

The complaint

Miss M complains that TSB Bank plc (“TSB”) did not refund transactions she thought she was making to a trading website which she says turned out to be a scam.

What happened

The circumstances of this complaint are well known to both parties, so I will not repeat them all again here in detail. But I will provide an overview of events below.

Miss M has said the following:

- In June 2020, she took out a £10,000 loan to invest in shares with a company, which I will refer to as Company D in this decision.
- TSB blocked her account when she attempted to make a payment equivalent to \$10,000 (using her debit card) to who she thought was Company D.
- TSB questioned her about the origin of the £10,000 in her account. She told it, amongst other things, “... *I was advised [by Company D] I could make great returns on my investment therefore I had got a loan and I was going to deposit £10,000.*”
- On 24 June 2020, “...*I was still chasing up my bank account being unfrozen due to being left with no money at all and was asked at this point what I was doing with the loan and where it had come from and I stated to invest in shares but with all what was happening would not end up investing.*”
- After providing TSB with proof of the loan, her account was unblocked about a week later.
- Company D’s ‘broker’ contacted her several times and she felt under pressure to invest. This was exacerbated by her personal circumstances at the time. The broker said she could make £2,000 a week, so on 7 July 2020, she made the following payments to who she thought was Company D:
 - £2,092.59 (plus fees)
 - £4,024.20 (plus fees)
- Contacted TSB to authorise these payments, which it did not ask any questions about.
- On 8/9 July 2020, she contacted TSB to try to recover her funds as she believed she had fallen victim to a scam: Company D’s website had gone, and she could no longer contact them. As TSB did not refund the funds, she raised a complaint.

TSB investigated the complaint and did not uphold it. In short, it said that in the course of a telephone call before Miss M’s account was unblocked, she had made it clear that she did not intend to invest any of the monies she had borrowed. Because of this, it had no reason to ask further questions about the proposed investment. TSB added that Miss M’s payments were made to a third-party payments company, which I will refer to as Company Q in this

decision. It added that Company Q is a service provider where users of their services can send money to an account in their name to make payments; and so, as Company Q is a legitimate service provider, there was no reason for TSB to block the payments.

Unhappy with TSB's response, Miss M referred her complaint to our service.

One of our investigators considered the complaint and did not uphold it. He thought had TSB attempted to raise a chargeback claim to recover Miss M's funds, the claim would have likely been defended successfully by Company Q. He also thought that the payments were not unusual, and so would not have expected TSB to flag them as so and intervene.

Miss M disagreed with the investigator's findings. Her position, broadly, is that several different bodies have acknowledged the alleged fraud – including TSB. She argues that TSB should have done more to protect her from financial harm; and should not have processed the payments to Company Q, which was set up as a new payee. Miss M has also referred to codes of practice and papers issued by the BSI and FCA. Moreover, she has provided a website link which she says shows Company Q operates as a scam.

As an agreement could not be reached, the complaint has been passed to me to make a decision.

What I have 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 agree with the conclusions reached by the investigator for reasons I set out below.

But first, I would like to say at the outset that I have summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there is a submission I have not addressed, it is not because I have ignored the point. It is simply because my findings focus on what I consider to be the central issues in this complaint.

Chargeback

Miss M's position is that she believed she made the payments in question to Company D, but later discovered she had in fact made the payments to Company Q; and that she had fallen victim to a scam. Given these circumstances, I will consider whether TSB acted fairly in how it dealt with Miss M's request for a refund of the payments she made to Company Q using her debit card.

Chargeback is an entirely voluntary scheme, which means banks are under no formal obligation to raise a chargeback claim. The scheme operator can ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them. However, such an arbitration is subject to the rules of the scheme – so there are limited grounds on which a chargeback can succeed. My role is to determine whether the regulated card issuer (in this case, TSB) acted fairly and reasonably in its decision not to present a chargeback on behalf of its cardholder (in this case, Miss M).

Based on the evidence before me, I'm satisfied, on balance, that Company Q are a payment network. The service they provided Miss M was: being a network through which she could transfer the funds concerned – which I expect were likely passed to Company D. Because of this, if TSB had raised a chargeback against Company Q, I am persuaded, on balance,

they would have been able to provide evidence showing the service they provided Miss M. It follows then that TSB acted fairly and reasonably by not presenting a chargeback on behalf of Miss M, as Company Q would have likely been able to defend the claim successfully.

I acknowledge Miss M says she believed she was making the payments to Company D. However, for the purposes of the chargeback scheme, this would have had no bearing on Miss M's chargeback claim if one had been raised.

Could TSB have done more to limit Miss M's losses?

It is common ground that the payments concerned were 'authorised' by Miss M for the purposes of the Payment Services Regulations 2009/2017 ('the Regulations'), in force at the time. This is because they were made by Miss M using the legitimate security credentials provided to her by TSB. These must be regarded as 'authorised payments' even if Miss M believes she was the victim of a sophisticated scam. So, although she did not intend the monies to go to scammers, under the Regulations and the terms and conditions of her bank account – Miss M is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory 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 its customers were at risk of fraud (amongst 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; and
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made 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 would like to assure Miss M that I acknowledge she says she made the payments as a result of a scam, and I am really sorry she has lost her money. But having looked into what happened, I am not persuaded TSB should reasonably have been expected to prevent this.

This is because I do not think the payment was particularly unusual or suspicious in appearance to TSB considering Miss M's normal account and payments activity. I say this because when looking at Miss M's bank statements she has made similar payments before the ones concerned, which I have checked with TSB and the audit trail shows these payments did not flag as suspicious on its system:

- £25,000 faster payment (19 January 2020).
- £2,5000 faster payment (20 February 2020).
- £1,700 faster payment (25 February 2020).
- £5,000 faster payment (31 March 2020).
- £1,450 faster payment (5 July 2020).

Taking all the above factors together, the payments concerned did not flag as suspicious and there were no warnings – for example, published by the FCA – about Company Q, which should have flagged the payments as unusual. Moreover, as I cannot see that Miss M spoke to or interacted with TSB staff at the time of the payments, I cannot say that TSB missed an opportunity to identify the payments as being made in relation to a scam.

My final decision

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 19 January 2022.

Tony Massiah
Ombudsman