

The complaint

Mr O complains that TSB Bank plc won't refund payments he says he didn't make from his account.

What happened

Mr O disputes making a number of payments using his debit card and which came to over £7,000. He says that he didn't allow anyone else to use the card or disclose his PIN.

TSB said it wouldn't be refunding the payments. A number of them including one for over £4,500 it seemed to a hotel, required the chip on the card to be read and the PIN entered. Mr O said he had the card with him when he reported the loss and hadn't given his PIN to anyone else. TSB said it would co-operate with any police inquiry.

Our investigator said that he didn't recommend that the complaint be upheld. There were 28 payments in dispute between 26 December 2022 and 3 January 2023. There were payments made abroad. TSB had provided evidence that a number of these required the chip on the card to be read and the correct PIN entered. Mr O had said he had the card with him at all times and that no one he lived with could have taken this. He had the card with him when he reported the fraud. There was no plausible explanation of how these payments could have been made without Mr O consenting to them. He noted that Mr O had provided evidence he was in hospital during the period after the day the disputed payments began.

Mr O didn't agree. He provided details of the medication he was on and said that he wasn't in control of his personal items and wallet and was asleep all the time. He said it was clear his card was taken before he was admitted to hospital but that he wasn't aware of this and didn't give his consent. Mr O said that someone else used his card, but he didn't know who and that it was impossible to accuse someone without evidence. His position was that it was clear that someone stole his card and then returned it. He had a crime number relating to this incident.

He wanted this case to be reviewed as he wasn't happy with the outcome.

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.

I won't be able to say *exactly* what happened and I'm thinking about what is *most likely*. I need to take into account the Payment Services Regulations 2017 in considering this complaint. These state that a payment can only be authorised if it was consented to. So, it's

not enough for it to be authenticated, say with a card and PIN. And if they weren't authorised Mr O wouldn't generally be responsible for them.

So, I will be thinking about the following areas in looking at this complaint:

- What is the most likely explanation of what happened to the card and PIN used for these payments?
- Did Mr O authorise the payments on the account including by allowing someone else to use the card?

TSB has provided an audit of the card use. I'm satisfied that the payments in dispute were authenticated with the card details. Over 10 of the payments required the chip on the card to be read and the correct PIN to be entered. The card was present for other payments too. We've not seen evidence of the chip on a card being cloned for everyday use.

The issue is whether Mr O consented to the use of the card in this way. I have seen the hospital admission information he has provided. And that this shows he was in hospital from 27 December 2022 to 9 January 2023. He has provided details of medication and I don't have reason to doubt that he was taking this before his admission. He explains that as far as he knew the card was in his wallet on the table in his bedroom.

He had the card when he reported the loss on 4 January 2023 and when based on the information he was still in hospital. But by just the day before that almost all the money in his account had been paid out. As our investigator says the card was present abroad. The first disputed transactions are consistent it seems with hotel and travel costs. The further spending is at a number of merchants.

It isn't impossible that a third party, knowing Mr O was unwell and going to be in hospital planned say to take an expensive trip then. And had taken his card from his home and returned it to him so that he had it in hospital when he reported the loss. At issue though is how that person would have discovered the PIN. Mr O was reasonably required to keep this secure and if he hadn't I'd need to think about whether he was *grossly negligent* in not doing so. Negligence is often referred to as a failure to exercise reasonable care. So, I think it fair and reasonable to conclude, the use of 'gross negligence', rather than mere 'negligence', suggests a lack of care, that goes significantly beyond ordinary negligence.

And he in any event says that he didn't write this down or disclose it to anyone but that his wife might have known it. He says she didn't use it and travel abroad at this time. The last use of the PIN for an undisputed payment I can see from the information was on 20 December 2022. So, it isn't most likely that an unknown third party could have then seen the PIN and managed to obtain and return the card. I would also find it unusual for a fraudster to take the risk of returning a card to Mr O and to be able to do so just around the time he clearly was going to check his account and would find out what had happened.

I wouldn't necessarily expect Mr O to be able to identify a fraudster. But on his account it would seem that person had some detailed knowledge about him. And the point is that he can't think of anyone who could have done this and now he is aware of the circumstances. I appreciate he has reported what happened.

Having carefully balanced all the evidence I find it most likely that Mr O consented to these payments which includes him allowing someone else to use the card. A main reason I say that it because there is no point of compromise for the PIN, and he says he kept that safe as he was reasonably expected to do. In addition, a person using his card without his authority would have the risk of discovery and would have been particularly bold in both taking the card and then replacing it. And in not taking as much money as quickly as possible but

instead in spending a significant part of the money it seems on a hotel and travel and increasing the risk of detection.

I appreciate the amount of money at stake, and I know he will be disappointed when I say that I won't be asking TSB to do anything further.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 21 November 2023.

Michael Crewe
Ombudsman