

## **The complaint**

Miss B complains that TSB Bank Plc hasn't reimbursed her for payments she made as part of a scam.

## **What happened**

In March 2018 Miss B spoke to someone on the telephone purporting to be acting on behalf of HM Revenue and Customs (HMRC). I'll refer to them as a fraudster throughout this decision as it's accepted this was the case.

The fraudster persuaded Miss B that they were an officer of the court and she was in trouble for underpaying her taxes. At the time, Miss B was self-employed and used an accountant to assist with her taxes. She was told that important paperwork had been sent to her old address and this was her accountant's fault. Miss B was also told she'd already missed her court appearance and so needed to repay £11,000 for her debt and court costs.

Miss B says she believed they were legitimate because the fraudster knew personal information about her, including financial information and her address. She said she'd had other problems with her post and so it seemed possible she hadn't received the letters they referred to.

The fraudster proceeded to convince Miss B that if she didn't pay her debt then she'd be arrested, and as a foreign national she'd then be deported. She was also told the police were watching her and had access to her laptop and phone. When she said she'd speak to her accountant she was told court processes are confidential and that to do so was illegal. Miss B was persuaded that she could no longer pay HMRC directly and would need to pay via iTunes top up cards and Steam wallet gift cards. Later on, Miss B was also convinced to withdraw cash and use this to make payments via cryptocurrency.

Over three days Miss B made several payments using her credit and debit cards with TSB and another bank. After the first four credit card payments were made, TSB blocked Miss B's card and sent her a verification text message. Miss B responded to the text confirming the transactions were her and proceeded to make payments from her debit card. The next day, after her credit card was unblocked, Miss B went into a TSB branch and withdrew cash from her credit card.

Miss B says she went to the park after making each purchase and read the codes from the vouchers she'd purchased over the phone to the fraudsters. They gave her specific instructions which she followed.

TSB declined Miss B's claim on the basis that she made the transactions herself and therefore they were authorised.

Details of the disputed payments and relevant account activity are as follows:

## **Credit card**

Date (2018)	Time	Place/location	Type of transaction	Amount
21 March	14:13	Brixton WH Smith	Chip and PIN	£1,000
	15:33	Brixton Currys Superstore	Chip and PIN	£1,000
	17:13	Clapham WH Smith	Chip and PIN	£1,300
	18:21	Clapham WH Smith	Chip and PIN	£1,000
	18:21		Fraud text sent to Miss B mobile. Credit card blocked	
22 March	7:13		Miss B confirms transactions as genuine. Block removed	
	10:44	Clapham TSB	Cash withdrawal	£1,800
			Cash fee	£54
23 March	13.56	WANDSWORTH SAINSBURYS	ATM cash withdrawal	£200
	13.58	WANDSWORTH SAINSBURYS	ATM cash withdrawal	£300
	16:06	SAINSBURYS	ATM cash withdrawal	£500
			Cash fee	£15
1 April			Over limit charge	£12
				Total £7,100 Total fees: £61

### Debit Card

Date (2018)	Time	Place/location	Type of transaction	Amount
21 March	18:21	Clapham WH Smith	Chip and PIN	£1,000
	19:25	Brixton WH Smith	Chip and PIN	£800
22 March	9:33	Streatham Tesco Express	ATM withdrawal- Chip and PIN	£500
23 March	9:57	Streatham WH Smith	Chip and PIN	£1,400
				Total £3,700

Miss B complained to our service and the investigator upheld the complaint. Miss B accepted this but TSB didn't agree so the complaint was passed to me.

I issued my provisional decision on 3 February 2022 – here I upheld the complaint in part. In summary I concluded that:

- The disputed payments were significantly different from Miss B's usual account activity and would have appeared suspicious. So I thought TSB ought to have stepped in sooner and done more to establish whether Miss B was the victim of fraud.
- I thought a fair point to say TSB ought to have been concerned that Miss B was the potential victim of fraud was by the third payment.
- If TSB had taken appropriate steps in the circumstances, I thought it was likely this would have identified the scam and prevented further loss to Miss B.

- Miss B's actions contributed to her loss and so I thought it was fair to reduce the award to reflect this.

Miss B accepted my provisional decision and TSB agreed to my recommendations as a gesture of goodwill. So I'm ready to issue my final 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.

As both parties have accepted my provisional decision and have not provided new information in relation to my reasoning, my decision is in line with it. I'll set out my full reasoning below

When considering what's fair and reasonable I'm required to take into account; relevant law and regulations; regulators' rules, guidance, and standards; codes of practice; and where appropriate what I consider to have been good industry practice at the relevant time.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

However, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider TSB should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that 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 make 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.

*The terms and conditions for Miss B's Current Account say:*

*"8.1 General conditions about payments out of your account (f) You will not be able to give a payment instruction using a card or your Security Details if we have stopped, or suspended, your ability to use them. We can do this if we reasonably consider it necessary for reasons relating to... (ii) suspected unauthorised or fraudulent use...*

*(g) We may refuse to carry out a payment instruction, or other transaction on your account, such as a withdrawal in one of our branches if...(iv) the payment seems unusual compared with the way you normally use your account..."*

*The terms and conditions of Miss B's Credit card say:*

*"11.2 (a) You will not be able to give payment instructions using your Card, Cheques or*

*Security Details if we have stopped, or suspended, your ability to use them. We can do this if we reasonably consider it necessary for reasons relating to:*

- *the security of your account or Security Details;*
- *suspected unauthorised or fraudulent use of your account or Security Details; or*
- *a significantly increased risk that you may be unable to make your repayments.*

*If we do this we will tell you as soon as possible. We'll usually contact you by calling or sending you a text message, by displaying a message on Internet Banking or telling you at the time you try to make a payment. If we can't tell you in advance, we'll tell you immediately after. But, we might not be able to tell you if that means we might compromise our security measures. We also might not be able to tell you if there are legal reasons that we can't do so.*

*We'll remove the stop on your Card or Security Details as soon as we can, once any of the reasons for stopping it are resolved...*

*20.1 We can contact you by:*

- *Post*
- *Phone*
- *Electronically – this means email, text message and other digital methods such as sending you a message on your Internet Banking. By giving us your mobile number or email address, you agree we can use these to get in touch with you so that we can service your account.*

*We'll need to contact you about your account for various reasons. For example, we'll let you know if there are changes to your terms and conditions or other important information you need to know about your account. Or we'll speak to you if we need to prevent fraud on your account..."*

I need to decide whether TSB acted fairly and reasonably in its dealings with Miss B when she made the transactions set out above or whether it could and should have done more before processing them. That is a question of fact and degree depending on the circumstances of each individual case.

It isn't in dispute that Miss B authorised these transactions as she made them herself. However, I agree that TSB didn't do enough in the circumstances. After the first four payments TSB blocked Miss B's credit card. TSB's systems had identified the activity as suspicious and sent Miss B a text to validate whether these payments were genuine.

I think TSB ought to have stepped in sooner and done more to establish whether Miss B was the victim of fraud. I'm persuaded that it's likely this would have prevented further loss to Miss B. I'll explain this in more detail.

I've set out above what I consider to have been good practice at the time. Further, TSB's terms and conditions for both accounts clearly allow it to prevent the use of those accounts when it suspects unauthorised or fraudulent use. There are also references to monitoring unusual account activity and potentially speaking to their customers to prevent fraud. TSB would have been aware of the prevalence of scams and that it would not always be enough to simply verify that it was their customer making the payments. Whilst I accept the

purchases were with reputable retailers, this doesn't mean that there was no risk of their customer being the victim of fraud.

Based on Miss B's credit card statements for the year leading up to these payments (August 2017 to March 2018), it appears her usual spend is between £100 - £250 with the highest being for around £600. Miss B's annual credit card statement also shows she spent less than £5,500 in the whole year (2 February 2017 to 1 February 2018). So, I think Miss B's spending of £1,000 or more in an hour on 21 March 2018 was significantly different from her usual activity and would have appeared suspicious. I therefore think TSB ought to have been concerned that she was the potential victim of fraud sooner, and by the third payment.

I'm satisfied that had TSB spoken to Miss B to ascertain what they were for and why she was making them, the scam would have unfolded. And it's more likely than not that this in turn would have prevented Miss B from making further purchases or withdrawals as part of the scam. I say this because Miss B didn't have a cover story prepared at the time, and whilst she was later coached into telling branch staff she needed funds for a personal emergency, this would not have been consistent with purchasing vouchers from high street retailers. I also agree that TSB missed multiple opportunities to intervene or provide sufficient warnings when the unusual activity continued – in particular when Miss B requested to withdraw cash from her credit card in branch. Whilst the banking protocol may not have been rolled out in that branch at that time, the branch staff would still have been aware that this was an unusual and expensive way for Miss B to have accessed funds. Miss B has described her personal appearance as visibly distressed, so much so that people stopped her in the street to ask if she was ok. Taking all of this in the context of her other recent account activity (including a fraud alert) I think it would have been good practice at the time to have had a more in-depth conversation. Again, I think an appropriate conversation would have revealed the scam.

Did Miss B's actions contribute to her loss?

Whilst I do think TSB failed to take sufficient steps to protect Miss B, I also need to consider her own actions and whether she should bear some responsibility for her losses. Having done so I think I should make a deduction to the award to reflect this

I understand Miss B felt considerable pressure and worry at what the fraudster had told her. I also accept that they used sophisticated techniques to persuade Miss B to take the steps that she did. However, I have concerns, similar to those raised by TSB, as to the plausibility of the scam. I say this because I don't think HMRC or the courts would ever ask to be paid via iTunes vouchers, Steam wallet gift cards or cryptocurrency.

I believe a reasonable person ought to have suspected as much and made further enquiries of HMRC or the courts through its official channels before buying the cards. I also don't consider the fraudster behaved in a manner a reasonable person would expect an officer of the court would. For example, in saying that the police were monitoring her every move and accessing her computer remotely, or by staying on the line while Miss B went into the TSB branch.

In the circumstances, I consider Miss B must bear some responsibility for her loss. I think it would be fair to reduce the award made to Miss B by 25%.

Lastly, I note Miss B says she didn't receive the £30 compensation awarded by TSB for the customer service provided in relation to her claim. If this payment was made, TSB should clarify when this was done. If not, it should pay this now."

## **My final decision**

My final decision is that TSB Bank Plc should:

- Reimburse Miss B £5,625 – this breaks down as
  - £2,850 (75% of £3,800) i.e. the fourth payment onwards made from Miss B's credit card; plus
  - £2,775 (75% of £3,700) i.e. payments made on Miss B's debit card
- Reimburse all interest, fees and charges applied to both accounts as a result of the disputed payments made from (and including) 18:21 on 21 March 2018 onwards.
- Where the above refunds would have placed Miss B's accounts in credit, pay interest at 8% simple from the date of the payments to the date of settlement.
- If TSB deducts tax from the interest elements of this award, it should provide Miss B with the appropriate tax deduction certificate
- Amend any adverse information on Miss B's credit file resulting from the payments, fees, charges, and interest referenced above.
- Pay Miss B £30 compensation if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 15 March 2022.

Stephanie Mitchell  
**Ombudsman**