

The complaint

Mr H is unhappy TSB Bank plc ("TSB") is holding him liable for a cash machine withdrawal which he says he didn't make.

What happened

On 11 October 2020, Mr H says he visited a TSB branch and used his debit card at the ATM. Mr H recollects this was around 12:07 pm.

Mr H says his card was retained by the ATM. He's said that he waited until around 12:28 pm to see if his card would be returned by the ATM machine but it wasn't.

A relative of Mr H's contacted TSB on his behalf to advise that his debit card had been retained by the ATM. At this point, TSB cancelled the card and arranged for a new one to be issued.

The following day, Mr H says he returned to the TSB branch in an attempt to retrieve his debit card from the ATM. He told us a staff member at the branch had retrieved a card but that this was not his TSB debit card. Mr H commented that the card the staff member returned with did not appear to be a TSB card.

Mr H explained that whilst at the branch, he was told £450 had been withdrawn from his account on 11 October 2020. This had been made at another ATM located around 10 minutes' walk away from the TSB branch (for ease I'll refer to it as ATM 2). Mr H has confirmed that he's made withdrawals from ATM 2 previously as this is close to where he works.

The cash withdrawal of £450 at ATM 2 was made at 12:26 pm on 11 October 2020.

On 12 October 2020, Mr H called TSB to say his card had been retained but £450 had been withdrawn from his account. Based on this call, TSB say the advisor correctly submitted an ATM dispute for £450. On 14 October 2020, £450 was credited to Mr H's account whilst the claim was investigated. Following its investigation, TSB re-debited the amount of £450 as it says the amount was dispensed correctly by the provider of ATM 2.

Mr H says he visited the TSB branch in November 2020, after the funds were re-debited from his account. Mr H added that, as he hadn't heard anything from TSB, he called its Head Office and was offered a branch appointment to see a manager, but that this wasn't until around four months later in February 2021. Mr H says the appointment was cancelled on the day - a few hours before the appointment time. He says he was told he'd be contacted with another appointment but was not. He then received communication from TSB to say it couldn't help him with this matter.

A complaint was raised. TSB investigated and said that it wasn't going to refund the ATM withdrawal of £450. It said Mr H's card hadn't been retained by the ATM at the TSB branch and that this was supported by the fact the debit card was used shortly after at ATM 2. It added that there is also no explanation of how Mr H's PIN could have been obtained by a

third party. However, when considering the concerns Mr H had raised about the level of service received, it did acknowledge Mr H didn't received a call back from a manager and for this it apologised.

Mr H remained unhappy with TSB's response and asked our service to proceed to look into his complaint.

One of our Investigators looked into Mr H's complaint and said he didn't think TSB had acted unfairly in not reimbursing the £450. He said that TSB had shown Mr H's genuine card was used to make the withdrawal and that the correct PIN was entered. He was satisfied, in all the circumstances, that the withdrawal was authorised and on balance, he thought it was more likely than not that Mr H had consented to the withdrawal. It followed that our Investigator didn't think it was fair to hold TSB liable for the withdrawal from ATM 2. However, he did think TSB could have provided a better level of service, agreeing with the aspect it had upheld relating to the appointment to meet with the branch manager. He thought TSB should have done more to put things right and recommended TSB pay Mr H £100 compensation for the distress and inconvenience caused by the customer service issues.

TSB agreed with our Investigator's recommendation of £100. But Mr H wasn't happy with what our investigator said, saying that he wanted the £450 to be reimbursed. He asked for an ombudsman to look into his complaint. So, the complaint has been passed to me for a 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.

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

In cases when there is a dispute about what happened, I base my decision on the balance of probabilities. In other words, what I consider is more likely than not to have happened in the light of the available evidence.

Having considered everything that both parties have said and provided, I find this complaint should be upheld in part. I will now explain why.

Whether a payment transaction has been authorised or not is important because account holders will usually be liable for payments they've authorised and, generally speaking, banks will be liable for unauthorised payments. If Mr H made the disputed transaction himself or authorised for it to be made on his behalf, it would not be fair to ask TSB to refund it. But Mr H has said that he did not make the withdrawal himself. He's also told our investigator that his card is always with him and that he's never shared his PIN or card with anyone else. He also said that nobody had ever made a cash machine withdrawal or purchase on his behalf.

TSB has provided evidence that Mr H's genuine card and PIN were used to make the disputed cash withdrawal - this means Mr H's actual card was used. But the regulations relevant to this case say that is not, on its own, enough to enable TSB to hold him liable. I also need to think about whether the evidence suggests that it's more likely than not that Mr H consented to the withdrawal being made.

I've considered the options for what's most likely to have happened. These are that the withdrawal could have been made by an unknown third party, by someone known to Mr H, or by Mr H himself. From what I've seen, I don't think it's unreasonable for TSB to conclude that Mr H authorised the transaction. This is because:

To carry out the disputed withdrawal a fraudster would have needed to access Mr H's debit card and PIN. Mr H explained that he hadn't shared his PIN with anyone, and he's told us the debit card was always with him.

I can see from our Investigator's review that consideration has been given to whether Mr H's PIN could have been obtained by "*shoulder surfing*" – in other words, a third party looking over someone's shoulder when they are entering a PIN. But the evidence provided by TSB shows that Mr H's card wasn't used at the TSB branch ATM as he recollects. Had Mr H used his card at the TSB branch ATM he would have needed to present his debit card and enter his PIN into the machine. In doing so, an electronic footprint would have been left to show this activity even if no cash withdrawal successfully took place. However, the information provided to us doesn't show this. It shows that Mr H's card and PIN were used to make the withdrawal from ATM 2 and that prior to the disputed cash withdrawal, Mr H last used his card at the same ATM on 7 October 2020.

Whilst I don't doubt what Mr H has told us is his honest recollections of what happened, on balance and, based on the information provided to me, I'm unable to safely conclude that his card was used at the TSB branch ATM.

Further, when carefully considering the possibility of shoulder surfing, I'm afraid I don't find this plausible in the circumstances. Given that Mr H's card and PIN wasn't used in the TSB branch ATM on 11 October 2020, for me to conclude that a fraudster obtained his PIN whilst he input this into a machine would mean this would've needed to have happened when Mr H last used his card and PIN on 7 October 2020.

This would then have meant that an opportunistic fraudster would have had to wait several days before having the opportunity to obtain Mr H's card. And to do this, they would have needed to have been aware of Mr H's whereabouts and movements. I don't think this is a plausible explanation as to how the withdrawal happened and I'm not persuaded a fraudster would have had such knowledge.

I'm also unable to find a plausible explanation for how someone else would have known this information, when he's explained his card was always in his possession up until the point he says the ATM retained it.

Further I'm mindful that in order for a fraudster to have been able to carry out the withdrawal they also would have had to obtain Mr H's debit card which, according to his testimony, was not returned by the TSB Branch ATM. Mr H says he waited by the ATM for around 21 minutes to see if his card would be returned by the machine at the time the disputed withdrawal at ATM 2 was made. This means in order for an opportunistic fraudster to obtain his card (for example, if a false front been placed on the ATM), they would have needed to have gained his card whilst he was still present at the ATM machine without him noticing. I'm afraid I find this unlikely given Mr H's own recollections.

I recognise Mr H feels strongly about this matter and that he's said he was waiting at a different ATM to the one used to make the disputed withdrawal and that, the machine didn't return his card. But for the reasons I've set out above, I'm satisfied that the transaction was more likely than not made by Mr H. As such, I cannot fairly or reasonably require TSB to reimburse him the £450 cash withdrawal in dispute.

I know this will come as a disappointment to Mr H, but I hope he understands why I've reached the decision I have about the ATM withdrawal.

However, I consider TSB could have provided Mr H with a better level of service. TSB appears to agree with this point following its acceptance to pay £100 compensation to reflect the distress and inconvenience this has caused to Mr H. Taking everything into account, I agree with our Investigator that £100 compensation should be paid to Mr H and that this is fair and reasonable in the circumstances of this complaint. Because of this, I make no further award in respect of this aspect.

Putting things right

TSB Bank plc should pay Mr H £100 compensation (if it has not already done so) in recognition of the inconvenience Mr H experienced.

My final decision

My final decision is that I uphold this complaint in part, and I direct TSB Bank plc to put things right by doing what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 13 October 2022.

Staci Rowland
Ombudsman