

## **The complaint**

Mr W and Mrs W complain that TSB Bank plc held them liable for a cash withdrawal they never received.

## **What happened**

Mr W was the account holder who experienced the problem. He explained that he was using his wife's debit card on their joint account to withdraw £250 from an automated teller machine (ATM). This was something they did regularly to manage their housekeeping.

Mr W said that he entered the card into the ATM and the machine put a message on the screen that it was processing the request. After about five minutes Mr W still hadn't received either his card back or his cash and approached the business who hosted the ATM. They told Mr W they couldn't help as the ATM was operated by someone else.

Mr W returned home and noticed that his account had been reduced by £250 from the cash withdrawal he'd attempted earlier. He spoke to TSB about it at the time who arranged for a temporary refund to be made the joint account.

TSB asked the operator of the ATM to check the machine and the various audit records to check the transaction. They told TSB that the withdrawal was completed normally. Once TSB received this evidence, they told Mr W and Mrs W that they were going to remove the refund from them and hold them liable for the transaction.

Both Mr W and Mrs W were unhappy with this decision taken by TSB and argued that they'd never received any funds. They told TSB that they'd returned the following day and withdrawn £250 from a different ATM next to the one they'd used previously. They noticed a handwritten note on that ATM. It appeared that the business hosting the ATM had put the note on it and Mr W and Mrs W thought this was due to other reports of problems with it.

They complained to TSB about what had happened and were told their complaint wouldn't be upheld because they'd already received information to say the ATM was working and the decision couldn't be overturned.

Mr W and Mrs W then brought their complaint to the Financial Ombudsman Service for an independent review where it was looked into by one of our investigators. TSB were asked to provide additional data about the ATM to check if the machine had been working correctly or was subject to external interference.

Further details were provided to TSB by the operator, but the investigator didn't think that TSB had complied with their obligations to show the ATM was operating properly because some of the information they provided was in the form of conversations held with the ATM operator, rather than specific audit reports from the ATM.

Mr W and Mrs W's complaint was upheld although TSB argued they'd provided more information than they were required to and disagreed with the investigator's outcome.

As no agreement could be reached, the complaint has now been passed to me for a decision.

As part of my review, I examined all the evidence provided by both parties. I noted that part of the additional information provided to TSB by the ATM operator was a report that recorded, step by step, what happened at the ATM once the card was entered by Mr W. This revealed there was a considerable gap in the transaction once Mr W put the card into the machine. Specifically, the process starts at 13:30:13 hrs once the card is entered and Mr W requests £250 cash. There's then a gap until 13:37:47 hrs and the cash is dispensed and the card returned with the complete process finishing at 13:38:04 hrs.

I issued my provisional findings on the merits of Mr W and Mrs W's complaint on 20 September 2023. In my provisional findings, I explained why I intended to uphold their complaint and offered both sides the opportunity to submit further evidence or arguments in response. An extract of that decision is set out below and forms part of this final decision:

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

*Much discussion has taken place about the standards of information provided by TSB. It's the case here that TSB weren't operating the ATM themselves, so relied on the operator of it to provide those details needed to understand what had happened at the ATM. But, whilst TSB weren't directly responsible for the operation of the ATM, they are responsible for the actions of their agent here (the ATM operator).*

*The relevant regulations are the Payment Service Regulations 2017 (PSRs) and specifically S.75 which states that:*

*75.—(1) Where a payment service user—*

*(a)denies having authorised an executed payment transaction; or*

*(b)claims that a payment transaction has not been correctly executed,*

*it is for the payment service provider to prove that the payment transaction was authenticated, accurately recorded, entered in the payment service provider's accounts and not affected by **a technical breakdown or some other deficiency** in the service provided by the payment service provider.*

*Plainly that means that once Mr W and Mrs W reported an issue with their withdrawal, it was TSB's responsibility to prove the various systems (including the ATM) were working properly.*

*I've added bold text above to highlight the specific obligation that lies with TSB in this complaint. The evidence strongly suggests that the ATM wasn't operating properly because a seven-minute gap in the withdrawal is, in my opinion, an unreasonable amount of time a user of the ATM would be expected to wait. I doubt many people would expect to wait that long and because of the delay, it appears that the cash and the card were taken by persons unknown after Mr W left the area to return home.*

*S. 91 of the PSRs goes on to deal with the refund of transactions that are defective payment transactions. In summary, it says where the transaction was defective, it's the payment service providers (TSBs) responsibility to refund the payer (Mr W and Mrs W) and put the account back where it was prior to the transaction.*

*As the ATM has been shown to have had some form of deficiency due to the unreasonable delay, the obligations of S.75 haven't been met and S.91 is applicable. On a broader perspective, my current thoughts are that it wouldn't be fair to expect Mr W and Mrs W to be held liable for the withdrawal, even though it was authorised. That's because it wasn't the fault of Mr W and Mrs W and they acted reasonably – even to the extent of waiting for about five minutes to see if the card/cash would be dispensed.*

*I've also considered the likely technical breach of the terms of the account because Mr W was using Mrs W's debit card. Although I appreciate that each user of the account should use their own card, Mr W explained that they had a "purse" they used to manage their cash and Mrs W's card was in it at the time. It's clear that Mr W knew the personal identification number for it and strictly this should only be used by the account holder. But here, any use of Mrs W's card by Mr W would be under an "apparent authority" and would create a responsibility for Mrs W to be accountable for her cards use by Mr W. But, as the account is a joint one then Mr W's use of his wife's card in these specific circumstances would essentially be the same as him using his own card to withdraw the £250. There's no evidence that the use of Mrs W's card was without her authority, so I don't intend to comment further about this issue.*

*Additionally, I'm considering a small payment for the stress and unnecessary inconvenience caused by the handling of the claim by TSB. They rejected it based on a limited amount of data from the ATM operator when further detailed information was available. TSB have argued that the agreement they have with ATM operators sets out what information they can and should ask for. I make no comment on that agreement because TSB's obligations are clearly set out in the PSRs.*

*If the ATM operator had given TSB the audit information they held at the time of the original request, I'm sure it would have been noticed that there was an unusually large time gap that answered the claim made by Mr W and Mrs W, leading to a quick resolution of the problem. But, this wasn't provided and led to unnecessary stress and inconvenience. I'm currently considering a payment of £100 for the impact this had on Mr W and Mrs W.*

*My provisional decision*

*I'm currently intending to uphold this complaint and to request that TSB pay:*

- *£250 refund including interest at 8% simple to account for the lack of use of those funds by Mr W and Mrs W; and*
- *£100 for the impact the handling of the claim had on them.*

*I invited Mr W and Mrs W and TSB to give me any more evidence and information they wanted me to consider before issuing my final decision. Both parties responded and accepted my 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.*

*Having done so, and as both parties accepted my provisional decision, 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**

In order to finalise this complaint, TSB are required to :

- Refund the £250 from the ATM withdrawal, add interest at 8% simple to account for the lack of use of those funds by Mr W and Mrs W from the date of loss to the date it's refunded.
- Pay £100 for the impact the handling of the claim had on them.

## **My final decision**

My final decision is that I uphold this complaint against TSB Bank plc and they're instructed to settle the complaint as I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 31 October 2023.

David Perry  
**Ombudsman**