

The complaint

Mrs P complains that TSB Bank plc won't refund money she didn't withdraw from her account.

What happened

Mrs P disputes two cash withdrawals each for £500 in October 2021. She says she didn't make them and had her card with her at the time. She was unhappy with the aggressive way that TSB dealt with her when she raised this.

TSB said it wouldn't be refunding the money. The card withdrawal limit for all accounts had been raised as a result of the pandemic. It had referred Mrs P to its fraud department and told her the way forward was to contact police about CCTV. When she said this wasn't available it offered to raise a complaint. It didn't think that the withdrawals were those of a fraudster.

Our investigator didn't recommend that the complaint be upheld. She said that Mrs P had the card in her possession and was using it during October 2021. Mrs P stated that she hadn't written her PIN down or given it to anyone. The withdrawals were on 12 October and 15 October 2021 in the early hours. A fraudster would typically take as much money out as quickly as possible as they risked detection. Our investigator said that the call recordings provided didn't show that TSB had dealt with Mrs P inappropriately.

Mrs P wanted her complaint to be reviewed. The amount of the withdrawals was over the limit she'd agreed, and she didn't know how that happened at a third-party cash machine. These withdrawals were made in the early hours, and she didn't go out at night to that area, and she had mobility issues. She insisted she didn't give the card or PIN to anyone and didn't think we'd considered the possibility of it being cloned or some other fraud.

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'll be 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 Mrs P 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 Mrs P authorise the payments on the account?

I'm satisfied that the withdrawals were authenticated with Mrs P's details. A cash withdrawal

requires the chip on a card to be read and the correct PIN entered. We've not seen evidence of the chip on a card being cloned for everyday use.

I take into account the time of the payments. And that this might suggest someone had been able to take Mrs P's card. And that the maximum amount was taken from the cashpoints and Mrs P says she didn't know that had been raised by TSB to £500. But I also note that there was a substantial amount available in her account. She said she didn't notice the payments until after a statement dated as issued on 19 October 2021. And she first reported the loss on 1 November 2021. There was a gap between the withdrawal dates, and I think that it's most likely an unknown third party in possession of a card and PIN allowing payments would have attempted to take more. I also wouldn't expect an unknown third party to have gone to the trouble of replacing the card. I note that a genuine payment using the card and PIN was made on the afternoon of 15 October 2021.

Mrs P hasn't identified anyone who could have had access to her card and used it in this way. And she insists that she didn't write her PIN down or tell it to anyone. So, I don't have a basis to find say that someone known to her with access to her property could have done this having perhaps seen her entering her PIN without her realising.

I appreciate that Mrs P reported this to police and was told that there was no CCTV. No further police action was taken. I've also listened to the call recordings from TSB that it has provided. I don't consider from what I've heard it dealt with her aggressively or inappropriately, but I can understand why she'd be unhappy with its approach to her claim.

I'm afraid having considered all the evidence I don't find it most likely that these withdrawals were made without Mrs P's consent. And so, I don't have a reasonable basis to require TSB to refund them. I know she will be very disappointed with my assessment.

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 Mrs P to accept or reject my decision before 12 October 2023.

Michael Crewe
Ombudsman