

## **The complaint**

Mr C and Mrs C complain that TSB Bank plc (“TSB”) failed to accept a Power of Attorney (PoA) issued in a foreign jurisdiction. This has had an impact on their ability to access their savings and has affected their quality of life.

## **What happened.**

Mr C and Mrs C are represented in this complaint by Mrs J.

Mr C and Mrs C moved permanently overseas for their retirement. In 2020 they obtained a Power of Attorney issued by the overseas authority for Mrs J to act on their behalf to manage their affairs including their bank accounts held in the UK. They also obtained an “Apostille” which is a document issued by an appropriate government department (in their current country of residence) that recognises (in this case) the PoA is authentic and can be accepted by other countries who are part of the international agreement for such matters, including the UK.

At the time the PoA was granted, there was no question regarding mental capacity of either of the complainants. The PoA was issued jointly in both Mr C and Mrs C’s name. Mrs J arranged, using the PoA, to have Mr C and Mrs C’s other UK based financial arrangements (pensions) moved to their overseas bank.

Mrs J attempted to register the PoA on four occasions with TSB and they’ve continually declined to recognise it. TSB have stated that they were first aware of it in 2022 after issues arose with the account which was blocked by their fraud team. TSB said they asked the account holder(s) to attend a branch with their identification documents and were informed that Mr C and Mrs C were living abroad. Due to their great age and health related issues, they couldn’t travel to the UK. TSB said it was at this point they suggested Mr C and Mrs C obtain a PoA to enable an attorney to manage their accounts.

During this period, Mrs J advised that access to the account was arranged through online banking using a specific laptop and agreed by TSB. Access to this device was later cancelled. Mrs J has said she’s found it very difficult to deal with her parents’ concerns because TSB won’t recognise her as their attorney (using the PoA).

It’s also relevant to this complaint that other family members have also had access to the account. Mrs J doesn’t believe this was appropriate and has said her parents didn’t authorise this. Later, Mr C and Mrs C couldn’t be sure if they’d given access to other family members.

It’s also not clear when TSB were advised about the permanent change of address. At the time the issue was raised in 2022, the address for their account was still in the UK, although they’d been abroad for some time prior to this.

Later in 2022, TSB advised Mrs J they couldn’t accept the foreign PoA/Apostille as this was against their company policy. They advised that a PoA issued in the UK should be obtained to allow Mrs J to be their attorney.

Mr C and Mrs C raised various complaints concerning their treatment and account blocks which caused them inconvenience and stress because they couldn't access their account to pay bills. Complaints were raised with TSB about these matters – but didn't form part of their complaint to the Financial Ombudsman Service. Mr C and Mrs C brought a specific complaint to our service regarding TSB's refusal to accept the PoA/Apostille as they thought this was unfair and unreasonable. Mr C and Mrs C advised that other UK Government departments and companies had accepted the PoA/Apostille so TSB should also accept it. An additional complaint was registered concerning unauthorised access to the account related to other family members, but this was later withdrawn.

Their complaint was looked into by one of our investigators who didn't think that TSB had failed to follow its own policy and wasn't unfair.

Mrs J on behalf of Mr C and Mrs C were unhappy with the outcome and asked an Ombudsman to review the complaint.

My first thoughts about this complaint were to attempt to broker an arrangement that satisfied both Mr C and Mrs C's immediate needs and TSB's concerns. Accordingly, I asked TSB to make arrangements to speak with Mr C and Mrs C via video to deal with the outstanding account access issues.

A video meeting was arranged between the various parties and for a number of reasons, the meeting didn't satisfy TSB that Mr C and Mrs C were in a position to independently give them instruction about their account.

Mrs J was equally concerned about how TSB acted during the meeting and didn't think that they were sufficiently interested about her parents and their situation.

Following the failure of this meeting, TSB advised they could accept a UK PoA, but Mrs J didn't think this was appropriate as it would likely mean that her parents would have to travel to the UK. Due to their ongoing health conditions and age, she didn't think this was appropriate.

The situation reached an impasse.

### **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.

As no informal agreement could be reached, I'm now issuing my decision regarding this matter.

Firstly, I wanted to acknowledge the continued input from both Mrs J and TSB concerning this matter. At the heart of this complaint are two elderly customers who are having difficulties accessing their own funds, but because they live abroad the situation is more challenging.

There are other factors present in this complaint which further complicate the situation, in particular, other family members who, at various points, appear to have had access to the account. I've had to consider the situation that not all parties are present in this complaint, so to an extent, not everyone's version of events is represented.

It's apparent that various family members are at odds with each other over who can or can't use the account. Mr C and Mrs C aren't in a position to say whether those accessing it did so with their permission or not, although in a recent letter, they have stated that Mrs J is their authorised representative (under the PoA), assisted by her brother. TSB records show

another family member as being a user of the account (not Mrs J) at some point, so on the face of it, they were also authorised to use it.

The complaint brought to our service relates principally to whether it was reasonable for TSB to decline the overseas PoA and accompanying Apostille. Mrs J strongly believes they should and thinks there's an element of bias because of which country issued it. TSB have provided their policy statement regarding overseas PoAs which says in general they don't accept them – whichever country issues them, although there are exceptions.

Those exceptions relate to whether the account holders have mental capacity and at the time of the submission of the PoA to TSB, there wasn't an issue concerning this. So, on the face of it this couldn't have been used. It's also not uncommon amongst UK banks that they won't accept foreign PoAs, so here I don't think that TSB's position is out of the ordinary.

I don't think there's any evidence to support Mrs J's assertion that TSB are biased towards particular countries as their policy is they won't accept any overseas PoA. I have thought whether their strict reliance on the policy is unfair in the particular circumstances of Mr C and Mrs C's situation.

Here, there are factors linked to other family members who believe that other family members shouldn't access the account and use the funds. TSB also had concerns that Mr C and Mrs C couldn't independently provide their directions to them during the video meeting. I appreciate Mrs J was very unhappy with the approach taken by TSB, but I have to consider all the factors present in a complaint. I can't ignore TSB's concerns here or that there are undoubtedly opposing views to how the account is operated. So, I don't think that in these particular circumstances, that TSB's adherence to their policy is either unfair or unreasonable.

Based on all the factors present in this complaint, I think that in order for the protection of Mr C and Mrs C, that a UK PoA or appropriate alternative order be obtained. This will provide all the parties, including Mrs J (as attorney) with the relevant authority to allow Mr and Ms C's funds to be safely released to their account overseas.

I do think that TSB could well have explained the situation with regards to the overseas PoA sooner. Their earliest notes on the matter don't show that they set out the situation about their policy – just that Mrs J was advised to register a PoA with them. I appreciate that TSB's records didn't reflect the new permanent address was overseas (until after the foreign PoA/Apostille issue was raised), but I think that in Mrs J's dealings with the branch when she tried to register it, it would likely have been discussed (especially as this was the main reason for visiting the branch).

Unfortunately, that time has now passed, but in fairness to Mr C and Mrs C, I think they were let down here by TSB's lack of grasp of their circumstances and the additional complications it involved. I think Mrs J would still have argued the current PoA was acceptable, so the matter was always likely to end in a stalemate.

Overall, my primary concern here is the complaint brought by Mr C and Mrs C, making sure they have access to their account through an appropriately authorised third party. I appreciate the strength of feeling Mrs J has about TSB's approach, but I have to take into account both parties' position and all the available evidence. That shows there were other factors including competing family interests about who has access to the account, transactions blocked due to fraud triggers and whether Mr C and Mrs C were able to independently give instruction about their account.

When balancing those factors, I don't think it was unreasonable for TSB to adhere to their policy and they also offered an alternative (the video conference) which unfortunately wasn't successful. Whilst I'm sure that it won't feel like it, TSB's obligations are to protect the account of the customers and there's sufficient uncertainty surrounding access to the account that I won't be asking them to do anything further.

I realise this will cause some logistical and other financial implications, but they are primarily caused by Mr C and Mrs C being based overseas. Whilst I attach no blame to them for this decision, their current residence is a complicating factor in making arrangements for appropriate access to their account.

**My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 01 September 2023.

David Perry  
**Ombudsman**