

The complaint

Mr S complains that TSB Bank plc won't refund a number of payments made from his account which he says he didn't make.

What happened

In September 2022, a number of payments were made from Mr S's TSB account which he says he didn't make. Mr S says his card was stolen around this time and he usually uses a mobile device to make payments on this account so didn't immediately notice. Once he noticed the payments on his mobile banking app, he reported them to TSB and asked it to refund the money he had lost.

TSB investigated but didn't agree to refund the payments. It said the payments were made with chip and PIN, and its fraud department had sufficient evidence to deem the payments as genuine. Mr S wasn't satisfied with TSB's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They said they thought it was most likely that Mr S had consented to the payments, so they didn't think TSB should have to refund them. Mr S disagreed with our investigator, so the complaint has been passed to me.

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.

Generally, a business can hold a customer liable for disputed transactions on their account if the evidence suggests it's more likely than not that the customer authorised the payments – for example, by making them themselves or telling someone else they could make them.

Deciding whether a customer has authorised payments is a two-part test. Firstly the payments must be authenticated, and secondly, the customer must have consented to the payments being made. And this doesn't necessarily require proving that the customer made the payments themselves, as it is possible for a customer to authorise someone else to make payments on their account.

TSB has sent us evidence which shows almost all the payments Mr S is disputing were made using his genuine card, either with his PIN or by making contactless payments – with a few payments made by entering his card details. This means the payments were correctly authenticated, and so I must also think about whether the evidence suggests it's more likely than not that Mr S consented to the payments.

I've thought very carefully about this and I think it's a finely balanced matter in this case. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is likely to have happened, based on the evidence I do have.

Mr S initially told our service his card was stolen. And he told TSB he hadn't given anyone else permission to use his card, no-one other than one of his friends knows his PIN and his PIN is only written down in his phone. But if this is the case, I can't see how an unknown thief would have been able to make all the chip and PIN payments. Mr S hadn't made any payments using his PIN in the days before the disputed transactions, so there doesn't appear to have been an opportunity for an opportunistic thief to have overseen him enter his PIN. And so a thief who stole his card would have had to correctly guess his PIN, which I think is unlikely. So I don't think it's likely these payments were done by an opportunistic thief.

When he first called TSB about these payments, Mr S also said he'd given his card to a friend of his and told them they could use it to make some payments – but the friend had made more payments than he'd intended. But by saying his friend could use his card to make some payments, I think Mr S had given his friend apparent authority to make payments on his account.

I appreciate that Mr S's friend may have gone on to make more payments on the account than Mr S intended, but these would still be treated as authorised as it appears Mr S had consented to his friend making at least some payments on the account.

In order to remove this apparent authority, Mr S would have needed to do something to ensure his friend didn't have access to and couldn't make payments on the account anymore. And I accept that when Mr S realised his friend had made more payments than he intended, he froze the card in his mobile banking app and contacted TSB. But he doesn't appear to have done this until after the disputed payments had been made from his account.

TSB has also sent us evidence which shows Mr S logged into his mobile banking app a number of times on the days when the disputed transactions were being made. And as the balance of payments made on the account will have been clearly visible to him when he logged in, and the balance would have been significantly different from what he would have been expecting it to be if none of the disputed payments had been made, I think it would be reasonable to have expected Mr S to have noticed and reported the payments sooner than he did if he had not agreed to them in some way.

So, based on the evidence I have, I think the disputed payments were authorised and so I don't think it would be fair to require TSB to refund them.

Mr S has mentioned that TSB told him not to make payments towards his credit card while this was being investigated, and that this has had an impact on his credit file which he would like corrected. But I've listened to the calls Mr S had with TSB about these payments, and I don't agree it ever told him not to make payments. In one call, Mr S says he doesn't want to have to make payments and won't pay back any of the balance from the payments that weren't him – but TSB doesn't agree to this. So I don't think it would be fair to hold TSB responsible for the impact Mr S not making payments towards his credit card has had on his credit file.

Mr S has also mentioned that the police investigated these payments and concluded it wasn't him who made the payments. But he hasn't provided any evidence of this. And, as I explained above, even if it wasn't Mr S who made the payments, this doesn't mean he didn't authorise someone else to make them. And so this doesn't change my conclusions here.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 17 November 2023.

Alan Millward
Ombudsman