

The complaint

Mr G complains that TSB Bank plc (TSB) won't refund £6,000 he lost when he was the victim of a scam involving, what he thought was a new business grant.

What happened

Mr G was looking for finance for a business he had set up. He found an organisation online offering business grants whereby if he paid in £6,000, they would top up a prepaid credit card account with a further £14,000. Mr G checked on Companies House and the organisation seemed to be a genuine company. On 20 February 2019 Mr G transferred £3,000 into his TSB account (of which £2,500 was from a credit card). On 21 February 2019 he transferred a further £2,000 from another credit card into his TSB account. Mr G then transferred £6,000 from his TSB account to the scammers account. When the credit card didn't arrive, he started having concerns.

Mr G says he called TSB on 1 March 2019, but the agent did not take the matter seriously and told him to wait for the card. He called the receiving bank who said it looked like a scam. He called TSB again on 2 March and 4 March 2019. He complained that the agent had told him to wait before raising a fraud case. Mr G is also unhappy because he feels TSB haven't addressed his complaint properly.

TSB attempted to recover Mr G's funds but was unable to do so. The money had left the scammers account by the 25 February 2019. Subsequently TSB didn't agree to refund Mr G the transaction that left his account. It said Mr G authorised the transaction himself and there wasn't anything to suggest it was suspicious at the time. Although it could not trace the initial call with the agent, TSB did compensate Mr G £100 for distress and inconvenience caused by the agent and £50 for any expenses incurred.

Mr G was unhappy with TSB's response and the service provided by TSB, so he bought the complaint to our service.

The investigator who considered Mr G's complaint upheld it and asked TSB to pay Mr G £6,000 plus interest. She accepted Mr G had authorised the transactions. But after considering TSB's duties, the investigator concluded it should have had concerns that Mr G was at risk of financial harm and contacted Mr G to verify the transaction before it left his account. This was because, the amount lost stood out as unusual when compared to Mr G's previous account activity.

Mr G accepted the investigator's findings, but TSB didn't. It said it is normal behaviour for its customers to transfer money from savings or from other sources into a current account to make a purchase or transfer out in the subsequent days. There was evidence of large payments in and out of the account in the months prior. Mr G's payment of £6,000 out was therefore not out of character. There is a balance it needs to strike to ensure customers do not have unnecessary barriers to their banking activities. The transaction was not flagged by its systems because there was nothing untoward about it. It considers it has met the industry standards expected of it.

TSB also said that the nature of the scam here was that the offer was too good to be true. It would also raise questions as to why Mr G would believe he needed to make a payment of £6,000 to receive a payment of £14,000. Mr G had other credit cards and he would be clear how lending against cards works.

TSB refers to the Contingent Reimbursement Model Code (CRM Code) – although it acknowledges that this case pre dates the CRM Code and therefore the code does not apply – it considers that ‘reasonable basis for belief’ requirement under that code to have captured existing industry practice and therefore relevant in this case.

TSB asked for an ombudsman’s decision, so the complaint has been passed to me.

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 have decided to uphold this complaint.

It is not in dispute that Mr G authorised the payment of £6,000. He was duped by scammers into transferring his funds into their fake account. They deceived him into thinking he was applying for a government backed grant to set up his new business. And he needed to contribute some money himself before he would be given access to the grant.

I therefore accept that this was an ‘authorised payment’ even through Mr G was the victim of a scam. He logged into his online banking using his security credentials to request the payment. So, although he did not intend the money to go to the fraudsters, under the Payment Services Regulations 2017, and the terms and conditions of his account, Mr G is presumed liable for the loss in the first instance.

However, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider TSB should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I’m satisfied the evidence indicates that TSB should’ve done more to protect Mr G when he was making the payment and that there were indicators that Mr G was potentially falling victim to a scam – meaning TSB missed an opportunity to step in and question the payment before it left Mr G’s account. I’ll explain why.

Most of the previous activity on Mr G's current account in the period before the scam related to standing orders, direct debits, debits and some cash withdrawals. The payment in question was made soon after a transfer in and cash deposit and the transfer was a faster payment to a new payee.

TSB said that it was in character for Mr G to receive large credits into the account to fund debits out for legitimate transactions in the months prior. From what I can see, Mr G did make two credits into his account followed by two debits out (£1,640.92 and £3,400.83) in the month previous – but what was unusual here was Mr G had previously not made such a large single payment *out* (£6,000) to a *new payee* by *faster payment*. The transfer of funds was also quick and following the transfers, the balance in his current account was reduced to £180 compared to balances of around £6,900 and £5,700 which were left after the two previous large debits mentioned above.

I accept there is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. And it doesn't automatically follow that TSB is liable for a loss, just because a customer is a victim of fraud. But in this case, I think it should have done more to protect Mr G.

I appreciate in this case TSB's fraud detection system didn't identify this payment as having high risk characteristics. But isn't to say that any activity not picked up on means a business doesn't need to do anything more. It's important to consider what would've been visible to TSB in terms of what it knew about how Mr G uses his account.

For all the reasons I've explained, I think TSB ought fairly and reasonably to have identified that Mr G was potentially at risk of financial harm. I'm persuaded that as a matter of good practice, TSB should have made additional checks, and made enquiries as to the purpose of the payment before processing it.

I'm also satisfied, if the bank had asked Mr G about the transfer, that he would have willingly explained what it was for – his contribution in order to get a new business grant. I say that because there's no suggestion in this case that the scammer had given Mr G a cover story or otherwise told him to lie about where the money was going. With this in mind, I think the bank could, relatively easily, have identified and warned Mr G of the possibility he was being scammed.

TSB has suggested Mr G didn't exercise enough reasonable care and should have realised it was unlikely that any legitimate business grant provider would expect such a large personal contribution. But I disagree. Mr G told us he undertook some checks to ensure the company that was administering the grants was genuine. I've also seen some of the correspondence he had with the scammer and can see why he didn't suspect he was being scammed. The emails and application document are professional looking and include links to the company's website. Overall, I think this was a very sophisticated and believable scam, particularly for someone in Mr G's situation who did not – as I understand it – have any previous experience about applying for this type of grant.

I'm satisfied Mr G had been entirely duped by the scammers. But I don't think it follows that he would have ignored warnings from his own bank if it had contacted him in relation to the transfer. He was paying a large amount of money and I think he would have taken seriously the warnings from a trusted third party. I think it's more likely than not, in this particular case, that TSB's intervention would have uncovered the scam and prevented the losses occurring.

In light of my conclusions above, it is not necessary in this case to consider whether the bank also exercised enough care and urgency in trying to recover the stolen funds from the

payee bank before they were irretrievably removed by the scammers. But for completeness, I will say that, it would have made no difference because the receiving banks records show that the scammers withdrew all the money by 25 February 2019 before Mr G first raised his concerns with TSB on 1 March 2019.

I have also considered whether Mr G should bear some responsibility by way of contributory negligence. However, it is clear that up to and including the time of authorising the payment, he was still totally in the dark and simply did not appreciate what he was doing or the consequences of his actions. I am satisfied there was no contributory negligence on this occasion, he was simply the unwitting and blameless victim of a clever fraudster. The bank was the professional in financial matters; Mr G was a layperson.

In the circumstances I am satisfied TSB should fairly and reasonably reimburse Mr G for the loss he suffered without any reduction together with interest to compensate him for being deprived of the money he lost. I can't be certain what Mr G would have done with £6,000 so interest should be at 8% simple per annum.

TSB has already accepted that it didn't handle Mr G's complaint as well as it should've and has paid £150 compensation in recognition of this. I think that's a fair award in the circumstances.

My final decision

For the above reasons, I have decided it is fair and reasonable to uphold this complaint about TSB Bank plc — and I therefore require the bank to:

- refund Mr G the £6,000 lost as part of the scam,
- pay 8% simple interest per year on that sum from the date Mr G made the transfer to the date of settlement*;

*If TSB Bank plc deducts tax from the interest element of this award, it should provide Mr G with the appropriate tax certificate so he might submit a claim to HMRC if applicable

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Kathryn Milne
Ombudsman