

## **The complaint**

Miss T complains that TSB Bank plc unfairly declined to refund transactions she didn't recognise.

## **What happened**

### *What Miss T says*

At the time of the disputed transactions, Miss T had a TSB savings account. She didn't use it often because she was saving for a mortgage. She needed to go shopping and couldn't find her usual bank card that was held with another bank and needed to withdraw some cash. Miss T decided to use her TSB card (which was kept hidden in the house) to withdraw the cash and when she looked at her account, she realised it had less in it than she expected.

Miss T spoke with TSB who went through various cash withdrawals and Miss T identified several of them that she didn't make herself and which had taken place over about a three-week period. Miss T confirmed she still had her card with her and discussed the possibilities of how the withdrawals could have been made, including the "cloning" of her card. Miss T didn't think that the TSB call handler treated her very well or took her additional needs into consideration. The conversation deteriorated and was cut short. Miss T notified both the police and Action Fraud about the loss from her account which amounted to nearly £2,000 over eight transactions.

Miss T visited a number of places where the cash was withdrawn and was able to obtain video images of one of the withdrawals which she identified as her (now ex) partner. Miss T notified TSB about this and visited a TSB branch to discuss the issue. Miss T also reported this to the police. Miss T said that after the initial call with TSB, she was so stressed that the medical emergency services had to attend at her home.

Miss T raised a complaint about the loss, how she was treated when she first reported it to TSB and how she'd been treated in branch.

Miss T later told the police that she'd previously asked her partner to withdraw cash from an ATM and had given him the card and Personal Identification Number (PIN). She stressed that she'd only asked for this one withdrawal and never gave permission to take the card or use it again. Her card was returned to her at the time. Miss T went on to say that her (now ex) partner had access to her house with a set of keys and was trusted by her and the family.

### *What TSB say*

TSB's records show that Miss T called them when she identified the withdrawals she didn't recognise and also confirmed that no one had access to her card or knew the PIN for her card. TSB declined to make a refund because they couldn't identify how someone had been able to obtain both the card and PIN, they also reported that if the card and PIN had been given to someone else by Miss T, then she would be liable for the withdrawals because it

would be in breach of the terms of the account.

TSB records show that the day following the first notification, Miss T told them she thought her partner had been responsible and he'd probably seen her use the PIN when he'd been shopping with her.

TSB noted that Miss T regularly used her account for cash withdrawals and some of the ATM's used for the disputed transactions were the same as normally used by her. They thought it unusual that Miss T hadn't noticed her card missing earlier and that she hadn't made any cash withdrawals herself during the three-week period over which the disputed transactions took place. TSB thought that Miss T's version of events had changed.

TSB explained that they'd listened to the first call between their advisor and Miss T and couldn't agree that she'd been treated poorly. They noted that Miss T had used inappropriate language which necessitated the call to be cut short. TSB didn't agree that their treatment of Miss T when she visited their branch was anything other than a normal approach to disputed transactions and they needed to ask Miss T about the withdrawals and how it could have been done without her knowledge.

TSB declined to make a refund for the disputed transactions.

#### *The investigation so far*

After receiving her complaint, an investigator from the Financial Ombudsman Service was assigned to look into it. Miss T also complained about a lack of response by TSB to some of her emails and that they hadn't taken her health conditions into account when they dealt with her. Evidence supplied by both parties was considered and a recommendation was made about the outcome of the complaint. The investigator thought that because Miss T had previously given authority to her partner, this meant that he had "apparent authority" to continue to use the card, which Miss T would then be responsible for. It was commented that Miss T should have taken steps to prevent her partner from using her card again such as changing the PIN.

Regarding the other complaint points - The investigator didn't have the opportunity to listen to the first call because TSB no longer had it available. This meant that the investigators assessment was based on the notes of the conversation and Miss T's records. The investigator didn't think there was any evidence to show that TSB had been unfair to Miss T. She thought that TSB could have answered Miss T's emails, although, because the final response had already been issued, it didn't cause any delay to the overall complaint process or disadvantage Miss T. Taking everything into account, the investigator didn't uphold Miss T's complaint.

#### *Miss T's response*

Miss T disagreed with the investigator's recommendations and still thought that TSB should have answered her emails. She also commented that she didn't change the PIN because she had no reason to believe her partner was going to take her card.

Miss T was able to provide footage of her now ex-partner using the ATM to make one of the disputed transactions and provided other photographic evidence to identify him.

Because no agreement could be reached, Miss T asked for an Ombudsman to review her complaint which has now been passed to me and I issued a provisional decision where I said:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*Miss T's principal complaint revolves around the use of her card and PIN to make several withdrawals from an ATM. It's her case that they were carried out by her now ex-partner without her permission. TSB didn't think the card could have been obtained on numerous occasions and returned without Miss T noticing. They also argued that had Miss T given the card and PIN to someone else, she would be responsible for the withdrawal because it breached the terms of her account that she'd signed up to when opening it.*

*The relevant law surrounding authorisations are the Payment Service Regulations 2017. The basic position is that TSB can hold Miss T liable for the disputed payments if the evidence suggests that it's more likely than not that she made them or authorised them.*

*TSB can only refuse to refund unauthorised payments if it can prove Miss T authorised the transactions, but TSB cannot say that the use of the card and PIN conclusively proves that the payments were authorised.*

*Unless TSB can show that consent has been given, it has no authority to make the payment or to debit Miss's account and any such transaction must be regarded as unauthorised. There's no disagreement here that the withdrawals took place, so whilst I haven't seen the evidence that these payments were authenticated, it doesn't affect the issue of whether Miss T can be held liable for them. I'll now need to consider the information provided by both parties to determine whether there's sufficient evidence to hold Miss T responsible for the disputed transactions or not.*

*TSB terms and authority to use the card*

*TSB's terms set out the way the account is to be used including how to treat the security of the card and PIN. It goes on to say that these details shouldn't be given to anyone else and in such cases where it's used, TSB are unlikely to be able to make a refund.*

*There are exceptions to this including when someone uses the card without the permission of the account holder.*

*Apparent authority*

*This is a concept that an account holder who gives their card and PIN to another to use is handing permission for them to use the card. In such cases they would generally be responsible for whatever use the card is put to, even if it's used outside of its original intended use. But, when the use of the card was for a specific purpose, we generally wouldn't agree that the authority continued past this point. In Miss T's particular situation, she has said that she gave permission to her partner at the time to use her card and gave him the PIN. This was for a specific withdrawal from an ATM. Miss T received the card back and has said that she didn't give permission for it to be used after this one withdrawal.*

*Where it can be seen that the "apparent authority" has ended, any future use of the card would likely be considered unauthorised. So here, Miss T's partner had the card and PIN for one withdrawal, which was completed. Miss T's testimony is that this was the only occasion she gave that permission and once she had the card back, it was hidden in her home. As Miss T received the card back and placed it out of sight, it's unlikely that her partner could take this as carte blanche permission to use it as he saw fit.*

*It's apparent that he knew where the card was kept as he'd been Miss T's partner for some years, and he had access (with a key) and was trusted by her and the wider family. So, it's*

*plausible that he could have obtained the card on each of the occasions to use it for these cash withdrawals.*

*Miss T followed up the cash withdrawals and managed to obtain CCTV coverage of one of them. This showed her partner withdrawing cash from the ATM. Miss T has been able to provide pictures which show her with her partner at the time who appears to be the same person withdrawing the cash. The evidence she's been able to provide points to her partner at the time withdrawing cash using her account, so I think it likely that the other withdrawals were also made by him as Miss T doesn't recognise them herself.*

*Whilst TSB can argue that there was a breach of their terms, the disputed transactions claimed by Miss T resulted from the removal of her card without her permission or consent. Without that consent the transactions can't be considered to be authorised. Miss T has explained that she never thought her account was at risk, otherwise she would have made changes to it including changing the PIN.*

*I've also considered whether Miss T can be held "grossly negligent" with the security of her card and PIN. This is a high bar and Miss T has stated that she never thought for one moment that her funds were at risk and kept her card hidden in her house. As her card was effectively taken without her permission by someone who appears to have entered her house repeatedly for that purpose – I don't think this could be viewed as Miss T being grossly negligent with the security of her card.*

*I've thought about TSB's position that Miss T changed her version of events and how her account was used. I don't think Miss T had any idea how her account had been used when she first reported it and it's apparent that she was completely taken by surprise at the realisation it was her ex-partner who'd taken the money. I think that TSB's interpretation of how the events unfolded didn't take into account the evolving nature of the information available to Miss T when she looked into the matter herself.*

*TSB detailed the times when the account was used which showed Miss T usually made use of it nearly every month. They thought the lack of use of her card during the three-week period of the disputed transactions was unusual. The account is used most months, but not every week. In the last twelve months there are gaps of up to about a month, but usually less than a couple of weeks between use. Having looked in detail at the statements, I don't think a three-week gap is particularly noteworthy.*

#### *Treatment by TSB*

*Alleged breaches of the Equality Act 2010 are a matter for the courts to determine – and so I cannot make a finding on whether or not TSB has acted unlawfully in discriminating against Miss T on the basis of a protected characteristic. But I can consider whether Miss T was treated in a fair and reasonable manner and whether I think she was treated differently to other customers.*

*I've considered the unfortunate impact on Miss T after reporting the loss to TSB. As I've mentioned, the call she had with them is no longer available, but the call notes are, and they indicate Miss T was increasingly distraught which resulted in the conversation being cut short. It's difficult to draw any reliable conclusions from the notes made by TSB and from the reports made by Miss T because they differ so much.*

*It's apparent that Miss T was affected by the loss of her funds and it wouldn't be surprising for TSB's message that she wasn't going to receive a refund to cause her even more distress. Miss T later apologised for her behaviour, so I think it's likely that the conversation became heated.*

*I do appreciate Miss T suffered considerable stress and worry, which resulted in the attendance of medical professionals, but this could be as likely to do with the message she'd received as opposed to how it was delivered.*

*Miss T further complained about treatment at a branch and TSB explained they'd spoken to her about the circumstances which Miss T said made her feel as though she was a criminal. There are no substantial records of this meeting, but I'd expect TSB to discuss the details of what happened and how her card and PIN could be used to make the withdrawals, particularly when she retained the card herself. It's understandable that Miss T would be sensitive to these discussions, particularly when she'd already had a bruising experience with TSB on the phone.*

*There isn't evidence that TSB's conduct was beyond their usual approach to this type of disputed transaction and I haven't seen anything that would lead me to conclude Miss T was treated differently to any other customer in a similar situation.*

#### **TSB response to Miss T's emails**

*I've also thought about the lack of response to further emails from Miss T. I understand they were sent after the final response had already been issued and TSB said the person who was dealing with Miss T's case had moved on from that position. Whilst I don't think that Miss T's ability to complain about the refund was impacted because the final response had already been issued, I do think that TSB could have responded to Miss T, particularly given that they were aware of her different needs. A timely response would no doubt have lessened the stress she was feeling.*

*Overall, I'm currently intending to uphold this complaint with a refund of the substantive losses (£1,974.96) plus interest at the account rate (as I've not seen any evidence that the money would have been used for any other reason at that time). Also, I think TSB could have been more understanding when they handled this situation and I'm currently thinking that a payment of £100 be paid to Miss T for the impact this had on her.*

I invited Miss T and TSB to give me any more evidence and information they wanted me to consider before issuing my final decision. TSB accepted my provisional decision and Miss T didn't have anything further to add.

#### **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.

Having done so, and as neither party had anything further to add, I see no reason to reach a different conclusion. So, this final decision confirms the findings set out in my provisional decision.

#### **Putting things right**

TSB should now refund Miss T the disputed transactions, recorded as £1,974.96, including interest at the account rate for the period the funds left the account to their repayment. Also, TSB to pay Miss T £100 for the distress and inconvenience caused by their handling of the complaint.

### **My final decision**

My final decision is that I uphold this complaint against TSB Bank PLC and they're instructed to settle this complaint as set out above.

If TSB considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Miss T how much it's taken off. It should also give Miss T a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 31 January 2023.

David Perry  
**Ombudsman**