

The complaint

Ms B is unhappy with TSB Bank plc's ('TSB') application process to open an account as she feels this means she is being treated unfairly as a result of her personal beliefs.

What happened

In October 2023, Ms B started the process of applying for a new account with TSB online.

As part of the application process, the applicant is asked for their gender. And, it gives the following three options:

- *Male*
- *Female*
- *Not disclosed*

One of these three options has to be selected in order to proceed with the application process.

Ms B says she felt unable to proceed as the question conflicted with a particular set of beliefs she holds in relation to sex and gender.

So, Ms B has told us that instead, she withdrew from the process and successfully applied to open an account with an alternative provider, which didn't require her to answer any similar questions.

On 30 October 2023, Ms B therefore made a complaint to TSB about the question outlined above. TSB issued their final response letter to this complaint on 22 December 2023, explaining the complaint had not been upheld. TSB said they hadn't made any errors, and that they did not think their application process was unreasonable.

Ms B was unhappy with this response and so referred her complaint to our Service in January 2024. TSB initially informed us that they didn't think our Service had jurisdiction to consider the complaint, as Ms B was not a customer of theirs.

One of our Investigators considered the complaint and issued their findings to both parties on 5 June 2024. Our Investigator addressed the matter of jurisdiction first and explained that a potential customer relationship had been demonstrated due to Ms B having started to complete the application process and her apparent intention to continue and ultimately open an account. Our Investigator then turned to the merits of the complaint and explained that TSB had not acted unreasonably by including this question in their application process and so the complaint was not upheld.

TSB did not respond to our Investigator's findings and nor did they provide any further comments. Ms B responded saying she disagreed with the Investigator's assessment. She went on to say that, although she accepts she had the option of selecting '*not disclosed*' in response to the relevant question, she felt that giving any response tacitly implied an acknowledgement on her part that it was a valid question to ask.

As the two parties were unable to reach agreement at view stage, the complaint has been referred to me to make a final decision.

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.

If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it. Rather, that I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my decision.

Having considered everything carefully, I agree with the outcome reached by the Investigator, and for broadly the same reasons. I'll set out my findings below.

Firstly, I'll address the point that TSB raised about our Service's jurisdiction in this case. As our Investigator has set out, it is not necessary that Ms B be a current customer of TSB to bring a complaint to this Service. In starting to complete the application, and in intending to continue with this process and to open an account, Ms B qualifies as a potential customer. And, a 'potential customer' is one of the categories of eligible complainant under the Financial Conduct Authority (FCA) DISP rules which set out our Service's jurisdiction. So, I'm satisfied Ms B's complaint is one we can consider.

I also note that TSB did not respond to our Investigator's view in which this point was explained, so it would seem they no longer dispute our Service's jurisdiction here in any case.

Secondly, I turn to the merits of Ms B's complaint. Amongst other points, Ms B has said that ultimately, she feels she has been discriminated against under the Equality Act 2010. While our Service is required to take relevant law into account, and I can confirm I have done so in this case, making a finding on this specific point does not fall within our remit. Only a court can make a decision regarding a breach of the Equality Act.

However, I can make a finding on whether TSB has made an error or acted unfairly or unreasonably regarding this matter. It's also important to be clear that I can only consider the individual circumstances of this particular complaint, as opposed to TSB's policies and procedures as a whole.

As explained above, the question to which Ms B objects within TSB's application process requires the applicant to select one of three possible answers; '*male*', '*female*', and '*not disclosed*'. Any of the three options, if selected, would allow the application to proceed, and it was not possible to proceed without engaging with the question (i.e., selecting one of the options).

I don't think it's unreasonable for a business such as TSB to ask customers for personal details and information when opening an account. There are many valid reasons for TSB to require this personal information, not least for account security and customer verification purposes.

I acknowledge Ms B holds a different view about the validity of the question but, while she is entitled to her view, I do not agree that she should expect to impose it upon TSB. Nor do I agree that the requirement for Ms B to give some form of answer to this question in order to proceed with the application process was unfair or unreasonable. If she did not wish to answer, as she clearly did not, the option of '*not disclosed*' was available to her.

I acknowledge that Ms B has told us she feels that in selecting such an answer she would've been forced to tacitly accept the validity of the question, and that this ran contrary to her beliefs, such that she had no choice but to give up the application altogether. I'm not persuaded this is the case. In my view, '*not disclosed*', simply indicates that the applicant does not wish to provide any information in response to the question, without giving any

endorsement or indication of the applicant's opinion of the quality or validity of the question itself. I cannot see a reason to read a wider meaning into the term here.

As such, I think Ms B could've selected this option without compromising any personal beliefs she may hold. In any event, Ms B decided not to complete the application, and to apply elsewhere instead, which of course she was free to do. But for the reasons I've explained above, I don't think TSB prevented Ms B from completing the application or put unreasonable barriers in her way.

Overall, having considered everything carefully, I don't think TSB have acted unfairly or unreasonably here. So, I'm not asking them to do anything further.

My final decision

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 12 August 2024.

Fiona Mallinson
Ombudsman