

The complaint

Mr D complains that TSB Bank plc is holding him responsible for transactions which he says he didn't authorise.

What happened

The circumstances of this complaint are well known to both parties, so I will not repeat them all again here in detail. But I will provide an overview of events below.

Mr D holds two accounts with TSB – a savings account and a current account. In the early hours of 20 April 2023 Mr D says his mobile phone was stolen. He said his phone was unlocked at the time as he had it in his hand whilst looking at google maps.

Between 4.17am and 4.19am a total of £16,840 – in three instalments - was transferred from Mr D's savings account to his current account. And between 7.26am on 20 April 2023 and 1.05pm on 21 April 2023 a total of over £7,000, in several transactions, was taken from Mr D's TSB account using his debit card via Apple Pay. Mr D said he didn't authorise those transactions and wants the funds refunded under TSB's fraud guarantee.

TSB didn't uphold Mr D's fraud claim. It said it didn't consider funds being transferred to another bank account in Mr D's name to be conducive with fraudulent behaviour. And TSB added that the debit card payments had been authorised using biometrics and memorable data only known to Mr D. It said this was *'impossible for anyone else to do'*.

Mr D referred his complaint to the Financial Ombudsman. He said the thieves transferred the funds from his savings account to his current account to allow purchases to be made via Apple Pay once they'd logged into his Apple account and changed his Apple ID and email passwords.

One of our Investigators considered the complaint and didn't uphold it. In short, she thought Mr D had authorised the disputed payments by way of inputting memorable information only known to him.

Mr D didn't accept the Investigator's findings, so the complaint has been passed to me to make a decision. He wanted us to consider evidence from where the transactions were made by obtaining CCTV footage and for us to contact the police.

Mr D also reiterated that his phone had been hacked by the thieves who reset his Apple ID, enabling them to make the transactions and remove a block TSB placed on his card. He said that since the incident he has received emails and Apple notifications that his passwords have been leaked.

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, I agree with the conclusions reached by the Investigator, and for largely the same reasons. I'll explain why.

But first, I would like to say at the outset that I have summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there is a submission I've not addressed; it isn't because I have ignored the point. It is simply because my findings focus on what I consider to be the central issues in this complaint – that being whether TSB has acted reasonably in concluding Mr D authorised the disputed transactions.

Where the evidence is incomplete, inconclusive, or contradictory, I must make my decision on the balance of probabilities – that is, what I consider is more likely than not to have happened in the light of the available evidence and the wider surrounding circumstances.

I don't think it's in dispute that something occurred on Mr D's account on 20 and 21 April 2023. But I must weigh up everything Mr D has told us against the technical evidence TSB has provided and decide what is most likely to have happened; and whether there's a basis on which I can require TSB to take any action.

Information from CCTV footage or the police would likely confirm Mr D's account of what happened, insofar as it relates to the reporting of the stolen phone and where the payments were made. But that information doesn't help in evidencing *how* the disputed payments were made and whether Mr D authorised them.

Mr D has said the payments were made using Apple Pay – and that this was because his Apple ID was reset by the thieves. But I've not been provided with any technical evidence supporting how that could be possible. I appreciate Mr D has been able to show that his Apple ID was reset around the same time his phone was stolen. But how that would then allow a third-party complete access to Mr D's Apple wallet and banking app – bypassing all biometric and memorable information linked to those facilities and/or Mr D's phone - is unfortunately, in the specific circumstances of this complaint, unsubstantiated. And so, I've no basis on which I can find in Mr D's favour on that point.

What I have been provided with is evidence to show how Mr D's banking app was accessed during the period when the disputed transactions were carried out. And that shows how on 20 and 21 April 2023, Mr D's banking app was accessed via his mobile phone using his internet banking memorable information.

Of particular significance is that this mode of access was used for the transfers made from Mr D's savings account to his current account – transfers he's said were made by the thieves so transactions could be made via Apple Pay from his current account. Mr D has told us the memorable information wasn't written down and as this is information unique to Mr D – I can't see how it was used without his knowledge or consent.

I can also see that Mr D's banking app was accessed during this time using his fingerprint and by following a customer verification process. His fingerprint was also used to access the app for genuine transactions immediately prior to the reported theft. And so, even if there was some point of compromise regarding access to Mr D's memorable information – which I don't think there was - the fact biometrics and customer verification were also used adds weight to the argument that Mr D was involved in the disputed transactions in some way.

It follows that in my judgement, on balance, it is more likely than not that either Mr D authorised the disputed transactions by making them himself or authorised another to do so by providing them his consent. And so, I won't be asking TSB to take any further action in this regard.

This is a difficult message for me to give as I know how strongly Mr D feels about this matter. But given the evidence I have and on the balance of probabilities, I'm unable to reasonably reach any other conclusion.

So, taking everything into account, I don't think TSB needs to take any further action.

My final decision

For the reasons set out above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision **before 22 February 2024**.

Anna Jackson
Ombudsman