

The complaint

Ms R complains that TSB Bank Plc has recorded a fraud marker and closed her account after she reported payment she hadn't authorised.

What happened

Ms R contacted TSB and said that she hadn't made five faster payments from her account on consecutive dates between 25 and 29 January 2020. These totalled £420 and she explains had all gone to her husband's bank account and then been withdrawn without his knowledge. He had reported this as fraud to the authorities.

TSB said that the payments had been made with a mobile phone device Ms R had routinely used before. Access to that device was made using biometrics - finger print recognition. And Ms R had been in possession of her phone. So, it couldn't see how anyone else could have made the payments. It wouldn't be refunding them and said it was entitled to close her account. TSB said it had reported what happened to CIFAS, the national fraud database, stating that there had been a false report of loss.

Our investigator didn't recommend that the complaint be upheld. The evidence from TSB supported the conclusion that Ms R had authorised the payments by accessing the account herself. He had contacted Ms R's husband with her permission. Her husband said he had at times left his card with possessions at work. But there was no explanation how his PIN could have been discovered. And although her husband thought his card had been cloned that wasn't possible with a chip. Ms R had also made reference to a number of articles about fraud and data breaches, but these didn't explain the circumstances here.

Ms R wanted her complaint to be reviewed. She said that she was concerned about the security of her account and the systems at TSB. And that she'd been relying on the use of her fingerprint and a three-digit code to access her account. This had caused her anxiety and depression and we now seemed to be pointing the finger at her husband. She could see the logic of why someone might think they carried this out. But she knew they hadn't done so. She wasn't willing to be considered a fraudster and not having a bank account was very inconvenient for her. She referred to the online articles again and said that the only thing she knew for sure was that she didn't make these payments.

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 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 Ms R wouldn't generally be responsible for them.

I also need to consider whether the report to CIFAS was made fairly. On this point, TSB needs to have more than a suspicion or concern. It has to show it had reasonable grounds to

believe that a fraud or financial crime had been committed or attempted and that the evidence would support this being reported to the authorities.

I've seen the payment logs and I'm satisfied that the payments were authenticated using Ms R's personal details. As TSB says this involved the use of her device and finger print recognition five times. That device was used before and after these payments. And I've seen nothing to show that it was hacked in some way as Ms R maintains. So, the published online information she's provided about security issues doesn't assist me with her complaint.

Given that then it is difficult to see a likely scenario in which someone else who wasn't acting with Ms R's authority could have made these payments. There is no explanation of how someone could have her phone in the evening on five consecutive days and also access the app using her fingerprint. I've thought about whether she perhaps could have been tricked by someone into providing access to her phone or whether she allowed someone she trusted to use it. But that would have needed to happen on five occasions as I say. I've also considered the possibility that she might have been mistaken about making the payments. But that's clearly not her explanation and she is very firm in her insistence she didn't make them

I note that Ms R made genuine payments to her husband's account the previous month. I would think it unusual if a fraudster used an existing beneficiary for these payments. Such a fraudster would need to be sure that money could be withdrawn. There was also a substantially higher balance than these payments in Ms R's account at the time and I would think it likely that someone able to access her account without her authority would take as much money as soon as possible. And that's especially as she had access to her account herself during this period and might have spotted what was happening. There's also no evidence of any further attempted withdrawals like this after she reported this.

I'm afraid, taking all this into account, I find that it's most likely Ms R authorised the payments. I'm not making findings about what any other party might have done in a complaint from Ms R about TSB. And so, I'm not deciding how the money was taken from her husband's account.

As I've found Ms R authorised the payments it follows she didn't have a genuine fraud loss. And so, I think TSB had grounds to close her account immediately under the terms and conditions. It also believed that she had made a fraudulent claim and applied the marker at CIFAS.

I've looked at whether TSB was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. This essentially means that TSB needs to have enough information to make a formal report to the police. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion. Having reviewed Ms R's account of events and the evidence TSB has provided, I'm satisfied that TSB had sufficient evidence for the CIFAS marker to be recorded on the basis she had made a false claim of loss.

I appreciate how disappointed she will be by my findings and when I say that I don't have a reasonable basis to require TSB to take any further action on her complaint.

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 Ms R to accept or reject my decision before 11 February 2021.

Michael Crewe
Ombudsman