

## **The complaint**

Mr M complains that TSB Bank PLC ('TSB') refused to refund the multiple transactions made to an online chat service. These transactions total around £8,000 and were made between June and October 2021.

## **What happened**

Mr M has appointed representatives to help with his complaint, but for ease of reading I'll refer solely to Mr M in this decision

In June 2021, Mr M joined a website offering dating services. Mr M provided his personal details and TSB debit card information in order to use the website services. Between June and October 2021 a large number of payments were made to this website, with associated overseas transactions fees. Mr M said he used the website, but didn't realise what he was being charged. And, he wasn't monitoring his account at the time as was relying on family to do so in view of his personal circumstances.

When he discovered the amounts he'd been charged, Mr M contacted TSB to explain what had happened and asked it to refund the money. But the bank didn't think it was liable for his loss. Unhappy with this, Mr M raised a complaint with TSB. Through his representatives, it was explained that Mr M is vulnerable due to health issues which impaired his decision making. It said he struggles to manage his own finances as a result and his sister helps him with this. As well as other things, Mr M explained that he had found evidence that the website involved was a scam, designed to take money from its victims, and that he took no actions that would justify the amounts he was charged. Mr M said TSB should've identified that the transactions were out of character and intervened, preventing his loss, and that it should've raised a chargeback in order to re-claim his money from the merchant.

## **TSB said:**

- Mr M told it that he had used the website and had authorised payments. As such, it wasn't responsible for his loss.
- It wasn't aware that Mr M was vulnerable.
- There is no guarantee that the measures it has in place to identify unusual or out of character transactions will work on every occasion.
- There is no automatic right for a chargeback, and there are strict conditions set by the card scheme which must be satisfied for a chargeback to succeed.

Mr M remained unhappy and referred a complaint to this service. But our investigator didn't think TSB should have reasonably been expected to prevent the disputed transactions, or that it was responsible to refund them. Mr M didn't agree and asked for an ombudsman's review and 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.

Having done so, I agree with the conclusions reached by the investigator for reasons I set out below.

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of their account. And I've taken that into account when deciding what is fair and reasonable in this case.

Here, it's accepted by all that Mr M entered his personal information into the website, including his card details, to start using the services it offered. And he used the services for some time before realising how much he'd been charged. It was only then that he contacted TSB to dispute the amounts.

I've carefully considered Mr M's comments in relation to the website being a scam to target vulnerable individuals into parting with their money. I've also considered the information available to Mr M when he signed up to the website and entered his card details. Having done so, the website does explain that it's not a free site, and that certain services are paid for using 'credits' purchased through the website. Mr M has accepted that he made some payments and used the services of the website, and I think it's more likely than not that he authorised *all* of the transactions – albeit I accept that he may not have realised how much he was spending at the time. The website does seem to have been providing a service – and it's not necessarily up to TSB to know the underlying nature of the service and decide what a reasonable cost is. Therefore, I can't agree that Mr M was involved in a scam that would be covered under TSB's refund guarantee.

The regulations relevant to this case say that generally speaking, a bank is entitled to hold a customer liable for authorised transactions.

But the matter doesn't end there, I've also taken into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time. And I consider TSB should, fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including money laundering, the financing of terrorism, and fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

So, I need to decide whether TSB acted fairly and reasonably in its dealings with Mr M when he made the debit card payments he disputes, or whether it should've done something more.

As I'm satisfied on the balance of probabilities, that Mr M did authorise *all* of the transactions he disputes, TSB had an obligation to follow his instructions. I'm satisfied each transaction was authorised because the technical evidence that I've seen from TSB satisfies me that each transaction was individually authenticated each time, rather than by using a continuous payment authority. A continuous payment authority is when a merchant can take payments without requiring any information from the card each time, such as for example the last three digits on the back of it. But this wasn't the case here. However, despite my findings that Mr M authorised all payments, I think TSB should also have been on the lookout for unusual and out of character transactions.

With this in mind, I've looked at Mr M's bank statements for the months leading up to the disputed transactions. Having done so, I don't think the payments he disputes were so unusual or out of character that the bank should've intervened. Whilst I accept that some of the payments were higher in value than his usual spending, and more frequent in numbers, in the months leading up to the disputed payments, Mr M made a number of 'card not present' transactions to online retailers. So even though the disputed payments were to a company Mr M had not used before, I don't think the payments were so unusual such that I think they ought to have been a cause for concern and prompted TSB to intervene.

I also note that during the period of the transactions, Mr M's online banking was being accessed using his online banking credentials, and this happened on more than one occasion. I understand that this was Mr M's ex-partner accessing his account rather than himself (with his authority). But I from this, I can also understand why TSB wouldn't have had cause for concern. I appreciate Mr M's comments as to why he asked others to monitor his account. But it doesn't appear TSB were aware of this or would've had reason to believe that it was anyone else other than Mr M accessing his online banking to check the statements. It's also unclear why Mr M wasn't notified about the activity or spending on the website by the person he'd asked to support him with his finances. It remains Mr M's responsibility to monitor his account, whether directly himself or someone else he'd allowed to use the account.

When Mr M contacted TSB in October 2021 to report the payments and ask for a refund, the bank cancelled his debit card and sent him a new one, with a different card number and security credentials. I've seen evidence that the replacement set of card details were then used for further transactions to the same website. I appreciate the comments I've received via Mr M's representative, which say that Mr M didn't have access to the replacement debit card once it was sent. However, as I'm satisfied that each transaction required individual authorisation, rather than the use of a continuous payment authority as I've explained above, I'm satisfied that Mr M, despite reporting the earlier transactions as disputed, visited the website again and made further use of its services using his new debit card details. In view of this, I find that Mr M continued to have a desire to use the services from the website, and any kind of intervention from TSB wouldn't have changed this.

Mr M has questioned why TSB didn't raise a chargeback for the disputed payments, in an attempt to re-claim his money. His representative asked why TSB temporarily refunded £5,800 to Mr M but then took it back again. It believes the bank didn't administer the chargeback process correctly.

TSB is correct when it says chargeback is not an automatic right, and that certain criteria need to be met in order for the card provider to raise a chargeback through the relevant card scheme. From listening to calls Mr M had with the bank, it's clear its advisor tried to understand what payments Mr M was disputing, as he said some of them were genuine. It seems this is why a temporary credit of £5,800 was paid to Mr M – as that's what it believed he was disputing. But, regardless of the amount TSB included within a possible chargeback

claim, I'm not satisfied that a chargeback would've resulted in a positive outcome for Mr M. I say this for the following reasons:

- The website would've been able to provide all of Mr M's personal details to show he had a genuine relationship with it.
- The website terms explain that it's not a free site and that certain actions are paid for using 'credits.' Again, I accept that Mr M used the services of the website, albeit without realising how much he was being charged. But this isn't grounds for a chargeback to be successful.
- As well as other things, chargebacks can be raised for 'services not received' or for 'unauthorised' transactions. Based on what Mr M has told us and the bank, I believe he did authorise the payments, and also received the services. So unfortunately, I think the merchant would've been able to successfully defend the chargeback.

So, whilst I accept that chargeback can be a useful process in an attempt to re-claim disputed transactions from a merchant, I'm not satisfied such attempt would've been successful in Mr M's circumstances here. And in any event, I'm satisfied he authorised the payments he's disputing.

I realise that this will be disappointing for Mr M. I was sorry to hear of the difficulties he's faced since discovering the disputed transactions on his account. But in the circumstances of this complaint, I can't fairly ask TSB to refund him for the disputed payments, for the reasons I've explained.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 November 2023.

Lorna Wall

**Ombudsman**