

Complaint

Mr M has complained that TSB Bank Plc won't refund unauthorised transactions and that it failed to make a reasonable adjustment.

Background

Mr M is deaf. He requires a British Sign Language interpreter when talking to others. He uses the Next Generation Text (NGT) relay service to make phone calls.

Mr M said his online banking and debit card were affected by TSB's technology failures in April 2018. He said he was without money for 4-5 days. During this time, he had to borrow money from his sister and use his credit card. As a result, he incurred bank charges. He also complained about duplicated transactions on his account.

In addition, Mr M said there were four transactions on his account, which he didn't recognise: an ATM cash withdrawal and three payments to a gambling merchant.

He tried to raise a complaint in branch but TSB staff couldn't provide a British Sign Language interpreter. He said staff told him they would make an appointment when he and an interpreter could attend. He said there were 35 to 40 failed attempts to book an appointment.

Mr M said he made 50 trips to the branch by taxi. And as he couldn't deal with his complaint in branch, he had to use the Next Generation Text relay service, which cost him around £250. He also said when he called TSB, the advisers would hang-up, as they couldn't understand what he was saying.

He asked TSB to:

- remove the duplicate transactions
- reimburse his bank charges, taxi fares and the costs of using Next Generation text
- refund the unauthorised transactions
- pay compensation of £500.

TSB acknowledged that Mr M had been affected by its system update. It said it had fixed the problems and corrected the duplicate transactions. It said it was aware he'd had difficulties raising his complaint in branch and for this, it agreed to pay him £100. It said there was only one appointment, which had been cancelled because the interpreter couldn't attend. It also agreed to pay him £50 for his expenses. And it said if he provided evidence that his expenses exceeded £50, then it would consider a further payment.

TSB paid £150 into his account.

However, TSB didn't refund the unauthorised transactions. It said they were made with his debit card and PIN and were consistent with previous activity on his account.

Mr M wasn't happy with TSB's decision so he brought his complaint to this service. He is asking for a refund of the unauthorised transactions and for compensation of £500.

An investigator looked into his complaint and decided not to uphold it because:

- the disputed transactions were carried out with Mr M's debit card and PIN
- the four transactions were consistent with previous activity on the account

- three transactions were to a gambling merchant which he'd used before
- Mr M hadn't reported his card as missing or lost
- he was unable to answer questions about how a third party might have his card or know his PIN.

The investigator concluded that, on balance, Mr M had authorised the disputed transactions.

The investigator didn't think it was reasonable to expect TSB to find a BSL interpreter without advance notice. She considered it had acted appropriately by making an appointment, allowing it time to find an interpreter. She thought the compensation payment of £150 was a fair and reasonable settlement, especially as Mr M couldn't provide proof of his expenses.

My findings

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

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The investigator wrote a detailed view that sets out in full the facts, the transactions, the relevant regulations and the evidence. Both Mr M and TSB have read the investigator's view, so I won't repeat every detail here, only those that form the basis of my decision. However, I can assure Mr M that I've read the file, including his comments. Having reviewed the evidence, I'm afraid I've decided not to uphold Mr M's complaint. I will explain why.

In short, TSB is required to refund the amount of an unauthorised transaction. The relevant regulations, to this effect, are the Payment Services Regulations 2017 (the PSRs 2017). Mr M says he didn't make the disputed cash withdrawal and payments and he wants a refund. So my primary concern is to come to a view about whether or not I think he authorised the transactions.

Having reviewed the transaction history, I'm satisfied his genuine card and PIN were used in order for the disputed transaction to take place.

But the regulations relevant to this case say that is not, on its own, enough to enable TSB to hold him 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 transactions by making them himself or allowing someone else to use his card.

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

- the disputed transactions were made using Mr M's genuine card and PIN
- when Mr M called TSB, he confirmed he still had his debit card. He said no one had permission to use his card and he hadn't shared his PIN with anyone else
- Mr M was unable to answer our questions about how a third party could've known his PIN or taken and returned his card to him without him noticing
- his statement shows he'd made regular payments of similar amounts to the same gambling merchant before the disputed transactions

- he'd received a credit in his account from the same merchant, two weeks before the disputed transactions
- his statement shows regular gambling activity and the disputed transactions were not unusual for his account
- he'd used the same ATM for genuine cash withdrawals.

I've thought about whether a third party carried out the disputed transactions but there is no evidence to support this scenario. It would have to have been someone close to Mr M because he had his card on him and was still using it. But Mr M couldn't provide any information about who might have access to his card or PIN. He simply said he couldn't remember.

Mr M has asked for CCTV evidence but this wasn't available. CCTV footage might have shown someone else making the cash withdrawal and payments. But Mr M didn't have to make the transactions in person to be liable for them under the relevant rules. He can still be held responsible for them if he allowed someone else to use his card. So even if CCTV had been available, looking at all of the evidence in this particular case, I don't think I could be sure that he wasn't involved.

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

The investigator asked Mr M to provide evidence supporting his claim for £500 compensation, such as receipts, but he hasn't provided anything. He said he's thrown away whatever proof he had. In these circumstances, I won't be asking TSB to pay anything more.

I'm sorry to send disappointing news but I hope the reasons for my decision are clear.

My final decision

My final decision is I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 2 April 2020.

Razia Karim
ombudsman