mr B, to authenticate for online banking and payments."

Responses to my first Provisional Decision

C made no comments on the provisional decision. But TSB didn't agree with my findings. They said:

- Their removal of the card reader and introduction of the app for authentication was done to increase security – as the changes are for the benefit of consumers there's an *"expectation that there will be a reasonable level of cooperation from consumers"*.
- There are no plans to re-introduce card readers.
- Business account users can receive an OTP to a standard mobile phone or landline for strongly authenticating online card payments, but not for setting up new payees.
- Mr B can do most transactions in online banking without any issues – it is only when Mr B wants to set up a new payee that the app is required.
- Mr S, already registered on the accounts, could be given a higher access level and be involved in *"this very occasional type of transaction"* – doing this *"could easily overcome Mr B's personal limitations"*.

TSB also asked me to review their Business Banking Ways to Bank User Guide. The User Guide explains that there are three levels of internet banking user. TSB have confirmed that Mr B is an 'Account Signatory Full Access User' and that Mr S is a 'Delegate Full Access User', both are therefore able to pay new payees via internet banking subject to any Online Payment Control settings. I'm aware C's account settings require two users to be involved in online payments – so, one user (Mr B) creates and authorises a payment instruction and a further user authorises it. TSB suggested Mr S could use the app to create and authenticate payments to new payees and Mr B could then authenticate via internet banking.

Further events since my first Provisional Decision

I put TSB's suggestion to Mr B and Mr S to see whether this would resolve C's complaint. I explained that Mr S could create and authorise a payment instruction using the app, and Mr B could then authorise it via internet banking.

Mr B, on behalf of C, explained that this 'work-around' would not resolve things for them as, the policy, organisation and rules of C "dictate clear separation between Treasurer and Secretary roles". Mr B said C should not have to change their organisation just because TSB won't make it possible for Mr B to create and authorise payments to new payees online.

Having considered C's response to TSB's suggestion, I told TSB I was still minded to issue a final decision along the lines that I set out in my first Provisional Decision. I said I remained of the view that SCA is required when a payment service user requests its payment service provider to create or amend a list of trusted beneficiaries. I also said I remained of the view that when SCA is required payment service providers should, in line with the FCA's guidance, think about customers with protected characteristics and provide different

methods for SCA to be completed.

I said that TSB had only provided Mr B with one way of strongly authenticating payments to new payees – an app – and as Mr B can't use a touch screen, he can't use the app, and this leaves him unable to create and authorise payments to new payees – an activity which seems fundamental to his role as Treasurer of C. I said I agreed with C that the answer shouldn't require adjustments to C's members' roles and duties. The answer should be, I think, provided by TSB in the form of a viable alternative method for strongly authenticating.

TSB's offer and Mr B's response

In response to my further thoughts, TSB explained that they were about to launch their mobile app for iPad and that this would be compatible for use with a keyboard. They offered to provide C with an iPad and input devices (keyboard and pointing device) for Mr B to use so that he can access the app without having to use a touch screen. TSB also provided a process map detailing how the app is used to generate an OTP when setting up a new payee in internet banking. This showed that an end user would have to make around four 'clicks' in the app to generate an authentication code each time they want to set up a new payee.

TSB also explained that it's not possible to send Mr B an OTP to his mobile phone when he wants to set up a new payee because this would affect their security protocols for this type of payment journey, and their current processes "*satisfy our risk assessments*".

Mr B initially said there is a "*prospect of a solution now focus has been shifted to mechanical input devices ... instead of [touchscreens]*". He also said, on reviewing the process map, that he felt "*more confident in being able to manage with keyboard and pointing device for a touch screen device for the TSB Internet banking 'app' provided screen size is not too small ... and the touch screen device permits keyboard navigation ...*" But he remained concerned that any input devices should be suitable for him to use (he provided examples of keyboards and pointing devices he's found comfortable to use with his personal computer) and he indicated there is a need for "*expert opinion on upper limb musculo-skeletal disorders and ergonomics to make proper sense of it all*".

He also pointed out that he'd still prefer to receive an OTP via SMS text message, said the extra kit he'd need to access the app seems an "*inordinate rigmarole*" to generate a code, and commented that TSB's exclusive use of the app does nothing to remove barriers or eliminate discrimination.

TSB offered to arrange an assessment of Mr B's needs by an occupational therapist or similar. They said there are numerous hardware options available and an assessment will help identify which will work best for him.

Mr B said he'd submit to an assessment "*once the TSB website is optimised better for keyboard navigation*". He also said he felt TSB had failed in its Equality Act 2010 duties by introducing the app as the only means of authenticating new payees. He said TSB's offer of an iPad and input devices was "*no more than a means of sustaining this breach*", and that he'd like an alternative means of authentication rather than TSB's "*sticking plaster*" offer.

My second provisional decision

As TSB's offer to resolve the complaint wasn't accepted by Mr B, on behalf of C, I issued a second provisional decision on 13 May 2022 setting out my thoughts on the offer and giving both parties a final opportunity to comment before I reached my final decision. I wrote:

"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 currently remain of the view, for all the reasons set out in my provisional decision, that C's complaint should be upheld and that TSB should offer C a viable alternative for its Treasurer, Mr B, to strongly authenticate the creation of and payments to new payees.

But I think TSB's current offer, to provide C with an iPad and suitable input devices (keyboard and pointing device) for Mr B to use so that he can access the app without having to use a touch screen, is fair. And I provisionally don't think TSB need to do more to resolve the complaint.

Before I explain why I've reached that conclusion, I note that Mr B has asked me to consider this case with reference to TSB's obligations under the Equality Act 2010. Mr B is correct to say that under the Equality Act 2010 businesses do have a duty to make reasonable adjustments to remove barriers which put disabled people at a substantial disadvantage compared with people who are not disabled when using their services. The duty is owed to disabled persons generally, it is an anticipatory duty which means service providers and people exercising public functions must anticipate the needs of disabled people and make appropriate reasonable adjustments so that disabled persons aren't at a "substantial disadvantage". But a service provider only has to make adjustments that are reasonable for it to make. Mr B says that TSB's introduction of the app as the only means for business account customers to authenticate the creation of new payees online, is a breach of this duty as there will be disabled people, like him, who can't, or who find it difficult to, use the app.

I've thought about TSB's Equality Act 2010 obligations when deciding this complaint, but I've ultimately decided this complaint based on what's fair and reasonable in all the circumstances. If C or Mr B want a decision on whether TSB has breached the Equality Act 2010 by making the app the only way a business account customer can authenticate a new payee in internet banking, then they'd need to go to Court.

I have found that Mr B attempted to use TSB's Business Mobile app but found the touch screen inaccessible. And in those circumstances, given what the FCA and UK Finance have said about providing several different methods of authentication so that all groups of consumers can strongly authenticate, I don't think it was unreasonable of C to expect TSB to offer them a viable alternative.

TSB initially said that they had offered C a viable alternative in telephone banking but, as I said before, I see telephone banking as an alternative way of banking, not an alternative way of strongly authenticating online banking and payments. In my view, if Mr B must call a telephone number and speak with a TSB agent whenever he needs to create a new payee, he's no longer strongly authenticating. Indeed, he's using a banking channel (telephone banking) for which SCA isn't normally required. So, I don't think telephone banking can reasonably be interpreted as an alternative way of strongly authenticating. Put simply, I think it avoids the SCA requirements altogether and is an alternative way of banking.

Telephone banking is also a way of banking which Mr B finds more difficult because of hearing loss. Whilst I acknowledge that TSB are sceptical of what Mr B has said about his use of phones, I'm satisfied that he does find telephone conversations difficult. He's said this difficulty is increased when he's speaking with someone he doesn't already know, someone speaking quickly or with an accent, or when his

tinnitus is bad. I accept Mr B is likely to be able to use the telephone to some extent, when he has what he describes as “appropriate conditions”, but I don’t think that means he should be given only telephone banking as a means for setting up new payees. Even if he didn’t have difficulties with hearing, telephone banking still isn’t the same as online banking.

Another point TSB have made is that their approach – offering only a mobile app to generate the code needed for strong authentication – only restricts Mr B’s ability to create new payees. They say he can do most transactions in online banking without any issues and so isn’t excluded from being C’s Treasurer. But I don’t agree that justifies leaving the situation as it is. It seems to me that the ability to create new payees is a fundamental part of a Treasurer’s role, and one Mr B should be able to do within the convenience of internet banking. I agree with C that they shouldn’t have to involve other club members in setting up new payees if that’s their Treasurer’s role.

Also, SCA is required when a payment service user requests its PSP to create or amend a list of trusted beneficiaries. As SCA is required by regulation to be applied to this activity, I think the FCA guidance which says PSPs should provide different methods of authentication applies. I don’t think it’s fair of TSB to say they won’t provide alternatives for strongly authenticating the creation of new payees because their current approach only excludes Mr B from one activity in online banking and payments. He shouldn’t be excluded from setting up new payees because the method of authentication TSB have chosen for this activity isn’t accessible to him.

TSB have explained that their security protocols mean they can’t offer Mr B the option of strongly authenticating by receiving an OTP by SMS text message to a standard mobile phone. Their systems also no longer support the use of card readers. But, accepting my conclusion that TSB should give Mr B a viable way of strongly authenticating the creation of and payments to new payees, TSB have made an offer here. TSB have offered to provide C with an iPad to access the Business Mobile app, one that is compatible with a keyboard and pointing device, so that he has an alternative to accessing the app via a touch screen. TSB are also willing to arrange a professional assessment of Mr B’s ergonomic needs so that any input devices are suitable and useable for him. I think this is a providing a reasonable means of avoiding the disadvantage he’s caused by not being able to use a touch screen and is a fair solution. This will resolve the problem Mr B currently has with generating a code via the app when he’s setting up a new payee in internet banking.

I appreciate that Mr B would prefer to receive or generate the OTP by another method (an SMS text message or a card reader). And I know he believes strongly that TSB’s insistence that the app be used for this process has the potential to cause customers who can’t use the app for reasons of disability “substantial disadvantage”. But whilst I think the regulations, and the associated guidance mean that TSB are required to offer authentication methods which are workable “all groups of consumers” I don’t think they’re prescriptive about the authentication methods a payment service provider must offer. It’s clear there are a range of ways PSPs can authenticate customers and not all PSPs will adopt the same range. It’s also not possible for me to require TSB to start sending SMS OTPs to Mr B or to reintroduce card readers. I simply don’t have evidence to support that this would be practical or possible for TSB to do. I think it’s relevant also that the duty to make reasonable adjustments does not require a business to make fundamental changes to the nature of their service.

I also don't think there is anything inherently wrong with TSB making use of the app central to their process for business account customers setting up new payees online – many smart devices which support mobile apps will have built-in accessibility features (such as voice activation, and screen readers) and are likely to be useable by customers with a broad range of needs. And it seems logical to me that payments to new payees should have a high level of security to reduce the risk of fraud. That's why SCA is required when a payment service user requests its payment service provider to create or amend a list of trusted beneficiaries. But when TSB were made aware that Mr B could not access the app because he struggles to use a touch screen due to a physical disability, I think they ought to have thought about what reasonable adjustments they could make. It wasn't in my view fair or reasonable for TSB to simply suggest Mr B "give up his role" or that C "consider moving their banking".

Although the length of time it's taken is disappointing, TSB have now accepted that they need to do something different for C by making it possible for Mr B to complete SCA.

Thinking about what Mr B has said about the type of keyboard and pointing device he currently uses with his personal computer, I think there's very little risk that TSB's proposed assessment of his ergonomic needs won't be able to identify suitable input devices. When saying this I'm mindful that Mr B has previously suggested he can use a card reader – usually a calculator sized device used to generate a code when a card is inserted and pin entered – and a 'clicky button' mobile phone. Indeed, when he first put this complaint to us he said he'd like TSB to "Provide alternative to the TSB 'App' that is not reliant on touch screen devices. Reinstate card readers for example."

I also think it's important to bear in mind that Mr B's interaction with the app is likely to be infrequent and, when he does need to generate a code using it, he should be able to achieve that within very few steps and with a minimal number of clicks. The iPad, keyboard and pointing device will not have to be used for writing lengthy documents or correspondence; the input devices need to be ergonomically suitable to enable Mr B to complete a few clicks. So, I think TSB's offer will remove the current problem that Mr B has with using a touch screen and make the app accessible to him. He'll still be able to do the vast majority of C's online banking from his personal computer using the keyboard and pointing devices he's used to and comfortable with. His only interaction with the app will be to generate an OTP, and he won't have to use the wider functionality of the app.

Overall, for all the reasons I set out in my first provisional decision and here, I don't think it's fair or reasonable of TSB to exclude C's Treasurer, Mr B, from fully using their online banking and electronic payments services, just because he can't use a touch screen device to operate their Business Mobile app. I think treating C fairly involves making it possible for the Treasurer they've chosen to strongly authenticate so that he can use all TSB's online banking and electronic payment services and doesn't have to rely on telephone and branch banking services instead. TSB's offer will, I think, make it possible for Mr B to strongly authenticate the creation of and payments to new payees and I currently think it's a fair and reasonable offer in all the circumstances.

Putting things right

For the reasons I've explained I intend to uphold C's complaint. TSB have already agreed to arrange a needs assessment for Mr B and, following that, provide C with

an iPad and input devices that will enable Mr B to use the app without reliance on a touch screen. This means he'll be able to login to C's account online, create and pay new payees, and fulfil his role as Treasurer in the same way as he did before TSB made changes to the way customers authenticate online banking activity. I think this offer is fair in all the circumstances.

So, my decision is that TSB should:

- *Arrange an assessment of Mr B's ergonomic needs for accessing the Business Mobile app.*
- *Following the results of that assessment provide C with a device which supports TSB's Business Mobile app and suitable input devices which Mr B can use to access the app and generate an authentication code instead of using the touch screen."*

Responses to my second Provisional Decision

In response to my second provisional decision TSB said they didn't have anything further to add.

Mr B said that he still considered he'd been discriminated against by TSB, but essentially agreed with my provisional decision. However, he said he didn't understand why action would need to be taken separately with respect to TSB's Equality Act 2010 duties.

He also explained that he has "*no objection in principle*" to independent assessment of his needs, but he has "*reservations*" about why one is necessary and how useful it will be as his condition and abilities can fluctuate over time.

Mr B suggested that an assessment may not be necessary if TSB can provide "*an appropriate adaptor*" for his own existing keyboard and pointing device (trackball) to be connected to the iPad they propose to provide. He explained that he's aware external keyboards can be connected to iPads via a USB port adaptor (or hub for multiple connections). He said, if this is possible, TSB won't need to arrange a needs assessment and need only "*ensure that their device and adaptor in fact can be connected to USB peripherals and come with some means of ensuring that TSB retain responsibility for them*". Finally, he said it matters not which touch screen device is provided, so long as he can read the screen.

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 see no reason to change the overall outcome I previously reached in my two provisional decisions on this complaint. I remain of the view that C's complaint should be upheld, that TSB should offer C a viable alternative for its Treasurer, Mr B, to strongly authenticate the creation of and payments to new payees. I also remain of the view that TSB's offer to provide C with an iPad and input devices (keyboard and pointing device) for Mr B to use so that he can access the app without having to use a touch screen is a fair and reasonable resolution to this complaint. However, I shall address the main points of Mr B's response to my second Provisional Decision.

First, I think it would be helpful to explain that whilst the Equality Act 2010 is a significant and important piece of relevant legislation, and I've thought about TSB's duties to make

reasonable adjustments under the Act whilst deciding this case, my role, as set out in the Dispute Resolution Rules is to determine a complaint by reference to what, in my opinion, is fair and reasonable in all the circumstances of the case. It's a matter for the Courts, not this service, to make a finding about whether the Equality Act 2010 has been breached.

Secondly, I note that although Mr B has agreed to undergo an assessment "*in principle*" he has set out a potential solution which might allow him to use the iPad TSB provide with the keyboard and pointing devices he's already used to and comfortable with. If it is technically feasible to connect Mr B's existing keyboard and trackball to the iPad with an adaptor, I agree this would render an assessment of his ergonomic needs unnecessary, and so I think this option – of connecting his existing keyboard and trackball to an iPad capable of supporting TSB's Business Mobile app– should be explored before any ergonomic needs assessment is arranged.

Finally, Mr B has raised the question of ongoing responsibility for the iPad and adaptor (or any other hardware that might be recommended and provided by TSB following an ergonomic needs assessment if one proves necessary). My view on this is that TSB's offer to provide C with an iPad is to resolve a *current* complaint that C's current Treasurer, Mr B, can't access the Business Mobile app to generate an authentication code without a device which is both capable of supporting the app *and* accessible via mechanical input devices. There are a number of things that could potentially change about the current situation which mean I don't think it would be fair or reasonable to impose an open-ended commitment on TSB with regard to the provision and maintenance of this hardware. For example, C may appoint a new Treasurer who is able to access the app via any touch screen device that the club or its members have at their disposal. It's also possible that TSB's options for completing SCA might evolve and change in future.

It's also relevant that the iPad and any other hardware, once in the possession of C, will not be restricted to use for accessing TSB's Business Mobile app or restricted to use by Mr B – it will be possible for C to use this hardware for other purposes if it so chooses. So, I don't think it's unreasonable that C takes some responsibility for these devices by, for example, insuring them appropriately and storing them safely. I don't think it would be fair to say that TSB remain responsible for equipment that a third party has in their possession, that they have no control over how well it's looked after, and that could be used for purposes unrelated to banking with TSB.

I think TSB's responsibility here is to provide C with a viable means for its Treasurer, Mr B, to strongly authenticate so that he can create and authorise payments to new payees in internet banking on behalf of C. I think TSB's offer to provide an iPad and input devices gives C that viable means for completing those tasks in the current circumstances. If, in future, C's Treasurer is again unable to complete SCA, perhaps if something goes wrong with the hardware, I'd expect C to raise that with TSB and, if the matter can't be resolved, it may result in a new complaint.

Putting things right

For the reasons I've previously set out I'm upholding C's complaint. TSB have already agreed to arrange a needs assessment for Mr B and, following that, provide C with an iPad and input devices that will enable Mr B to use the app without reliance on a touch screen. I think this offer is fair in all the circumstances. However, Mr B has made a suggestion which, if technically feasible, might render an ergonomic needs assessment unnecessary, and I agree this should be explored first.

So, my decision is that TSB should:

- Communicate with Mr B to understand the technical specifications of his existing keyboard and pointing device, and his requirements with regard to the screen size of an iPad (or similar app supporting device) and, using that information, explore whether it is technically feasible to provide C with a device which supports TSB's Business Mobile app and an adaptor or hub which allows the connection and use of Mr B's existing input devices.
- If it is technically feasible to connect Mr B's existing keyboard and trackball to the iPad (or similar app supporting device) with an adaptor or hub, provide C with a device which supports TSB's Business Mobile app and an adaptor or hub which allows the connection and use of Mr B's existing input devices which Mr B can use to access the app and generate an authentication code instead of using the touch screen.
- If, having communicated with Mr B and explored the options, it is not technically feasible to connect Mr B's existing keyboard and trackball to the iPad (or similar app supporting device) with an adaptor or hub, arrange an assessment of Mr B's ergonomic needs for accessing the Business Mobile app.
- If an ergonomic needs assessment becomes necessary, following the results of that assessment provide C with a device which supports TSB's Business Mobile app and suitable input devices which Mr B can use to access the app and generate an authentication code instead of using the touch screen.

My final decision

My final decision is that I uphold C's complaint. TSB Bank plc should put things right by doing what I've set out in the "*Putting things right*" section above.

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

Beth Wilcox
Ombudsman