

## **complaint**

Mr M complains that TSB Bank plc (TSB) won't refund disputed cash withdrawals made from his account.

Mr M says that fraudulent withdrawals totalling £12,450 were made from his TSB account between 2 October 2017 and 3 October 2017.

On 24 September 2017, Mr M contacted TSB to request a new card be sent out to him as he had lost his card the previous evening. At the same time, Mr M also requested a new PIN. TSB advised both the new card and PIN would be received by Mr M within 5 working days.

Mr M didn't receive the card as expected and so on 5 October 2017, he went into branch to withdraw some funds and query the non-receipt of his new card and PIN. A statement was provided to Mr M in branch and at this point he noticed the disputed transactions on his account.

Mr M said he doesn't recognise the transactions and he didn't make them himself. He said someone must have intercepted his card and PIN and made the transactions without his authorisation. He thinks TSB has been negligent in allowing a large cash withdrawal without first requesting ID from the person who made the withdrawal.

TSB said it won't refund the withdrawals made from Mr M's account. It said there are multiple inconsistencies in the information Mr M had provided to it when it was completing its fraud investigation. It also said Mr M had been unable to provide sufficient evidence to prove that he was the genuine beneficiary of the funds that had been removed. It said it felt Mr M had received his new card and PIN and authorised someone else to make the withdrawals on his behalf.

## **background**

Below are details of the transactions Mr M disputes, as well as any other account activity that I think is relevant to the outcome of this complaint:

### *what Mr M has said*

Mr M said he doesn't recognise any of the transactions I've highlighted above.

He's told us that on 8 August 2017, a cheque payment of £15,000 credited his bank account. He said this was from the sale of a vehicle. A further cheque payment was deposited on 9 September 2017 for £5,060. Mr M said this payment was from his brother – who was returning money that was owed to him.

On 23 September 2017, Mr M moved a total balance of £17,508.15 into his 'savings account'. The next day he reported the card attached to this account lost and ordered both a new card and PIN to be sent to his home address where he lived with his parents and two brothers. Mr M was told his card and PIN would be received by him within five working days.

Mr M has said his post is usually delivered directly to his home through a direct letterbox and is usually picked up and placed on a table within his home.

On 5 October 2017, having not received his new card and PIN, Mr M went into branch to enquire about when he was likely to receive them and to withdraw some cash. At the same time, Mr M was provided with an account statement. Upon review of this statement, Mr M was shocked when he realised the balance of his account was significantly lower than he expected. He queried this with the cashier who confirmed the new card and PIN had been used to make the transactions. TSB later looked at the CCTV footage from the time the withdrawals took place. TSB confirmed the CCTV showed the withdrawals were made by someone other than Mr M.

Mr M raised a fraud claim with TSB and said as it wasn't him who made the transactions, and the CCTV confirms this. He felt TSB had been negligent in allowing someone to withdraw large sums of money from his account without first providing ID. Mr M said the money should be refunded to him.

*what TSB has said*

TSB has refused to refund Mr M any of the funds as it feels he authorised someone to make the transactions on his behalf.

It felt there were a number of inconsistencies in what Mr M had said when reporting the fraud. For example, Mr M was asked if he had requested a new PIN when he reported his original card stolen and Mr M said he hadn't. But when TSB listened to the call where Mr M reported the card lost, it was clear he did request a new PIN be sent out to him. TSB questioned why Mr M would need a new PIN number if his previous card had simply been lost.

It said Mr M's new card and PIN had been sent to the address they held on file for him and Mr M had confirmed this address was correct. TSB said the card and PIN were sent from different depots and it was unlikely that both envelopes had been mis-placed and received by the same third party.

TSB said the two large deposits into Mr M's account before the fraud took place were unusual. And it appeared whoever was using the card knew there was a substantial amount of money available in the account – there was no evidence of any balance enquires before the first transaction took place.

TSB also said that it had asked Mr M for proof that he was entitled to the £15,000 that had been credited to the account. Mr M had told TSB that this was from a recent sale of a car. TSB said there were inconsistencies in what Mr M had told them about where the funds came from - the name on the invoice for the car did not match the name on the cheque used to deposit the funds, the car registration did not seem to exist, Mr M had no documents to prove that he had ever been the owner of the car, and the name of the dealership that he brought the car from did not match with the account the funds came from. TSB also pointed out that Mr M had previously had a fraud claim upheld with Lloyds.

Mr M didn't agree with HSBC's decision and he asked us to investigate.

Our investigator didn't think the complaint should be upheld. In summary, she felt unable to conclude that the transactions had been made fraudulently and she was persuaded they were most likely authorised by Mr M.

Mr M asked for the investigator's assessment to be reviewed by an ombudsman, so the complaint has been passed to me to look into.

## **my findings**

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, my review of the evidence has led me to the same overall conclusions as our investigator previously set out - and for much the same reasons.

There has been a lot of discussion throughout the course of this complaint about whether Mr M was entitled to the funds that were paid into his account before the fraud took place. I will not be looking into this aspect of the complaint further here. This is because I'm not minded to tell TSB to return the funds to Mr M. Had I been minded to recommend TSB return the funds, I would have gone on to consider this point further. But as I'm not, I see no reason to make a finding on this point here.

I've also reviewed TSB's process for allowing cash withdrawals. And I can see TSB don't need to request identification for cash withdrawals of £4,000 when a chip card and PIN is presented. A customer presenting a card and entering the correct PIN is enough to allow a withdrawal – additional identification is not a requirement. And so I don't agree that TSB hasn't followed its agreed process here in allowing the withdrawals from the account without asking for additional identification.

## *authorisation*

Generally, TSB can hold Mr M liable for the disputed transactions if the evidence suggests that it's more likely than not that he made them himself or he authorised someone else to make them on his behalf.

I'm satisfied from the TSB's technical evidence that Mr M's genuine card and PIN were used to make the disputed transactions. But the regulations relevant to this case say that is not, on its own, enough to enable TSB to hold Mr M liable. So I also need to think about whether the evidence suggests that it's more likely than not that Mr M consented to the withdrawals being made.

From what I've seen, I don't think it's unreasonable for TSB to conclude that Mr M authorised someone else to make the transactions on his behalf. This is because:

- The disputed withdrawals were made using Mr M's genuine replacement card and replacement PIN. I've considered the possibility of both the card and the PIN being intercepted by an unknown third party, but having done so, I think this unlikely. Mr M's card and PIN were sent in separate envelopes from two separate depots and whilst it's possible, and plausible, that one could have gone astray, I think it's unlikely that both envelopes would have gone astray – and have either been delivered to the same,

incorrect address, or have been intercepted by the same person. So I think it's more likely than not that Mr M's card and replacement PIN were sent to his home address and received by him.

- It's also unclear why Mr M ordered a new PIN if his previous card had simply been lost. There is no evidence to suggest he thought his PIN may have been compromised.
- I've also considered the possibility that Mr M's card and PIN were correctly delivered but picked up by someone known to Mr M – someone who had access to his post at home. I did consider this a possibility. Someone close to Mr M may have been aware that Mr M had lost his previous card and might have been aware that he was expecting a new one. Mr M has said his post is delivered to his home address and is often left on the table for him to pick up. So someone aware of this could have been monitoring Mr M's post. But having considered this possibility, I don't think this is likely, I say this because TSB has provided us with CCTV footage of the person who went into branch and completed the transactions. Our investigator sent a still from this footage to Mr M and he confirmed the person in the footage is unknown to him.
- The transactions were allowed because of the large credits that had been transferred into Mr M's accounts in the days prior. And there is no evidence of any balance enquires taking place before the withdrawals took place. This indicates that whoever was using the card knew there was a substantial amount of money available in the account. I think it's unlikely someone using the card without Mr M's consent would've known this especially given that Mr M usually maintained a very low balance and was frequently in his overdraft in the months prior to this transfer. Having such a large balance available was unusual for Mr M.
- There were no further attempts to use the card after it had been cancelled by Mr M and there is no persuasive explanation for how a fraudster would've known to stop using the card. There was still a substantial available balance of around £4,500 left in the account at the point Mr M reported the fraud. And a fraudster will generally remove all available funds over the shortest possible timeframe to maximise their gain before the fraud is identified and the card blocked. But in this case there were no further attempts – which suggest to me that whoever was using the card knew the account had been blocked.
- Both Mr M and TSB agree that the person who has been captured in TSB's branch footage isn't Mr M. But Mr M didn't have to make the withdrawals personally in order to be liable for them under the relevant rules. He can still be held responsible for them if he authorised the use of his card. So, looking at all the available evidence, I don't think the availability of the CCTV footage is enough for me to be as sure as I would need to be to say that Mr M wasn't involved.

Taking everything into account, I find, on balance, that Mr M authorised the disputed withdrawals. It follows that HSBC is entitled to hold him liable for them.

### **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 Mr M to accept or reject my decision before 20 October 2019.

Emly Hanley  
**ombudsman**