

The complaint

Mr L complains that TSB Bank Plc won't reimburse him the money he paid to what he says was a binary options trading scam.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide an overview of some of the key events. In 2015 Mr L began a series of payments to a company I'll refer to as 'U'. He says that U operated a fraudulent Binary Options / Forex trading scam.

From 2015 to 2018 Mr L paid significant sums to U using both his TSB debit and credit cards. In November 2018 Mr L wrote to TSB and explained he'd been the victim of a scam in relation to the payments to U. He asked that TSB reimburse him via chargeback or section 75.

TSB responded the same month and explained that Mr L had raised his chargeback claim too late under the scheme rules and so they would be unable to assist him. In February 2019 Mr L brought his complaint to our service. One of our Investigators didn't recommend that it should be upheld. As he disagreed, Mr L asked for an Ombudsman to review his complaint.

In January 2022 I issued a provisional decision in which I said:

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

Mr L's initial complaint referred to the payments he made to U. I understand that Mr L has since disputed many other further payments to different merchants. I've no desire to further extend the significant time Mr L has been waiting for an answer, but this complaint is about what Mr L brought to us on our complaint form which he signed in February 2019. I'll ask our investigator to help Mr L set up complaints in relation to his outstanding issues.

There are slightly different considerations for trying to obtain redress for debit compared to credit card payments. So, I'll deal with each one in turn.

Debit Card Payments

Mr L wrote to TSB on 18 November 2018 disputing payments he made to U using his TSB Visa debit card between November 2015 and May 2016 totalling £34,102.57. TSB says it asked Mr L for some specific evidence to decide whether or not it had any chargeback rights and in the absence of further evidence, it concluded it had no chargeback rights. TSB said the matter was raised more than 120 days after the date of the disputed transactions and they were out of time for the purposes of Visa's chargeback time limits.

Mr L has since provided our service with a spreadsheet detailing all the payments he made to U (amongst others). From this the relevant payments took place between 24 November

2015 and 2 March 2018. I don't see that Mr L complained about all of these transactions to TSB on 18 November 2018 but I've considered whether TSB responded to Mr L appropriately.

Prior to October 2017, Visa had limited scope for chargeback claims relating to binary options or investment trading disputes. For a claim to have succeeded, Mr L would have needed to provide written documentation from U guaranteeing an amount of profit/return the cardholder was due to receive. I note Mr L says most of the (mis)representations occurred over the phone. A claim would also have needed to have been processed within 120 days of the date of the transaction. So I don't think TSB acted unreasonably in declining Mr L's claim on the basis that it was brought outside the Visa time limits as he didn't contact it until more than 120 days after the date of his last transaction (in accordance with his letter of 18 November 2018).

I've noted there were payments to U that Mr L made this service aware of that were not brought to TSB's attention at the time of his complaint. Some of those payments would still have been out of time on the basis that Mr L contacted TSB too late. But Visa expanded its rules for transactions that occurred after 14 October 2017 and gave further rights for disputes relating to binary or investment trading. For a claim to have succeeded under Visa's rule expansion, Mr L was required to provide evidence that he tried to withdraw funds from his trading account, and that this was declined by U. Mr L was also required to provide evidence of a screenshot of his trading account showing an available balance at the time he requested his withdrawal.

Mr L provided his U trading account snapshot dated 16 June 2018. It showed he had an account balance of \$76.84. It also showed that Mr L had successfully withdrawn \$21,255 since opening his account. I don't find that Mr L would have had any chargeback options in relation to his disputed payments to U at the time he contacted TSB to complain.

Credit Card Payments

I can't see that TSB provided Mr L with an answer in relation to the transactions he disputed on his credit card. Mr L made specific reference to a claim under section 75 which would have applied to his credit card payments. I think TSB ought to have considered this and it doesn't appear that they did. So, I've gone on to consider whether this has made a difference.

Mr L's credit card was a Mastercard. So different chargeback rules apply compared to his Visa debit card. Our service has sought clarification from Mastercard and it explained that if a cardholder authorised and engaged in a transaction with the intent to participate in gambling, investment or similar services, then cardholder-dispute chargeback rights are restricted. It went on to explain that issuers have no chargeback rights related to the use of these chips or value, unspent chips, or withdrawal of such value, or on any winnings, gains or losses resulting from the use of such chips or value.

In short, Mastercard consider the purpose of the Mastercard transaction to load funds into the gambling or investment account and not what activities are subsequently done with the funds. In this case, Mr L's claim relates to him alleging U were operating fraudulently, so I don't think there was any recourse for TSB to try to recover Mr L's credit card payments to U through the Mastercard chargeback scheme.

Section 75 of the Consumer Credit Act 1974 gives a debtor the right to pursue a 'like claim' for breach of contract and/or misrepresentation against a creditor as he would have against the supplier of goods or services. For a claim of misrepresentation to be successful it's necessary to show not just a false statement of fact but also that the statement induced Mr L

into entering into an agreement. Mr L hasn't presented evidence that would suggest U made a misrepresentation that induced him into entering into the agreement with them. Nor that they breached any contract he had with them.

I've noted that U were regulated by CySec at the time Mr L contracted with them and they also had passporting rights through the FCA. The FCA removed U's passporting rights in June 2020 but this was some time after Mr L made all of his payments. I've further noted that Mr L was able to successfully withdraw money from his trading account. I recognise he also lost money and I don't doubt there may have been some bad practices on the part of the broker. But Mr L's loss appears to have been due to the high risk nature of his investments rather than U breaking promises they made to him. If Mr L has evidence to show that U misrepresented themselves or breached the contract they had with him, I would invite him to submit it in response to this provisional decision. But as things stand, I don't think he has established a claim under section 75 for either a breach of contract or misrepresentation.

Duty of Care

Mr L believes TSB has failed in its duty of care by allowing all his payments to be made. I've considered this and having looked at the outgoing payments, I'm not currently persuaded that the payments to U (on either card) would have stood out as unusual or out of character. Mr L commonly made payments of similar amounts to similar merchants.

Even if I'm wrong on this point and TSB had contacted Mr L to confirm the payments and to provide warnings of common scams, I'm not persuaded this would have made a difference. As I explained above, at the time of Mr L's disputed payments, U were regulated by another jurisdiction and had permission through the FCA to offer services to UK customers. So if Mr L had been prompted to do more checks by an intervention from TSB, it's likely he would have discovered that. I don't think it would have reached the point where Mr L wouldn't have instructed the payments.

Summary

Overall, I'm not currently intending to uphold this complaint as I don't think TSB are responsible for the losses Mr L has suffered. I don't think chargeback was an option at the time the issue was raised. I'm not persuaded Mr L has evidenced a breach of contract or misrepresentation such that section 75 would apply and I don't think TSB ought to have questioned the payments at the time they were made."

TSB responded and said they had nothing to add. Mr L also responded, and I'll address his comments below.

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.

Mr L's response re-iterated that he felt he'd done nothing wrong and was a victim of fraud. He also made reference to an amount of around £786.44 which he feels shouldn't have been removed from his account.

I've considered this, and whilst it isn't entirely clear where this amount of £786.44 has come from or to what it relates, I'm not persuaded to change from the outcome explained above. It seems the loss Mr L initially alleged as a result of his payments to U was far in excess of this amount. But in any case, nothing that Mr L has submitted persuades me that TSB ought to

have done more in relation to his payments to U, or that there is any reasonable basis upon which to direct that he should be refunded by TSB.

My final decision

For the reasons outlined 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 Mr L to accept or reject my decision before 4 March 2022.

Richard Annandale
Ombudsman