

The complaint

Mr P complains that TSB Bank plc won't refund payments he didn't make from his account.

What happened

Mr P says that his card must have been lost when he was out on 12 March 2020. He had made a balance enquiry and thinks his PIN was seen over his shoulder. He later found that a cash withdrawal of £500, and payments for gambling had been made. These came to £4,100 and he raised a fraud claim.

TSB said that it wouldn't be refunding the money. Having investigated what happened it said that it thought Mr P had made the payments. It pointed out that Mr P had made a very similar claim in 2019 when he had been refunded. There had been significant recent credits into the account that had allowed these payments to be made. And no balance enquiry had been carried out before then by anyone other than Mr P. The payments were made with chip and PIN.

Our investigator didn't recommend that the complaint be upheld as he said it was most likely Mr P made these payments. He said that the balance enquiry made by Mr P at 19:20:31 had come less than two minutes before the cash withdrawal at 19:22:15. And this seemed unlikely to have been made by a fraudster especially as there was no other balance enquiry made. The disputed payments had come close to sizeable insurance credits Mr P had received. And although Mr P had initially said that he didn't gamble he then said he had before – the last time being at the end of 2019. He had also been inconsistent about whether he was in a rush at the cashpoint or spent time out before going home. He says he realised what happened when he logged into mobile banking at 21:0 that night.

Our investigator detailed that the payments to it seems casinos were made in person with the card and PIN and the last was at 20:24 that evening. He has now confirmed that Mr P phoned TSB at 21:33 that evening to report what happened as he said he had. There were further attempted payments to a supermarket in the early hours of the next morning with a cash withdrawal at 00:49 that was declined.

He noted that TSB had already given Mr P notice of the closure of his account on 24 March 2020 before these payments and it was restricted immediately because of the fraud claim and closed in line with its terms and conditions.

Mr P didn't agree and wanted his complaint to be reviewed. He hadn't gambled for some time and a witness could verify this. And he went straight home after making the enquiry as his phone battery was low. He was still at home when the later attempted payments were made and couldn't be in two places at a time. He has sent some screen shots which he says show this – and that he was later awake in the early hours of the next morning worrying about what had happened. He didn't think he had been treated fairly as the fraud guarantee should still apply even if his account was already going to be closed.

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 the payments weren't authorised Mr 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 Mr P authorise the payments on the account, as TSB says?

Mr P provided three screenshots of photos in response to the investigator's view to support his complaint. I need to say that it isn't going to be possible to verify who took these and where and why they were taken, and none show Mr P. I note that one is timed on 12 March 2020 at 18:38 apparently in a shop selling alcohol and before the balance enquiry. One is at 21:07 at a location which is apparently not where Mr P lives and there is a later one from that location at 02:29 the next morning. I have considered these, but they don't really assist me in considering the complaint. I note as our investigator has confirmed to Mr P that there is a recording of him calling TSB at 21:33 that evening as he says he did.

I won't be able to say *exactly* what happened, but I am thinking about what is *most likely*. TSB has shown that the payments in dispute here were made when the chip on the genuine card was read and the correct PIN was entered. So, I'm satisfied that these were authenticated. The issue I need to decide upon is whether Mr P consented to the payments and so they were authorised.

To find that they weren't I'd need to think that all of the following are most likely:

- Mr P didn't take greater care when using his card and entering his PIN. That's taking into account him making a claim for fraud having been 'shoulder surfed' the year before. He said when he reported the fraud that he thought someone might be behind him, but he didn't react to this or check then his card was still with him.
- Mr P was unsure about what he did that evening. He's said he did stay out at one time and at another he rushed home. When he later discussed this with the investigator he said a long time had passed but in response to the opinion now seemed sure he did go straight home.
- Mr P needed to check his balance at 19:20 and couldn't use his phone as the battery was low. He explained he wanted to check one of the insurance payments had come in, but TSB has confirmed it had already been credited by 13:12 when he was logged into mobile banking that day and made a payment out. Mr P says he made this payment automatically and later wanted to 'double check my balance.'
- A fraudster started to make payments without checking the balance. And was able to do so within two minutes of Mr P leaving the cashpoint rather than Mr P deciding to make this withdrawal himself. And the fraudster risked Mr P realising his card was lost and coming back at any time. Mr P says that there could have been a group around him with someone seeing what was on the screen and someone else seeing his PIN but to me that seems unlikely.
- A fraudster got hold of the card and PIN just at the time that there was a substantial amount of money in the account and decided to use this in the main in casinos rather than say make other types of purchases.
- A fraudster stopped making payments to casinos just at the time when almost all the money in the account had gone. There were no declined payments until the ones at a supermarket some four hours later. It is unclear both why a fraudster would have stopped using the card and then started again in the early hours.

I don't find that *all* of the above factors were most likely to represent what happened here. While Mr P's account of what happened isn't impossible I don't think it is a plausible one and the most like explanation. I take into account that as our investigator says he has not been consistent about what happened but also the sequence of events I've set out and what I would need to believe to find in his favour.

So, I know he will be very disappointed when I say that I consider that he did consent to and authorise these payments. I don't think TSB make a mistake in holding him responsible for them and I won't be asking it to do anything more.

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 Mr P to accept or reject my decision before 20 September 2021.

Michael Crewe
Ombudsman