

The complaint

Mr M has complained TSB Bank plc has discriminated against him as a disabled customer.

Background

Mr M is deaf and is legally blind with limited sight. In late December 2022 he attempted to transfer some money, via the TSB banking app on his phone, from his bank account to a new savings account he had opened with another financial institution I'll call 'C'. As the amount of money Mr M wanted to transfer was higher than normal for his account, it was temporarily blocked by TSB in order for it to run the necessary fraud checks and ensure it was a genuine request.

In order to complete the security checks, Mr M had to phone TSB and speak to a representative in real time. When this happened Mr M was away from his own home, where he has additional software on his computer that allows him to complete text-calls via a third-party operator service. Without this equipment it's not possible for Mr M to engage in telephone conversations independently.

When Mr M attempted the first transfer from his TSB account to his new account with C, he was in his partner's home and so didn't have access to his computer. However, he was happy for his partner to assist him with the call. So, he was able to phone TSB to have the fraud checks removed and complete the first transfer.

During this call Mr M indicated that he was planning on completing more transfers later that day and over the coming days. He was warned the same fraud checks may stop the planned transactions from being completed online and that he might have to phone back. But the representative did promise to leave detailed notes on Mr M's account so any follow up checks could be completed faster. Mr M confirmed he understood this and thanked the bank representative for their help.

Later that day, having left his partner's home and gone to a friend's house, Mr M attempted to make a second transfer via the app on his phone. Unfortunately, this was also blocked, and Mr M was unable to complete this transfer, or the others he had intended to make over the coming days, until he returned to his own home three days later.

Mr M has said that the processes TSB have in place to remove fraud markers are discriminatory under the Equality Act 2010. He says this because the only way he was able to contact TSB to have the checks removed was over the phone. He believes TSB has failed in its duty to provide reasonable adjustments to ensure all customers are able to access its services. He says if he was able bodied he'd have been able to make the calls with ease and would've been able to complete all his transfers on time. However, because he's deaf and effectively blind he wasn't able to complete the transfers when he wanted to. The account with C has a higher interest rate on it and so Mr M believes TSB should compensate him for the three days of interest he lost on the funds he was unable to transfer until he returned to his own home.

TSB responded to Mr M's complaint stating that it's both reasonable and necessary for it to

have fraud and scam checks in place in order to protect its customers and itself. It has said that while it appreciates the checks can cause frustration they are necessary to ensure customer's accounts are safe. It didn't respond to Mr M's allegations of discrimination in its response.

Unhappy with TSB's response Mr M brought his complaint to our service. I issued a provisional decision on Mr M's complaint on 16 October 2023. I said I was intending on upholding Mr M's complaint as I didn't think TSB had done enough to ensure he could reasonably access its services. I explained that I was going to ask the bank to pay Mr M £250 for the issues he'd experienced when trying to complete the bank transfers. TSB accepted my findings, but Mr M didn't. In essence he wanted to know why I hadn't addressed his concerns about the customer service he'd received as it was part of his original complaint. He also thought I should be able to make a direct finding on whether or not he'd been discriminated against.

As neither party has raised any concerns around the majority of the findings set out in the provisional decision I will repeat them here and address Mr M's concerns around the customer service aspect and how I've addressed his allegation of discrimination.

My Findings

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

Mr M has queried why I didn't make a direct finding on whether or not he was discriminated against as per the standards set out in the Equality Act 2010. As I explained in the provisional decision, this service is an alternative to the courts, and while our decisions can be legally binding, we don't have the same authority as the courts do. Only a court of law can decide whether or not a piece of legislation has been breached. That's because a piece of legislation can only be interpreted by a court of law and only a judge can decide whether or not an act, such as the Equality Act, has been breached. It is a fundamental matter of law. As an alternative to the courts, I don't have the necessary legal authority to make such a finding.

However, I did consider the provisions and purpose of the Equality Act, as well as other relevant pieces of legislation and regulations, when deciding Mr M's complaint. And I did find that the business had failed to ensure he could access its services in a fair and reasonable way when compared to other customers who don't have the same disabilities as he does. And I found the business should've done more to support him as a disabled customer and upheld his complaint on that basis. So, while I can't make a direct finding saying TSB discriminated Mr M under the definitions set out in the Equality Act, I do think it should've done more to support Mr M and that its treatment of him was unreasonable.

Mr M has also asked that I consider the customer service he received from TSB as separate complaint point and has queried why I didn't address it in the provisional decision. He has said that his complaint was not only about the problems he had when he tried to complete

the transactions but the standard of customer care and delays in receiving a response to his complaint when he logged it in January of this year. I'd like to apologise to Mr M for not addressing that within the provisional decision, this was because the crux of the complaint was around whether or not he'd been treated reasonably and fairly by the business. I upheld the complaint on the basis that the bank should've done more to support him as a disabled customer, which does address the bulk of the issues Mr M experienced but not the delay in receiving a final response letter from TSB. I will address that in this decision but before doing so will repeat some of the findings from the provisional decision to clarify the problems Mr M experienced.

Mr M accepts why the fraud checks are necessary and doesn't dispute that there's a requirement on TSB to ensure, as much as it can, that the transactions on its customers' accounts are genuine and fully authorised. So, I won't repeat the explanations already provided by TSB as to why it was necessary for it to check the transfers between Mr M's account with it and the account with C were genuine. Instead, I'll focus on what happened once the check on the first transfer had been completed and whether there was more that should've been done to enable Mr M to complete the later transfers within the intended time frame.

TSB has provided us with recordings of the calls Mr M made in late December 2022 and early January this year. Because Mr M requires the operator service to make phone calls the bank representatives he speaks to are immediately aware of his disabilities and that there's a third party facilitating the call. I would like to assure Mr M I've listened to these calls in full. In the first call the TSB representative explains why the initial transfer was blocked. They ask Mr M a series of security questions, as well as questions about the intended purpose of the transfer, and the nature of the account with C. Mr M answers all of the questions in full and eventually the bank representative agrees to remove the checks and completes Mr M's transfer.

During the call Mr M indicates that he intends on completing two more larger transfers that day, until he reaches the daily transfer limit on his TSB account. The bank representative explains that while they have added detailed notes to Mr M's account clarifying the purpose of the transfers they can't guarantee that later attempts won't be blocked in the same way. They explain that if that happens it will be necessary for Mr M to call the bank again and go through the same checks a second time. Mr M thanks the representative for making him aware of the situation and confirms he's happy that notes will be added to his account.

Later that day Mr M attempts to transfer a second large sum of money from his TSB account to his account with C and it's blocked. However, by this time Mr M had left his partner's home and was with a friend. As he didn't want to involve his friend in his private financial matters he was unable to complete the final two transfers planned for that day.

The following day Mr M attempted to make another transfer and this one was also blocked. As Mr M hadn't yet returned home he was unable to call the bank and have the transfer completed.

Two days later Mr M returned to his home and was able to call the bank to request the checks be removed.

Having listened to the call between Mr M and the bank representative it is clear how frustrated Mr M has become by the process in place. The representative has to take Mr M through lengthy and detailed security questions a second time, despite confirming they have seen the notes left on Mr M's account from the call a few days earlier. Mr M becomes increasingly frustrated by the volume of information he has to repeat in order to complete the transfer. He clearly states to the representative that he feels TSB have discriminated against him because the only way to remove the fraud check is to call the bank. And that's not something that's easy for him to do. So, he feels the bank has failed in its duties under the Equality Act 2010 to provide reasonable adjustments for consumers who are unable to, or can't easily, contact the bank via phone. He then asks to speak to a manager as he wants to raise a complaint.

The bank representative explains that it's not possible to speak to a manager but that they can start the complaint for Mr M and arrange for a manager to call him back. Mr M becomes extremely annoyed by this suggestion as, given the bank representative is on the phone with a third-party service operator, it should've been apparent Mr M wouldn't be able to answer a direct call from a manager. The third party operator asks the TSB representative directly if a call could be arranged for a fixed time via its service but is told this isn't an option either.

At this stage Mr M explains he wants the entire amount he had intended to transfer incrementally over three days (due to the daily transfer limits) transferred in one lump sum. The bank representative explains they're not able to do that and says that they'll try to find a manager to speak to. However, Mr M is unable to stay on the phone and the call ends. I don't think TSB was wrong to put safeguarding measures in place or that the transfers Mr M wanted to complete had to be verified directly before TSB released the funds. And I know Mr M doesn't dispute this either. So, while I can empathise with why he found the volume of questions asked and the nature of the questions excessive, I don't think it was unreasonable for TSB to want to ensure the transfers were legitimate.

That said, TSB also has to ensure that the processes it puts in place around such checks are accessible to all its customers and not just the majority of them.

Given the nature and sophistication of a lot of online fraud and scams that can take place I understand why TSB asks to speak to its customers rather than communicate via email or text. And Mr M has explained that it would've been just as difficult for him to communicate with TSB in email or text format while he was away from home. So, I don't think Mr M was going to be able to complete the transfers without having to communicate with TSB in some manner when the checks were applied.

It's unfortunate that after the first transfer was completed the later attempts were also blocked. TSB has indicated the fact that Mr M had moved location between the first and second transfer and so the IP address the request was coming from had changed, along with the increase in the amount requested, may have caused the fraud trigger to be added again. Either way although I understand why Mr M felt the second call should've been unnecessary I can't say that it's unreasonable for TSB to check these sorts of transfers when they're flagged.

So, I'm not upholding Mr M's complaint on the basis that the later checks were unnecessary or excessive as I don't think they were. However, I do think that TSB has failed to have adequate processes in place to support deaf and visually impaired consumers. Or, if it does have processes in place, its staff were unaware of them and unable to use them to enable Mr M to complete the transactions as planned or speak to a manager when requested.

When Mr M rang TSB after returning to his home and said he wanted to speak to a manager and to complete the transactions in a single lump sum so he could avail of the higher interest rate with C in the manner in which he had planned. He was told the only process in place was for the manager to call him back and that call had to be to his home number and no other. Mr M has since clarified it wouldn't have been possible to accept a call via the relay-text service either, but this wasn't properly discussed at the time.

It is extremely foreseeable that a bank like TSB will have customers who are unable to accept incoming direct calls for a plethora of reasons. That the representative seemed at a loss to be able to suggest any other alternative method for a manager to contact Mr M is worrying.

Therefore, having listened to the calls between Mr M and TSB I think there was more the bank could have and should've done once he said he wanted to speak to a manager. As I'm unable to make a finding under the Equality Act I can't say that TSB discriminated against Mr M. But I do think it's failed to ensure its processes are assessable to all customers, including those who are deaf and or blind. By telling Mr M the only way it was possible for him to speak to a manager was via a direct call back, TSB failed to treat Mr M fairly. And for that I think it should pay him £250 compensation for the upset caused.

Mr M has also said that following the problems he experienced on the final call he logged a formal complaint with TSB on the 4 January 2023 but didn't receive a response until 1 March 2023, despite the response being dated 6 January 2023. When his complaint was considered by our investigator she didn't think the timeline for receiving the response was unreasonable as the relevant rules set out by the Financial Conduct Authority ("FCA") provide businesses with up to eight weeks to respond to complaints made by consumers. As Mr M received his response eight weeks to the day it was made it fell within those timeframes and so didn't breach the expected standards.

Overall, I agree with our investigator here. I would need to have found that Mr M's response was unreasonably delayed by TSB in order for me to uphold on this point. While I agree that it's strange the letter was dated on the 6 January but not received by Mr M for another 7 weeks or so, ultimately Mr M did receive an answer and it was within the timeframes set out by the FCA. So, I can't say the business failed to adhere to the standards required of it in relation to that part of Mr M's complaint, or that the delay on Mr M receiving a copy of the letter was down to a failing on the part of TSB.

Mr M has understandably raised his concerns that the response he received by the business didn't actually address the main element of his complaint, i.e., whether or not he was discriminated against, but instead focused on whether or not the checks that had been put in place were reasonable. I agree that the letter from TSB didn't address anything to do with the problems Mr M had faced when trying to complete what should've been a relatively straight forward transaction. I think this was down to the complaint handler framing the complaint incorrectly and I understand why they thought Mr M was primarily upset by the fact that he couldn't complete the transactions when he wanted to and not why that was the case or what that meant for him as a disabled consumer.

However, I don't think this was a deliberate attempt by TSB to avoid addressing all of the concerns raised by Mr M. Instead, I think it was down to human error on the part of the person who set up the complaint for him. I hope this decision has addressed those issues now and that Mr M feels like his concerns have now been considered.

Putting things right

TSB Bank plc should pay Mr M £250 compensation in recognition of the distress caused

when it failed to make reasonable adjustments for him and properly address his complaint in full.

My final decision

For the reasons set out above I uphold Mr M's complaint against TSB Bank plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 December 2023.

Karen Hanlon
Ombudsman