

The complaint

A company which I'll call 'L' complains that TSB Bank Plc wouldn't remove a restriction from their account which had been applied incorrectly as a result of a HMRC error.

The complaint is brought on L's behalf by their director, Mr B.

What happened

L held a business current account with TSB.

L told us:

- They are retail business but with a focus on a specific sector of the community. Initially the company had been run with Mr B and his partner Mr D as directors. However, due to illness, Mr B had needed to resign as a director in around early 2015.
- Mr D took over as sole director, however due to various issues he was unable to continue and eventually Mr B took over as a director and Mr D resigned.
- In December 2015, without warning TSB restricted access to L's account which meant they didn't have access to the account balance of approximately £20,000. TSB said this action had been taken at the request of HMRC.
- They contacted HMRC in January 2016, and it said that L had no issues as a trading company, and that confirmation from it should be enough for TSB to remove the restriction on L's account.
- They repeatedly contacted TSB in branch and over the phone, both directly and through their former accountants but the bank was unhelpful and wouldn't release their funds. In 2019, their new accountant, which I'll call 'J' wrote to TSB with a copy of the HMRC letter and again asked for the funds in their account to be released. There was no response from the bank.
- In January 2022, TSB wrote to them and said it was restricting access to their account – even though it was already restricted. There was no reference to any previous contact. J wrote to TSB again in April and June 2022 requesting the release of the funds but received no response and HMRC said there was nothing it could do to assist.
- They have struggled to repay all their creditors but have managed to clear all their outstanding debts and opened an account elsewhere. However, they need access to the funds held by TSB to keep the business running – particularly after the Covid pandemic.
- TSB hold the original letter from HMRC which offered assistance if required, so why

didn't the bank call them to check about the account.

TSB told us:

- TSB received a strike off notice from HMRC in December 2015 and it wrote to Mr D to make him aware of this.
- In February 2016, Mr D said the strike off notice shouldn't be affecting L's account, because it was for a different company. He contacted it again in December 2016 but didn't provide any evidence to support what he was saying.
- It received a letter from J in December 2019. However, this didn't include a letter from HMRC, but said they were the new accountants, and it was signed by Mr B as the director not Mr D who was still on their records.
- In January 2020, it wrote to Mr D to enquire about him no longer being a director. This was sent to the address it held on file, which was that of the previous accountant. It had never been told about an update of director or accountant.
- It received a further letter from J in April 2022 requesting that L's funds be released. It was aware from this point that L's account could be unrestricted, and it should have taken action at this point. It then received a further letter in June 2022, but again, it didn't take any action.
- L had never updated it to say that Mr B was now the director, so it hadn't been able to act on any of his instructions or J's request as the authority had come from Mr B not Mr D who was still the director on its records.
- Once it had received the correctly signed mandate from Mr B and Mr D in late June 2023, it had actioned this request. After resolving some system issues due to the HMRC notification, L had been able to move funds from 15 August 2023.

Our investigator recommended the complaint be upheld. He said that in December 2015, TSB had received a notice from HMRC of active strike off action for L. However, shortly afterwards HMRC realised it had made an error and the strike-off was discontinued for L as it was the wrong company. He said L had repeatedly tried to make TSB aware of this, but the bank hadn't taken any action until April 2022. He didn't agree with TSB's explanation for the delay and thought the bank should pay L 8% simple interest per annum on the account balance from January 2016 when the account had been restricted until the date L had been able to access their funds.

L accepted the investigator's opinion, but TSB didn't. The bank said that Mr B didn't have the authority on L's account until a new mandate had been completed in July 2023 so it couldn't accept instruction from him or his accountant. It said it hadn't received any contact from Mr D between 2015 and 2023, or a response to its Final Response Letter ('FRL') of January 2020. So, it didn't think it was fair to expect it to pay interest on the account for that time. However, it said it should have added the accountants letter to L's complaint sooner, so it was happy to pay the interest from December 2019. As an agreement couldn't be reached, the case has been passed to me to decide.

I issued a provisional decision on 4 March 2024. I said the following:

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

L says that TSB has treated them unfairly because their account was restricted without warning, and despite being aware from January 2016 that this was an error the bank wouldn't release their funds. They believe that TSB should refund them interest at 8% simple from this date. But I don't agree.

Firstly, I want to make clear that I do think TSB has made a mistake here and that interest should be payable to L for the time that they were without their funds. But I think the bank was reasonably aware from December 2019, when they received J's first letter with a copy of the HMRC letter, that L's account shouldn't be restricted. I'll explain why.

L told us that they wrote to TSB in January 2016 and made the bank aware at this point that there had been an error and provided the letter from HMRC. They've also said they attended the branch and attempted to resolve this. However, I've seen copies of the bank's contact notes and whilst they show that there was contact from L, the notes say that proof from HMRC will be provided. And I haven't seen any evidence that was the case until December 2019 when the letter from J was received by the bank. So, I think it was reasonable that TSB left L's account restricted, pending the evidence that it needed from HMRC.

TSB told us that the first evidence they received from L with the confirmation from HMRC was in April 2022. It says this was the point it should have unrestricted L's account. But I've seen that in December 2019, J wrote to TSB enclosing a letter from HMRC. The HMRC letter confirmed that L was operating correctly and there was no need for a restriction to be placed on their account. I recognise that the bank may not have been aware of the HMRC error prior to this date, and I acknowledge that it says there is no record the letter from HMRC was enclosed with this letter. But I think on the balance of probability that the bank did receive the HMRC confirmation at this point, particularly as J's letter itself referred to this.

Furthermore, even if the HMRC confirmation hadn't been included, I think it's reasonable to believe the bank could have made enquires at this point either with HRMC or the accountant's that sent in the letter. Instead, I've seen it wrote to Mr D at the previous accountants address to enquire about him no longer being a director. So, I think that TSB was reasonably aware from this point, that regardless of who the director was for L at the time, that the company's account should have been unrestricted.

I recognise that the bank has said the accountant was acting on Mr B's authority not Mr D's who was on its file as the director at the time, but I'm not persuaded by the bank's argument here. If the bank had responded to J to say it didn't hold the right authority to speak to them at that time, based on how quickly this was provided once our service became involved and Mr B and Mr D knew what they had to do, I think this matter would have been resolved in December 2019. I also think it's reasonable to think that when TSB received the letter from J, it could have checked the information held on Companies House which would have confirmed that L was active with no issues, as J had said.

TSB told us that there was no record of Mr B or Mr D contacting the bank about their issues. However, they have told this service that they did regularly try to resolve this issue in their local branch but were treated unreasonably and were offered no support despite the difficulties financially and health wise making them vulnerable customers. Given that TSB were aware in December 2019 that L's funds should have

been released, that they had a new accountant, and the director had changed I think the bank should have made more of an effort to support the company.

I recognise that TSB told us L didn't update it with the new details. However, given what L has told us about the branch visits, I think it's likely on balance that they did attempt to provide the evidence from HMRC saying that their account shouldn't have been restricted and that Mr B was now L's director. So, I think TSB should pay L £500 for the inconvenience caused.

Mr B has told us that this has been a difficult time for both himself, and Mr D when he was the director. He's also mentioned the impact on the demographic group that L supports. However, our service can only look at the impact on the eligible complainant, which in this case is L, not the individuals or groups it supports. As L can't be caused distress, I can only look the inconvenience caused to the company.

I'm sorry to disappoint L as I know they wanted a refund of interest on the account balance from when their account was restricted. However, I'm not persuaded that's a fair resolution. I think TSB should refund L interest at 8% simple from 4 December 2019 when it was reasonably aware from HMRC that L's account didn't need to be restricted, and pay L £500 for the inconvenience caused.

I invited L and TSB to give me any more evidence and information they wanted me to consider before issuing my final decision. TSB accepted the decision and had nothing further to add. L didn't accept the decision. They said in summary that:

- Mr D went to the local branch in 2016 and was told that there was no-one that could help and that he needed to call a different department. Therefore, there was no-one that he could hand the HMRC letter to.
- TSB said that proving HMRC had made a mistake was Mr D's responsibility. Mr D did try to do this by HMRC said the letter it had provided should be sufficient.
- TSB has records from 2016 that prove it knew HMRC had made a mistake, or why would it have said it was waiting for confirmation from HMRC. TSB made no attempts to contact Mr D at his home address or on the phone show that it wasn't concerned that L's account was restricted.
- From 2017 onwards, Mr D was a carer for a poorly relative and therefore this reasonably took priority.

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'm sorry to disappoint Mr B but this doesn't change my opinion that L should only be refunded interest on the funds from 4 December 2019 onwards. I recognise Mr B's strength of feeling about this complaint. However, I don't think TSB acted unreasonably here because there is no evidence that it received the letter from HMRC in 2016. And given that the bank had recorded that the proof was going to be provided, I think on the balance of probability, that if the proof had been provided that there would have been a record of this – in the same way there was when L's accountants contacted TSB.

Furthermore, whilst I note Mr B's comments that there was no-one in the branch to hand the letter to, I think it's likely that after Mr D had spoken to the relevant bank department in 2016, that it would have told Mr D where to send the letter to. I recognise L thinks it's unreasonable that TSB didn't try to contact Mr D (or HMRC) to follow this up. However, the bank isn't obligated to do this, and it had already spoken to Mr D about what it needed from him. As far as the bank was aware, it had acted on the instruction given to it by HMRC to restrict the account, and it needed proof from HMRC to remove this – simply because Mr D had told it otherwise wasn't sufficient for it to do so. I think this was reasonable.

I'm sorry to hear about the personal issues that Mr D experienced in 2017, and I recognise this has been a distressing time for both Mr D and Mr B whilst they haven't had access to the funds in L's account. But I can't fairly hold the bank responsible for both of L's directors, not providing the information TSB required to remove the restriction on the account.

Therefore, I'm not persuaded that L should be refunded 8% interest on their restricted account balance from January 2016 onwards and I see no reason to reach a different conclusion to my provisional decision. So, this final decision confirms the findings set out in my provisional decision.

My final decision

My final decision is that I uphold this complaint. I instruct TSB Bank Plc to do the following:

- Refund L interest at 8% simple on the balance of L's account from 4 December 2019 until 15 August 2023 when the account was unrestricted.
- Pay L £500 compensation for the inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 15 April 2024.

Jenny Lomax
Ombudsman