

## The complaint

Mrs H complains that TSB Bank plc won't refund transactions she says she didn't make or authorise.

During this complaint Mrs H has been supported by a friend, who I'll refer to as Mr B.

## What happened

In late December 2016, Mrs H received a pay out from a life insurance policy following the death of her son. The money was paid into her account held with another bank. Within days, £45,000 of the money had been transferred to an acquaintance of Mrs H's who I will refer to as K. K was Mrs H's neighbour.

On 9 January 2017, K paid £30,000 of the money back into Mrs H's TSB account. Mrs H says she gave K £5,000 to start a business but didn't agree to give her any other money or allow her to use her bank account. At some point, Mrs H and K stopped being friends but Mrs H hasn't been able to say when or why this happened.

This service has been provided with a copy of a police report from an investigation that ended in August 2019. The investigating officer's notes say that they had been in contact with Mrs H for around 12 months and that a suspect had been interviewed. The police concluded that this was a civil dispute and not a criminal fraud matter. It said the circumstances suggested *"a dispute over an amount of money given to one person by another, some significant time after they ceased to associate with each other."* The investigating officer noted Mrs H had said she'd purchased things for K and had given them money in the past.

TSB says the first time the matter was raised with the bank was in December 2020. It says Mrs H queried payments totalling £16,000 made in June 2016, but the bank was unable to identify any transactions that matched what Mrs H said.

Mrs H obtained copy statements and disputed transactions made between January and July 2017. But TSB declined the claim for a refund of these transactions in October 2021 because they had been reported too late.

With Mr B's assistance, Mrs H contacted this service and we started a complaint on Mrs H's behalf. TSB issued its final response in November 2022. It said there had not been a bank error and it was not obliged to refund transactions that took place more than 13 months ago.

Mr B asked us to investigate. He said the disputed spending on Mrs H's account was uncharacteristic for her and indicated that it wasn't her using the account. He pointed out that there were transactions made to PayPal when Mrs H doesn't know anything about computers and transactions appearing to be made in Australia when Mrs H has never been there. He said that Mrs H hardly owns anything and has nothing to show for this money. He explained that she'd not had the benefit of it herself and that she was really struggling financially now.

Mr B says Mrs H is a vulnerable adult that had been taken advantage of by a “*blatant confidence trickster*.” He thought it was likely Mrs H was being coerced and that video or photo evidence would prove beyond doubt who was really making these withdrawals.

When TSB provided its complaint papers to us, it said the larger disputed cash withdrawals were made at the branch counter with Mrs H’s card. It said Mrs H made regular visits to the branch and was known to the staff. It said undisputed purchases were made around the same time as the transactions that are now in dispute. It noted that Mrs H raised a dispute in May 2019 for a £25 payment to a wine company, so it felt she was monitoring her account. As such, it said it was not unreasonable to have expected Mrs H to notice the disputed transactions sooner than she did.

Our Investigator looked into the complaint but did not recommend that it should be upheld. He agreed the branch staff would have most likely been familiar with Mrs H given that she did most of her banking through the branch. He didn’t think it was likely that Mrs H had been impersonated on numerous occasions. He pointed out the bank’s notes suggest she had made appointments to discuss her savings accounts and her direct debit payments around the same time as the transactions that are now in dispute. He thought it was more likely than not that the disputed transfers and cash withdrawals were made by Mrs H.

He explained he’d reviewed the police report and it was difficult to understand the exact nature of the relationship between Mrs H and K. Overall, he didn’t think he could fairly criticise TSB for processing the disputed payments. He said Mrs H appeared to have been managing her finances independently at the time and was a regular user of the branch. He didn’t think the way Mrs H’s accounts ran should have alerted TSB to the possibility that she was at risk of financial harm from fraud or economic abuse.

Mr B was very disappointed. He said Mrs H isn’t a liar and that she is not mentally incapacitated. He wanted to know if we had seen photographic evidence for any of the large cash withdrawals. Our Investigator explained that we would not expect TSB to be able to provide footage or still images from one of its branches this many years after the payments in dispute took place. He suggested that Mrs H had displayed some confusion to the police over events.

Mr B didn’t agree. He said the bank should have done more to protect Mrs H and wanted to know where the money went. He said the bank statements prove third party involvement and TSB did not take measures to protect a vulnerable adult from being manipulated.

As no agreement could be reached, the matter was put forwards for decision.

### *My further investigation*

When the complaint was referred to me, I had further questions for both sides.

I contacted TSB and explained that the transactions Mr B had highlighted go wider than transactions made in the branch and included cash machine withdrawals and other retail spending. I pointed out that Mr B had explained that Mrs H is not computer literate and says she would not have been able to buy these things online herself.

I explained the difficult circumstances that Mrs H is facing and how stressful this matter has been and continues to be for her. I asked the bank to consider Mrs H’s vulnerability as it was unclear whether it had previously been aware of the extent of her situation.

TSB said it was sorry to learn of Mrs H’s current financial pressures and the impact this situation had had and continues to have on her mental health. It said it was not aware of any vulnerability at the time of the disputed transactions. The bank explained that it had tried to

contact some of the merchants Mr B had challenged online payments for, but it wasn't confident that it would receive a positive response as the transactions happened over six years ago. It said there was no way now of proving what happened to the money. It concluded by saying the details of the complaint are too vague so there was nothing further it could helpfully add.

I also contacted Mr B. I explained that this case presents some challenges because of how long ago the transactions in dispute happened. I explained that even if the transactions on the face of it do not appear to be things that Mrs H would have been able to use or benefit from, that does not automatically mean that TSB must refund her.

I explained that the relevant regulations say that TSB only has to refund transactions that Mrs H hasn't authorised. If Mrs H had agreed that K could use her payment tools such as her card, any transactions that K goes on to make are considered to be authorised by Mrs H, even if K went further than what Mrs H had agreed and in circumstances they had not discussed.

I asked Mr B whether he knew Mrs H well at the time the transactions in dispute took place or whether it was only later that he'd become friends with her. I asked him what he understood the nature of the dynamic between Mrs J and K to be as in some documents K was referred to as Mrs H's carer and in other documents a neighbour.

I asked Mr B what K did for Mrs H, as there was a mention that K had a mobility car for her and the general impression from the information I currently had was that they had once been close. I asked Mr B why and when Mrs H fell out with K. I also asked if he knew why K had transferred £30,000 back into Mrs H's TSB account.

Mr B explained that he'd first met Mrs H in early 2018 and she has always maintained that K befriended her and then tricked her. He said that Mrs H did not need a carer then and does not need one now. He describes her as "robust and determined". He suggested K fabricated the carer status to give the situation credibility. He said that K and Mrs H had spent time together, such as going shopping and having coffee, but he felt that it wasn't a true friendship and that K had preyed on Mrs H when she was vulnerable.

Mr B said Mrs H and K fell out when Mrs H found out via a third party that K had been boasting about having taken her money to buy a car and holidays.

Mr B said he understood that 2017 was a long time ago. He said that the police had not investigated properly, and it should have been obvious what had happened. Mr B said Mrs H has absolutely nothing to show for this money and it has been spent by someone else. He hoped that I could help.

### *My provisional decision*

On 20 April 2023, I issued my provisional decision explaining why I didn't intend to uphold this complaint. My findings are replicated below and form part of this final decision:

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

*Gathering evidence in this matter is particularly challenging. It concerns events that happened approximately seven years ago. Although Mrs H has had some direct contact with this service, she has been very upset during those interactions, making it hard for her to tell us in her own words exactly what happened. There's not much common ground about exactly what happened or how it might have happened.*

*Mr B has tried his best to be as helpful as he can, but he didn't know Mrs H at the time the events complained about, so he's only been able to surmise based on what he's assumed or has been told. Where the evidence is incomplete, inconclusive or contradictory (as it is here), I reach my findings on balance – in other words, what I consider is more likely than not to have happened in the light of the available evidence and the wider circumstances.*

*It's important for me to be clear that my role isn't to determine whether Mrs H has been the victim of a crime. My role is to determine whether TSB is entitled to hold Mrs H responsible for the transactions in dispute. The transactions Mr B is concerned about include cash machine withdrawals, online purchases and transactions made in branch at the counter.*

*Did Mrs H authorise the disputed transactions?*

*Of particular importance to my decision about what is fair and reasonable in the circumstances of this complaint are the Payment Services Regulations 2009 which applied at the time the disputed payments were made. The regulations explain that a payment transaction can only be regarded as being authorised if the payer has given their consent to the execution of the payment transaction.*

*This means that if Mrs H made the disputed transactions herself or agreed they could be made on her behalf, it would not be fair to ask TSB to refund them. Mr B has explained that Mrs H has nothing to show for the large amount of money that she received and that some of the transactions appear to be for items that were of no benefit to her. But what he's said doesn't automatically mean the transactions are unauthorised and they should be refunded.*

*It's not surprising that TSB hasn't been able to provide full records for all of the transactions because of how long ago the events happened. But it has said that Mrs H's card was not reported as lost or stolen at any point and that it considers, on balance, that Mrs H's payment tools such as her card and PIN were used to make the payments now in dispute.*

*It seems likely that Mrs H was present when the transactions in branch were made. From what I have seen in the bank's notes, Mrs H attended the branch regularly, so I think it's more likely than not she was known to the bank staff. But I have not been able to establish with any certainty if the other transactions Mr B has challenged were made by her. Mrs H has said that K was acting as her carer, but she's not explained exactly what K did for her or why that support was needed. But this means it is possible that some of the activity on Mrs H's account, although not carried out by her, will be activity that she has given her consent to. It's possible K may have abused her trust and exceeded what Mrs H had agreed to by using her card and PIN to buy things Mrs H didn't know about or things that she wouldn't have wanted to buy herself. If that's what happened, even though Mrs H didn't agree to or know about these payments, providing the third party with the card and PIN would, in effect, authorise the further spending.*

*If Mrs H had given K her authority to use her bank account, or shared her payment tools such as her card and PIN with K, TSB is entitled to treat the resulting account activity as being authorised by Mrs H, even if Mrs H didn't physically make the transactions herself or give her explicit permission for them. If it looks to the bank like the payment transaction has been authorised by the payer, the payments made can be considered authorised. This is the case even if the third party goes on to spend more than was agreed and in circumstances that the account holder had not discussed.*

*Mr B says K manipulated Mrs H. He's said it's clear Mrs H has been defrauded and he's painted a picture of K's character. But I don't have the power to compel K to provide me with evidence, or to cross-examine them or have them cross-examined in order to establish their*

*true intentions. In addition to this, I am not sure what Mrs H's intentions were. It is broadly accepted that Mrs H gave K some money to start a business, but I have not been able to establish the full extent of the relationship or any agreement that may have been in place between them. It's possible that Mrs H felt differently about the payments at the time they were made. The information from the police report suggests that Mrs H had made gifts to K. It says: "the victim has confirmed that she had purchased her several items and had gifted/given her money."*

*I am also mindful that the investigating police officer said: "the evidence suggests the person making the withdrawals from this account was the victim. I conclude from this, that no fraudulent activity has occurred on this TSB account." I feel able to place some weight on this because there was potentially more evidence available to the police at that time than is currently available to me. From what I can see, a police officer had been in regular contact with Mrs H for around a year before August 2019. It is also clear that both Mrs H and K were interviewed as part of the police investigation into the allegations made.*

*From what has been said and provided so far, I think it is more likely than not that Mrs H authorised the disputed spending.*

*Should TSB have done more to protect Mrs H from financial harm?*

*There's no question that TSB has responsibilities to protect their customers – especially older and vulnerable customers – from financial harm.*

*I've thought about the transactions that are in dispute and whether there were any reasons why it would have been fair and reasonable in all of the circumstances to have expected TSB to have double checked payment instructions with Mrs H before allowing the payments to be made. Some of the disputed spending is similar in nature to undisputed transactions, so it wouldn't have necessarily stood out as out of character and unusual to the bank at the time. In addition, the bank's notes show that Mrs H regularly went into branch to discuss her accounts. Around the time of some of the disputed transactions, the bank helped Mrs H to review the direct debits she was paying. I think it's likely these conversations would have involved at least some basic conversation about the way Mrs H's account was running and her general account use.*

*Having carefully considered the circumstances of this complaint, I don't think I can fairly criticise TSB for processing the disputed payments. I don't think the transactions should have aroused suspicion that Mrs H was being taken advantage of, or that TSB missed clear indicators that Mrs H was at risk of financial harm. I can only compel TSB to refund money if I think it is responsible for the loss incurred. But as I don't think TSB should have done anything more in light of the information available to it at the relevant time, I can't hold the bank responsible and direct it to return the money that's been sent.*

*Mrs H's circumstances*

*This is a very difficult situation and I do not underestimate the emotional burden Mrs H is carrying. There is no legal obligation for TSB to reimburse the funds. But it remains good practice for TSB to investigate what has happened and to consider whether it would be appropriate to reimburse some or all of the money on a case by case basis, especially in situations where its customer is vulnerable and it is being alleged they have been the victim of financial abuse. TSB has considered the difficult situation Mrs H is facing but concluded not to do anything further in this particular case. I have to be fair and reasonable to both sides in a complaint. I cannot fairly compel TSB to do more when the relevant law, rules, codes and good practice do not say that it should.*

## Overall

*I cannot even begin to imagine how difficult things have been for Mrs H in recent years. Whilst I recognise Mr B's strength of feeling that there has been an injustice, I have not seen any persuasive evidence to show that Mrs H was being exploited or coerced into agreeing K could spend her money when she didn't really want this to happen. From what I currently have to consider, I can't be as sure as I would need to be what went on, or that Mrs H did not consent to these payments. Given all of this uncertainty, I am unable to fairly ask TSB to refund the money that's in dispute.*

## Responses to my provisional decision

TSB did not respond to my provisional decision.

Mr B confirmed he'd received the provisional decision. He was disappointed that I'd not reached the outcome Mrs H was hoping for, but appreciated that so much time had passed it was difficult to establish what had happened. He explained that he'd lost touch with Mrs H. As we were unable to reach Mrs H and she had not seen my provisional decision, we closed the complaint at that stage.

Around a month later, Mrs H called us directly and explained she'd not been well. She said she had proof that K was caring for her because she paid the mobility company for a car. She explained she did not authorise any other payments to K and that the money had been stolen out of her bank account and that her neighbour could tell us this too. Mrs H said she had never been to Australia or used PayPal. Mrs H explained that she was having trouble at her home, but the Police wouldn't do anything. Our Investigator wasn't sure if Mrs H had seen my provisional decision, so he sent her a copy.

Mrs H was very upset by my provisional decision. In summary, she said she didn't see how I could make a decision because I did not know her. Mrs H said we should have interviewed K and that we'd let her get away with it. She explained that K had debt collectors come to her home and that she had been in trouble with the council. She told us that K had done a "moonlight flit" late at night so she was not seen. Mrs H was particularly concerned that another neighbour, A, had provided a written statement to Mr B that he in turn provided to us. Mrs H said A never knew K. Mrs H told us her home had been broken into whilst she was in hospital, leaving her frightened and desperate for money so she could leave. Mrs H said that she was not going to give this case up and she really needed this money back.

## 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 have listened to the recordings of the calls that Mrs H has had with our Investigator recently and things have not been easy for her. She's got a lot on her plate, and I do understand that this situation has been and continues to be very upsetting. I have heard how strongly she feels about the matter.

Mrs H's position is that she has been taken advantage of financially. But my role isn't to determine whether Mrs H has been the victim of a crime. My role is to determine whether TSB is entitled to hold Mrs H responsible for the disputed spending that occurred. To do this, I need to weigh up the evidence available and make my decision on the balance of probabilities – in other words what I think is more likely than not to have happened in the circumstances.

The difficulty in this case is I am still not able to establish exactly what happened here, even taking into account everything Mrs H has said following my provisional decision. Much of what Mrs H has said I was already aware of before I issued my provisional decision. In my provisional decision, I outlined how Mrs H was known to the branch and how she attended regularly at the time when the disputed transactions were being made to discuss her accounts, making it less likely to me that she wasn't aware of these transactions. And I'm afraid that I am unable to put much weight on the details Mrs H has provided to support that her banking credentials were stolen. She's suggested that a neighbour that lives next door to her could tell us, but that would not be strong enough evidence to confirm that Mrs H's banking credentials specifically were taken, nor does it shed sufficient light on who they were taken by, when they were taken and why.

Mrs H is concerned about a letter that was provided to us by Mr B when he was helping her with the complaint. This letter was from a neighbour, A. I can confirm that I have read A's comments, but I have not been able to place any weight on them. A's letter explained that A's daughter's friend had overheard a conversation between K and K's mother at some point. But this information is not something that I can substantiate, and nor does it come from A's direct knowledge or experience.

Mrs H has highlighted transactions to PayPal and to merchants such as "*LAO Australia*" and "*LM Australia*" as proof that her money has been stolen. She's explained that she has never been to Australia and these transactions were not made by her. The transactions happened a long time ago, so I am not surprised that the bank hasn't been able to obtain any further details about these specific merchants now. But looking at Mrs H's statements, I am not persuaded that her debit card was used in Australia. This is because the transactions were debited in Pounds Sterling not Australian Dollars, and because Mrs H's card is used for undisputed transactions in the UK on the same days.

Whilst Mrs H has provided details about K's character and conduct to support her view that K is not trustworthy, it remains the case that it is not clear what the dynamic between Mrs H and K truly was at the time the transactions in dispute were made. Mrs H does not dispute that she obtained a mobility car for K and that she gave K money for specific purposes. Given that Mrs H has at times described K as her carer, it does not seem implausible to me that she might have given K authority to make transactions. I have not seen enough evidence to be as sure as I would need to be that K stole from Mrs H, especially considering the information provided by the police report which I included in my provisional decision and is summarised above. On balance, I still think it is fair and reasonable for TSB to hold Mrs H responsible for the disputed spending.

I am sorry to have to disappoint Mrs H. I have not reached this position lightly and I am especially mindful that the loss of this money at a time when she's struggling to make ends meet will not be easy to accept. But for the reasons I have explained in both my provisional decision and my additional commentary above, I am unable to fairly conclude that TSB should take responsibility for the loss.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 6 September 2023.

Claire Marsh  
**Ombudsman**