

complaint

Mrs E is helping her mother, Mrs A, with this complaint. Mrs E says TSB Bank Plc hasn't properly explained why it spoke to Mrs A on the phone – despite instructions not to do so. And she doesn't feel the bank has apologised properly for the problems that resulted from it calling Mrs A.

background

The details of this dispute are well-known to Mrs E and to TSB. So I only summarise them here. Given the circumstances of this complaint, I refer mainly to Mrs E, rather than Mrs A.

Mrs A suffers with dementia. So her daughter, Mrs E, often helps Mrs A with her finances, including her banking with TSB. In 2011, there'd been some problems between TSB and Mrs A, so she wrote to the bank asking it not to contact her by phone and to deal with Mrs E.

In September 2014, a large credit (from a property sale) was made to Mrs A's account. At the time, it was a joint account with Mrs A's (now) late husband. TSB rang Mrs A to confirm she was expecting the money. Following the call, TSB transferred the money to an easy access savings account (earning a low rate of interest).

But Mrs A had forgotten there were already a number of cheques that were being written. So these bounced, causing some upset for several family members.

Once TSB knew what had happened, it put things right and refunded all the charges resulting from the cheques being bounced. But Mrs E was upset the problems had arisen in the first place. She said the bank knew not to contact Mrs A by phone. So she complained to the bank.

TSB said it hadn't done anything wrong. Its records didn't show it shouldn't ring Mrs A. They did show it shouldn't contact her for marketing purposes. But it argued the call wasn't to sell Mrs A anything. It was just about the unusual credit to her account and delivering an excellent service to Mrs A. Mrs E wasn't happy with the bank's explanation, so she contacted us.

our adjudicator's conclusions and responses to them

One of our adjudicators looked into things for Mrs E. He thought TSB shouldn't have rung Mrs A. So he recommended TSB pay Mrs A £300 for the upset caused.

Both the bank and Mrs E were unhappy with the proposed outcome. TSB still didn't think it had done anything wrong – but it was prepared to pay Mrs A £100. And Mrs E said she couldn't really say what amount of compensation might be appropriate until TSB admitted it'd got things wrong. So Mrs A's complaint was referred to an ombudsman to review.

my findings

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

I issued a provisional decision on this case in September 2015.

my provisional findings and decision

Having spoken to Mrs E, I knew how strongly she felt about this matter. As much as anything, I issued a provisional decision to express her concerns to TSB.

There's no dispute TSB corrected the immediate problems from the cheques bouncing. And it refunded all the resulting fees. That was the right thing to do. So Mrs A hadn't suffered a financial loss.

But it seemed clear to me the bank shouldn't have rung Mrs A. I'm sure it did so with the best of intentions. It wanted to make sure the credit was genuine (it could have been misdirected). I've no problem with the bank seeking to do this. Indeed, it could be considered good practice to do so. It's just the way it did so that was the problem.

I have some sympathy with TSB's comments that the call wasn't for marketing purposes. But – in reality – I thought it was. I'd expect any bank (having established a large credit was genuine) to try and make sure the money remained with the bank. And I thought that's what TSB was doing here.

As I said earlier, I thought the call was made with the best of intentions. It was most likely a genuine error, rather than deliberately ignoring Mrs A's request not to be contacted by phone. And Mrs E hadn't registered a power of attorney with TSB at the time of the call – so the bank's records hadn't been formally changed to show all correspondence (and contact) to go to her. So I didn't think it would be fair to criticise TSB unduly.

But it did get things wrong here. I thought this complaint could probably have been avoided if TSB had simply acknowledged there had been an unintentional error and apologised more clearly and much sooner. Indeed, that's very much what Mrs E wanted TSB to do now. And I didn't think that's unreasonable.

I had to think carefully about what other action might be right for TSB to take to resolve this complaint. I didn't think any amount of money could properly compensate Mrs E for the trouble she'd been put to.

I was aware she faces a constant struggle to try and protect Mrs A – and the problems here hadn't helped. Mrs E's said she'd donate any award made to Mrs A to the home that cared for her late husband. That'd a matter for her – but I understood the reasons behind this.

Mrs E said she's incurred costs through getting professional advice on her dealings with the bank. But that'd been her choice. We don't normally make awards for any such costs – as complaints can be brought to us free of charge (and without professional support). And it was important I wasn't not seen to 'penalise' TSB as it's not our role to regulate banks. Our role's to try and resolve disputes informally.

I thought a more 'formal' apology from TSB and a payment of £300 struck the right balance.

responses to my provisional decision and my further findings

Mrs E responded to my provisional decision. She was broadly happy with what I said. But she was concerned any apology from TSB wouldn't be genuine – the approach of the bank simply showed the banking industry at its worst.

So I expect Mrs E will be disappointed – but not surprised – to hear that TSB didn't respond to my provisional decision (by the date required). On the one hand, this could simply mean that it agreed with what I had said and proposed. But, equally, it could be seen as reinforcing Mrs E's view that TSB doesn't care. I can understand why she'd feel like that.

And it makes any more formal apology from the bank unlikely to be as genuine as both Mrs E and I feel it should be. I don't think TSB's lack of action here helps its (and perhaps the wider industry's) cause at all.

So, while I continue to believe TSB should write a more 'formal' apology to Mrs E, I hope she'll understand my concerns about how genuine it will be. Indeed, if TSB doesn't issue that apology, I hope that Mrs E will still feel Mrs A is able to accept the monetary part of my award.

It might seem tempting to increase the monetary award I make to recognise the further frustration Mrs E will feel. But I have to be careful I do not go beyond my powers and give the impression I am 'penalising' the bank in some way.

In summary, I think this is a complaint TSB could have easily avoided. Its subsequent actions (or now lack of action) have – in my view – simply compounded that.

my final decision

For the reasons I've given, my final decision is that I order TSB Bank Plc to:

- acknowledge it made an error in ringing Mrs A and write to Mrs E apologising for the problems that followed on from this; and
- pay Mrs A £300 to compensate her and Mrs E for the upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A (or Mrs E on her behalf) to accept or reject my decision before 9 November 2015.

Andrew Davies
ombudsman