

The complaint

Miss D has complained that TSB Bank plc won't refund her for disputed transactions she didn't make or authorise.

What happened

Miss D had a current account with TSB. Between November 2019 and May 2020, a series of transactions were made to three gambling websites, I'll call C, S and P.

On 28 May 2020, Miss D told TSB that she hadn't made any of the payments to the gambling sites. She said she hadn't alerted the bank sooner because she didn't have access to online banking. And hadn't received her bank statements, so she wasn't aware of the payments being made from her account. She said she only discovered the payments when she used her bank card and discovered she had no money left in her account.

Miss D explained that she didn't have accounts with C, S or P and only had access to the internet at her home address. So, she can't understand how the payments were made. She also said that she'd had a number of replacement cards issued by the bank and hadn't received all of them. So, she believes someone had managed to get hold of her account information to use on the gambling websites from one of the missing cards.

TSB looked into Miss D's fraud claim and decided not to refund the disputed transactions. In summary the bank said:

- It had contacted the gambling websites, C, S and P and the details matched Miss D
- Miss D had asked to receive postal statements and they had been sent to Miss D's address each month
- The IP address used to make the disputed transactions matched undisputed transactions Miss D had made from her account
- The bank had sent Miss D a replacement bank card in October 2018 and Miss D hadn't told the bank she hadn't received the card. And based on her account activity she'd been using the bank card regularly for undisputed transactions

Miss D wasn't happy with the bank's response. She said she's never had any accounts with the gambling websites. And the bank sent out four replacement cards on her account, so she's not sure which one was used to make the transactions.

One of our investigator's looked into Miss D's complaint. She asked Miss D some more questions about what had happened. Miss D explained that she didn't have a mobile phone at the time the disputed transactions were made, and she believes someone else opened an account with the gambling websites using her details. She said she was expecting a large payment into her account and discovered the transactions when she checked her account balance for the payment.

The investigator didn't uphold Miss D's complaint. She said it was unlikely that a fraudster would set up gambling accounts in Miss D's name. She also said Miss D had received a

credit into her account in May 2020 from C, which she hadn't disputed and had made undisputed transactions from the same IP address used to make the disputed ones. So, she said Miss D had most likely authorised the disputed transactions.

Miss D disagreed with what the investigator said. She said she didn't carry out the transactions and TSB should have been checking her account and stopped the transactions from being made. She explained that because of the transactions she was left without enough money to pay for food and bills. And her mental health had suffered.

As no agreement could be reached the matter has come to me to decide.

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.

The investigator wrote a detailed view that sets out the full facts, the disputed transactions, the relevant regulations and the evidence. Both Miss D and TSB have read the investigator's view. So, I won't repeat every detail here, only those which form the basis of my decision. However, I can assure Miss D that I've read the file, including her comments and evidence.

Generally speaking, if the evidence suggests it's more likely than not that Miss D authorised the payments, TSB is entitled to hold her liable for the disputed transactions. The relevant regulations, to this effect, are the Payment Services Regulations 2017 (the PSRs 2017).

Having reviewed TSB's technical evidence, I'm satisfied that Miss D's card details were used to make the disputed transactions and that they were authenticated. But, the regulations relevant to this case say that this is not on its own enough to enable TSB to hold Miss D liable for them. So, I also need to think about whether the evidence suggests that it's more likely than not that Miss D consented to the transactions being made.

Having looked at all the evidence, I don't think it's unreasonable for TSB to have concluded that Miss D authorised the transactions. I say this because:

- the disputed transactions were made to gambling websites with C, S and P. TSB has provided evidence that they contacted the providers and the accounts set up with C are registered in Miss D's name – with nearly all the personal details matching Miss D's. The providers also confirmed that the details provided were checked when the first deposit was made and passed its verification processes.
- the disputed transactions took place over a period of seven months and were usually for small amounts, which is unusual for fraudulent activity. I don't think a fraudster would have continued using Miss D's account details over such a long period because they'd be a high risk of her discovering the transactions and cancelling her card. It's more typical for the card to be used as quickly and for as much as possible. But this didn't happen.
- the disputed transactions reduced Miss D's account balance and I can see that she checked her balance at ATM's often during this period. So, I think she would've noticed the transactions much sooner than she's said she did as her account balance was reducing. The bank has also confirmed that Miss D's statements were sent to her home address each month. So, I think it's likely Miss D would've noticed the transactions and if she hadn't authorised them, she would've raised this with the

bank at the time. But she didn't alert TSB until May 2020.

- the technical evidence provided by TSB shows the IP address used to make the disputed transactions was also used to make undisputed transactions Miss D made during the period.
- it's unusual for a fraudster to carry out gambling transactions after gaining access to someone's card as any winnings would have been paid into Miss D's account. So, there's no opportunity for financial gain. I've also seen evidence of a credit from the same gambling website being paid into Miss D's account in May 2020. It doesn't seem likely to me that anyone would defraud Miss D like this if ultimately any money went back to her and the thief didn't make any profit. And had no way of accessing the funds.
- Miss D says TSB sent out a number of identical replacement cards to her and it's impossible to know which card was used to make the disputed transactions. I can see that TSB sent a new card to Miss D in January 2018. Miss D has provided the investigator with photographs of two bank cards. From looking at the photos I can see that both cards are as Miss D says, identical. But based on Miss D's own evidence she is (and has been) in possession of both cards throughout the period of the disputed transactions. She hasn't said she's given either of the cards to anyone else to use. Neither has she said that anyone else had access to them or her banking credentials. So, I don't think it's likely anyone else used Miss D's cards (either of them) to make the disputed transactions. I also don't think it's likely that a fraudster would wait nearly two years to make the disputed transactions using her replacement bank card.

So, when I weigh everything up, on balance, I'm persuaded that the most likely explanation here is that Miss D made the disputed transactions herself. So, in the circumstances it wouldn't be fair for me to ask TSB to refund Miss D the disputed transactions.

Finally, Miss D has said that the bank should have spotted the transactions and stopped them from going through. So, the bank's at fault. But I'm firstly not satisfied that the transactions were necessarily that unusual for Miss D – she'd carried out previous undisputed gambling activity on her account. And I can't decide she didn't authorise them just because TSB didn't block the payments. I have to look at the evidence, which in my view connects Miss D to the disputed transactions. And I've set this out above.

My final decision

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 21 July 2021.

Sharon Kerrison
Ombudsman