

complaint

Mr H has complained TSB Bank plc won't refund him for almost £1,500 worth of disputed transactions which he doesn't believe he made.

background

In May 2018 TSB refunded Mr H £70 after he disputed he'd got all the money he'd withdrawn from a cash machine. He then went on to believe he'd got less money from two further cash machine withdrawals.

This coincided with TSB's well-known IT problems. Mr H believed his email and online banking details had been compromised due to this issue. He disputed a range of transactions on his account to gambling companies. TSB didn't refund him or properly investigate what may have happened.

Mr H brought his complaint to the ombudsman service. After some delay our investigator was able to review the limited evidence on this complaint. She was able to see Mr H had only made one cash machine withdrawal in the period he thought he'd lost money. Mr H accepted there was nothing further to do on this aspect.

After further evidence (from TSB) from one of the gambling companies involved, she noted Mr H had had an account with this company and she thought it was more than likely his details hadn't been compromised. There was no evidence someone else had been able to access his account and use his debit card. However she did believe TSB should pay £450 in compensation for the experience he'd had with them. She didn't think they'd properly investigated his complaints.

After some consideration, TSB agreed to pay that amount and Mr H accepted that offer. On 23 October TSB paid this money into Mr H's account with another bank. It then became clear Mr H still expected to have money refunded for his disputed transactions. His complaint has been referred to an ombudsman for decision.

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, I've reached a similar conclusion to our investigator. I'll explain why.

Firstly I appreciate TSB believes Mr H accepted the outcome of his complaint in full and final settlement and therefore shouldn't get a second bite of the cherry. I have considered this. But overall – taking into account Mr H's insistence that he wouldn't have accepted the £450 if he'd known he wasn't having his disputed transactions refunded – I believe it's fair and reasonable that Mr H gets an opportunity to have his complaint decided by a final decision. This will bring his complaint to an end.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

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 Payment Services Regulations are the relevant law here. These primarily require banks to refund customers if they didn't make or authorise payments themselves. Certain other circumstances do apply but nothing that's had an impact on the decision I'm making here. So when we look at whether a bank has acted fairly in rejecting someone's fraud complaint, one of the things we consider is whether the customer made the transactions themselves or allowed them to be made. If they did, then we generally wouldn't ask the bank to refund them.

So to help me decide what happened, I've looked at the evidence of the transactions, as well as what TSB and Mr H have told us.

I can see the timeline of events and each party's testimony were covered in our investigator's views of 23 July and 7 October 2020. I've also seen Mr H's detailed responses about his complaints and what he considers happened. He's also talked about the emotional and financial toll this has taken on him. I don't intend to repeat everything that was said there. I will, of course, refer to those aspects which form the basis of my decision.

What Mr H has never provided, however, is any confirmation of the specific transactions he disputes. Mr H has also been given plenty of opportunity to share his mobile phone bill. He's told us he's had to pay a considerable amount on all the calls he's had to make to TSB but he's not been able to verify what this has cost him.

cash machine withdrawals

After the withdrawal of £250 on 10 May 2018 – £70 of which was refunded to him on 15 May – there are a further five cash machine withdrawals on his account over the week at the same cash machine. But only one of these is for £70 and that took place on 12 May. Mr H originally felt there were two of these withdrawals when he thought he'd received £50 rather than £70 but this isn't the case.

Our investigator didn't think TSB should have suggested it was Mr H's responsibility to use another cash machine. I agree that this alone shouldn't have stopped them from investigating what was going on. But I do believe that it's most unlikely a cash machine over a period longer than 24 hours would be dispensing lower amounts than customers would expect to receive.

I've noted Mr H accepts he wasn't debited what he thought for the two cash machine transactions he disputed. Having reviewed what happened, I don't believe there's enough evidence to show Mr H didn't get the money he intended when withdrawing cash from cash machine.

disputed transactions

Mr H originally believed there was nearly £1,500 worth of disputed transactions made using his debit card on gambling websites. He'd not consented to these transactions and he noted this coincided with problems TSB had with its IT system.

Mr H has never given us clear information about the transactions he disputes. His complaint was raised in mid-2018. But I can see from his statements that there were gambling transactions from February 2018 to October 2018 at least.

I've considered the evidence TSB was able to obtain from one of the gambling companies involved. This shows Mr H had opened an account with them in 2010 with personal details I recognise. The account usage didn't resemble fraudulent activity.

I've also seen no evidence that Mr H's card and online banking details were compromised. In fact on 24 May 2018 Mr H received a substantial credit of £3,281.93 from a gambling company. If someone had been able to compromise his banking details, I'd have expected them to take steps to use this amount. From Mr H's statements, I only see him making use of his own funds and account.

I know Mr H will disagree but there's isn't enough evidence to say he was a victim of fraud. And taking into account his history with gambling companies I think he made these transactions himself.

customer service

Mr H had only recently opened this account with TSB and I can see there were a number of disputes raised with them. This coincided with an extremely busy period for the bank and they struggled to respond effectively to him. I'm sure this slow resolution of his complaint didn't help him in his fixation that he'd been badly treated and TSB had failed to meet their guarantee – in his eyes – that all fraud would be refunded.

I note our investigator felt TSB should pay Mr H £450 in compensation. They'd already paid £300 compensation to Mr H during the lifetime of his account (which was closed in March 2019). I may not have asked TSB to pay as much compensation but I can see TSB accepted this outcome (and of course, have already paid this to Mr H). So I think it would be unfair of me to change this.

This brings Mr H's prolonged complaint to a conclusion and marks the end of our consideration of his issues.

my final decision

For the reasons I've given, my final decision is to instruct TSB Bank plc to pay Mr H £450 for the trouble caused.

(TSB paid this money in October 2020)

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 4 January 2021.

Sandra Quinn
ombudsman