

## **The complaint**

Mr R complains that Tesco Personal Finance Plc ("Tesco") have failed to refund £4,800 he lost as part of an investment scam.

## **What happened**

Mr R fell victim to an investment scam, whereby he transferred over £16,000 to fraudulent merchants (Trade Capital and Extick) using his debit card with another bank (which isn't the subject of this complaint).

Mr R submitted a withdrawal request to Extick in December 2018 but received no response from the merchant. He later received a call from an individual claiming to be from Extick's Mismanagement Recovery department, who said they knew he was having problems with withdrawing his money. They said they could recover his funds, but that the value of his investment had fallen, meaning he would have to pay more money into his account first before he was able to make a withdrawal. Mr R paid the scammer £4,800 on 11 January 2019 using his Tesco credit card, which was paid into a Coinpop wallet (where the funds were then subsequently transferred to the scammer). He later realised he had been scammed when he didn't receive any further contact.

Mr R reported the scam to Tesco, who refused to provide him with a refund as he had authorised the transaction. It also said he couldn't recover his money under Section 75 of the Consumer Credit Act 1974 as he had paid the funds to a trading account, and because the debtor-creditor-supplier chain had been broken.

Our investigator upheld the complaint. She noted that Tesco questioned Mr R about the payment before processing it on 11 January 2019 but did not think its intervention went far enough. Had it gone further, the investigator thought that Tesco would have revealed the scam and prevented Mr R's loss. Tesco disagreed, so the matter has been escalated to me to determine.

## **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 agree with the conclusions reached by the investigator and have decided to uphold it.

Tesco have said that they are not persuaded that Extick is a fraudulent trader. However, based on what I've seen, I am satisfied that Extick were not carrying out legitimate binary-options/forex trades but were instead dishonestly defrauding customers e.g. by not actually making trades/bets with the money received from clients but simply manipulating their online 'trading platform' to show purported gains in order to induce further 'investments' from victims such as Mr R. In the absence of evidence to the contrary, I have concluded this because:

- Prior to January 2018, binary-options dealers were required to be licensed by the UK's Gambling Commission, and thereafter by the Financial Conduct Authority. Extick were not registered with either, nor were they regulated in any other jurisdiction so far as I am reasonably aware. This indicates they were likely operating illegally, probably with dishonest intentions. Legitimate firms tend to comply with regulatory requirements.
- There are several reports in the public domain—e.g. foreign press and online forums—stating that Extick are scammers. This hearsay is not in itself sufficient evidence of fraud. But in the context of known regulatory facts, it may fairly and reasonably be regarded as circumstantial evidence that helps build an overall picture of scammers dishonestly seeking gains at the expense of others.

But having concluded that this was a scam, it's also necessary to consider whether the disputed payments were unusual or uncharacteristic enough for Mr R's account such that they ought reasonably to have triggered an intervention by Tesco.

Tesco is aware of our general position on a Payment Service Providers' safeguarding and due-diligence duties to protect customers from the risk of financial harm due to fraud. We have published many decisions on our website setting out these principles and quoting the relevant rules and regulations. It is unnecessary to rehearse them again here in detail.

It is common ground that the disputed payments were 'authorised' by Mr R for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. This is because they were made by him using the legitimate security credentials provided by Tesco.

I am satisfied there were enough 'triggers' in this case to have alerted a responsible regulated bank such as Tesco that Mr R's account was being subjected to unusual and uncharacteristic activity. There were reasonable grounds to suspect a fraud or scam, and therefore justify an intervention (such as phoning him in order to ask discreet questions about the nature and purpose of the payments). It is also common ground that there were such fraud triggers in this case because Tesco did in fact intervene by blocking the payment, where they called Mr R to discuss it before allowing it to be processed. Accordingly, it's just a question of whether the bank did *enough* in all the circumstances with that intervention.

When Tesco spoke to Mr R on 11 January 2019, it asked him what the transaction was for, to which he responded that he was purchasing Bitcoin, which is what he thought he was doing. Tesco proceeded to ask Mr R if it was the case that he was purchasing it 'off his own back' or whether someone had asked him to do it for them, to which he said he was purchasing it for himself. However, no further questions were asked, and the payment was processed.

At the time the payment was made, Tesco ought to have had a good understanding of how investment scams commonly work. And given the size of the payment, and that it was being used to purchase cryptocurrency from an online platform, I would have expected the bank to have asked additional question about the context and purpose of the transaction. While it is not up to our service to dictate which questions a bank should ask, Tesco could've, for example, asked how Mr R had come to make the purchase in the first place, and whether he was being 'assisted' by a third party in the purchase. They could've also asked if he had opened the Coinpop account himself (which he hadn't), as this would have also given a strong indication that he was in the process of being scammed. This would have formed part of a reasonable line of enquiry to protect a consumer from the potential risk of a prominent type of scam.

Had Tesco asked such questions on 11 January 2019, I'm satisfied it would have become apparent at that point that Mr R was falling victim to an investment scam. Tesco submit that

Mr R would not have been forthcoming with what he was doing even if it had asked further questions. But I've seen little to suggest this would have been the case.

Mr R was truthful when asked what the purchase was for, as he said he was buying Bitcoin. I appreciate he said he was buying the cryptocurrency for himself, but this technically wasn't an incorrect answer in response to Tesco's question. Tesco asked him if he was doing it for himself or if anyone had asked him to do it for them. Mr R wasn't purchasing the Bitcoin for anyone else, so he wasn't untruthful in his response. If Tesco wanted to discern whether someone else was involved in the purchase, then it ought to have clearly asked this question. But it didn't.

If Tesco had asked such further questions and for more of the basic surrounding context, I consider it's likely that Mr R would have explained what he was doing and that everything had originated from a third party broker, who had said he had to invest further money in order to release the money he had already invested – which would have been a clear indication he was being scammed.

I appreciate that Coinpop is a legitimate trader. But I think Tesco still should have provided a scam warning in light of all the information known to banks about the increasing number of scams associated with cryptocurrency.

After all, at the time, there was information in the public domain – which a bank ought to have known even if a lay consumer ought not – about the very high risks associated with crypto trading, including many warnings of potential fraud. For example, the FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018. Regulated businesses ought reasonably to take notice of such insight. By the time Mr R made the payment to Coinpop, cryptocurrency scams had risen greatly in frequency and it's reasonable to conclude that banks, such as Tesco, had also had time to digest these warnings and put mechanisms in place to detect and prevent this type of fraud.

Even if an intervention by the bank would've identified that the payment was going to the consumer's own account with Coinpop (which he said was set up by the fraudsters), the conversation should not have stopped only on the basis that the money appeared to be going somewhere safe and within the consumer's control.

I say this because, by the time Mr R made these payments, I think Tesco had or ought to have had a good enough understanding of how these scams worked to have been able to identify the risk of harm from fraud. Including, that the consumer often first purchases a crypto asset or sends money to a platform where the money is subsequently moved on to or taken by the fraudster. So, it is with this in mind that I think Tesco ought to have probed further about the nature and context of the payment Mr R was making.

In light of this, I think Mr R's losses were foreseeable to Tesco despite the payment on the face of it not leaving the consumer's control. And I'm satisfied that had the bank asked relevant questions of Mr R when it spoke to him, it would have been apparent that he was falling victim to a scam. In other words, but for Tesco's failure to make further enquiries, it would have been on actual notice that Mr R was going to suffer financial harm from fraud. Had Tesco provided Mr R with a warning, it would have likely alerted him to the common issues arising in relation to binary options and cryptocurrency scams which, in turn, would have led him to second guess the broker's credentials and why he was being asked to invest yet more money in order to make a withdrawal. The result of this is that it would have likely stopped Mr R from making the payment with his credit card.

Therefore, I'm satisfied that Tesco can fairly and reasonably be held responsible for the loss Mr R has suffered, as I think it could have ultimately prevented it.

I accept that, when simply executing authorised payments, banks such as Tesco do not have to protect customers against the risk of bad bargains or give investment advice. However, the FCA has confirmed that a fraud warning would not constitute unauthorised investment advice – so I do not think the bank would've acted out of line, had it warned Mr R along the lines that I've described.

### Contributory negligence

There's a general principle that consumers must take responsibility for their decisions. I have duly considered whether Mr R should bear some responsibility by way of contributory negligence. However, in this case, I do not think he could have foreseen the risk that the company he was dealing with was a scam and simply did not appreciate what he was doing or the consequences of his actions. He is not an experienced investor, and while I appreciate there was anecdotal evidence of the trader being a scam online, I do not place too much weight on general but arcane information in the public domain, because of the information imbalance between financial professionals and ordinary consumers.

All in all, I am satisfied there was no contributory negligence on this occasion and Mr R was simply the unwitting and blameless victim of a clever fraudster. The bank was the professional in financial matters; Mr R was a layperson. Therefore, I do not consider it would be appropriate to reduce compensation in these circumstances.

Finally, given that I think it fair and reasonable for Tesco to refund Mr R the amount he has lost, I do not consider it necessary to determine whether he would be entitled to recover his money under a Section 75 or chargeback claim.

### **My final decision**

For the reasons given above, I uphold this complaint and direct Tesco Personal Finance Plc to:

- (1) Refund Mr R the £4,800 loss incurred from his credit card as a result of the payment he made as part of the scam and rework his account to reimburse any interest and charges levied as a result, as though the payments had not taken place.
- (2) Pay 8% simple interest per year on any payments Mr R made towards the credit balance as a result of the scam, from the date he paid them to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 9 May 2022.

Jack Ferris  
**Ombudsman**