

The complaint

Miss C complains that TSB Bank plc (“TSB”) held her liable for a failed cash withdrawal.

What happened

Miss C explained that her partner was using her debit card to do some shopping. He then tried to withdraw cash from an automated teller machine (ATM). Miss C was told by her partner that he’d tried to use two ATMs to withdraw cash and they both failed.

After checking the account balance, the first withdrawal attempt was for £300. Miss C related what she was told by her partner that the ATM failed to provide any funds. He then went on to use a second ATM and requested £200 which again failed. The ATM didn’t return Miss C’s card and during the attempt to withdraw cash, it was reported that the ATM kept asking for Miss C’s phone number.

Miss C said her partner stayed by the ATM whilst she spoke to TSB and reported the issues. She was told by TSB that her card had been cancelled, a new one issued, together with a new personal identification number (PIN). TSB confirmed that her partner could leave the ATM.

Later, Miss C spoke with TSB again and advised that she’d noticed other payments she didn’t recognise. TSB recorded them in their fraud report which were later refunded. The ATM operator accepted the second attempt to withdraw cash failed and refunded £200.

TSB temporarily refunded the £300 from the first attempt to Miss C and approached the operator of the ATM about the withdrawal. The operator sent details of the ATM in the form of a “journal roll” and a balancing certificate.

The journal roll is a record of activity of the cards that use it. It showed that Miss C’s card was used to check the balance before £300 was successfully dispensed. Other cards were shown to use it straight afterwards, again successfully. The ATM was “balanced” the following day, meaning that the cash in the ATM was checked against what the records showed. The ATM contained £70 more cash than the records indicated.

Once TSB received this information they advised Miss C they were taking the temporary refund back because the ATM evidence demonstrated the withdrawal was successful. Miss C complained to TSB who didn’t accept they’d made an error. Miss C then brought her complaint to the Financial Ombudsman Service for an independent review. An investigator was assigned to look into the issue.

Both parties were asked to provide any information they had about the complaint and Miss C was able to say that:

- Her husband had to enter the card’s PIN several times and was asked for a phone number to send a verification code.
- Her husband cancelled the transaction, but the card didn’t come out.

- Her husband waited in front of the ATM while Miss C spoke with TSB. They said he could leave.
- There were two men near the ATM.
- One of the men tried to press a button on it.
- No one else was queuing.
- The money was needed to top up the energy meter.

TSB provided details of their investigation, including timings of the cash withdrawals and evidence from the ATM operator. Summarised as:

- The £300 withdrawal took place before the £200 withdrawal.
- The £300 withdrawal (which is the subject of this complaint) was successful.
- The ATM was used one minute later by a different account.
- The ATM had £70 excess cash in it when it was balanced.

After reviewing the evidence, the investigator recommended that the complaint not be upheld. It was explained that:

- The evidence shows the transaction following the failed attempt (from the first ATM) was successful which rules out the likelihood of a “device” attached to the ATM – used to divert users cash.
- This withdrawal conflicts with Miss C’s partner’s explanation that he stayed with the ATM.
- There was no evidence to show the funds had been taken back into the ATM.
- It’s possible that her partner was distracted whilst at the ATM and the cash taken, but this wouldn’t explain how the card was still available to use in the second ATM.
- If the cash was taken (by a third party) then the bank wouldn’t be liable as the transaction was successful.
- It was concluded that the ATM was in working order and the transaction was successful after Miss C’s partner used her card and PIN to make a withdrawal.

Miss C disagreed with the investigator’s recommendations and commented that:

- She confirmed the £200 was refunded.
- If a device was present and captured the cash, the ATM operator should make sure the ATM was safe.
- CCTV would have provided evidence of what happened at the ATM.
- Miss C stood by her explanation that her partner stayed by the ATM.

- No money was dispensed by either ATM.
- Miss C requested a further review of her complaint.

As no agreement could be reached, the complaint has now been passed to me for a decision. I wanted to clarify my understanding of what Miss C had said about the activity at the ATM. I also asked TSB to provide further information about the account activity and evidence that the £200 had been refunded.

Miss C confirmed that:

- Her partner never intended to withdraw more than £100.
- Miss C believes thieves were somehow able to manipulate the ATM and use her card to withdraw cash and use it later for other charges.
- Miss C believes she'd been called a liar.

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.

Firstly, I'd like to address Miss C's comments about her testimony. There's absolutely no suggestion that what she's said is anything but her genuine belief and there's no suggestion that she'd been called a liar (by TSB or anyone else).

TSB are required to provide evidence that their payment systems (including ATMs operated by other operators) were working properly – S 75 of the Payment Service Regulations 2017 refers.

Because the ATM was operated by a different organisation, TSB used a process to challenge the withdrawal, whilst applying a temporary refund to Miss C's account. Evidence was provided by the operator which TSB used to base their decision not to refund (the first) withdrawal for £300. They then took back that refund after notifying Miss C of the outcome of their investigation.

Miss C's complaint is that both ATMs were faulty. The second (£200) attempt was refunded, as were later claims made by Miss C. The outstanding claim relates to the first attempt for £300.

It's a little unclear what happened at the first ATM because the bulk of the explanation relates to the second withdrawal, particularly in relation to the card not being returned. It's apparent that the first ATM returned the card, otherwise it would not have been possible to then use the second ATM.

There's been much discussion about what happened at the ATM, including comments about other people standing nearby and Miss C's husband staying at the ATM. Having now reviewed the circumstances, I think it's likely that Miss C was explaining to TSB and our service what she was told by her partner. So, there's some potential for the events to become slightly confused because Miss C wasn't present herself.

It seems to me that her partner was talking about the second withdrawal when he made comment about staying nearby until TSB gave the all-clear to leave it. There's been no evidence of the second ATM operation (because it's been refunded) so it's difficult to be

precise about what happened. For example, there's no evidence to show how the ATM dealt with the withdrawal request or when the card was returned.

So, I've mainly concentrated on the first transaction and the available explanations/evidence. What that shows is it successfully dispensed £300 after a balance enquiry was carried out, followed a minute later by a different card user requesting funds which again appear to have been successful.

Given the ATM didn't contain surplus funds that could relate to a £300 failed withdrawal (it had only £70 excess funds), it's likely those funds were dispensed otherwise I'd expect to see the records make a reference to an issue with the withdrawal on the journal roll. Here the records all support the successful withdrawal of £300. Of course, it's possible that Miss C's partner was somehow distracted, and the funds stolen. If this were the case, the withdrawal had been completed and TSB's liability here would have ended.

Miss C has said they only wanted £100, so wouldn't have asked for £300. I don't think this explanation is supported by the ATM records. I think it's unlikely that the ATM would randomly dispense £300 without the user asking for it. The second ATM attempt was also for more than £100, so I think that on both occasions, additional funds were requested.

I understand Miss C was critical of the lack of CCTV coverage. TSB didn't ask for any and nor do I think they had to here. They didn't operate the ATM, so didn't control any cameras (if they even existed) and the agreement they have with the ATM operators doesn't require them to obtain it. Instead, they relied on the ATM audit data which is relevant to the operation of the ATM. I don't think it's unreasonable for TSB to rely on this evidence.

Whilst I accept that the second ATM had a problem, the £200 was later refunded. Further refunds were made after the card was used and Miss C told TSB she didn't recognise those additional transactions. The remaining claim relates to the first withdrawal. On balance I haven't seen any evidence that would persuade me the first ATM wasn't operating properly.

Because Miss C authorised her partner to use the card and gave him her PIN, she's responsible for the use of it. Her partner entered the card and PIN into the ATM and because the records show the withdrawal was successful, I won't be upholding this complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 24 February 2025.

David Perry
Ombudsman