

## **The complaint**

Mr H is unhappy that TSB Bank plc won't refund the money he's lost to a fraudster.

## **What's happened?**

Mr H says he received a cold call at the end of February 2019 from a person who asked if he wanted to invest in bitcoin. He'd recently seen an advert on a popular social media platform about this type of investment – claiming that celebrities had received lucrative returns – the reviews for the company the caller claimed to work for looked positive and the company itself seemed professional (although Mr H was aware it wasn't regulated by the Financial Conduct Authority ('FCA')), so he decided to go ahead. He was given an investment manager, some training on trading and online access to a trading platform where he could see how much his investment had grown. At around the same time, Mr H shared the login details for a legitimate bitcoin trading account in his name with his investment manager, so that he could trade from that account on his behalf.

Initially, Mr H invested small amounts from accounts he held with other financial institutions. He's said he could see his investments were growing from looking at his online account, so he didn't have any concerns.

On 4 April 2019, he made a larger investment of £11,109.18 from his TSB account.

He then received some small 'returns' of £215.90 on 17 April 2019 and £456.93 on 14 June 2019.

On 8 August 2019, he transferred £19,889.44 into his legitimate bitcoin trading account for his investment manager to trade with.

Mr H has since discovered that he has been the victim of fraud. He has lost contact with his investment manager and cannot get the money he has invested back, and the funds he transferred to his legitimate bitcoin trading account have been removed.

Mr H asked TSB to refund the money he's lost from his TSB account under its fraud guarantee. TSB explained that its fraud guarantee was not in place when Mr H instructed the first transaction on 4 April 2019. And it said that its fraud guarantee doesn't cover the second transaction instructed on 8 August 2019 because Mr H's loss didn't arise from his TSB account – his money was transferred to a genuine account held in his own name and the fraudster removed the funds from that account. TSB also explained that the payments Mr H made weren't flagged as suspicious because he often transfers funds from his savings account to his current account, as he did here, and then out to merchants who offer investment virtual currency exchanges. So, the payments were in line with his usual activity.

## **What did our investigator say?**

Our investigator didn't uphold Mr H's complaint. They didn't think that TSB's fraud guarantee was applicable in the circumstances, or that the scam would've been uncovered if TSB had flagged the payments Mr H made as unusual and asked him some more questions about

them.

Mr H asked for an ombudsman's decision, so the complaint was passed to me to decide.

### My provisional decision

I issued my provisional decision on 15 February 2022. I'll set out my findings below.

It's common ground that Mr H 'authorised' the two payments from his TSB account. He made the payments using internet banking and, even though he was the victim of a scam, and he didn't intend the payments to go to a fraudster, the payments were 'authorised' under the Payment Services Regulations 2017. TSB had an obligation to follow Mr H's payment instructions, and Mr H is presumed liable for his loss in the first instance. But that's not the end of the story.

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider that TSB should:

- Have been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.
- 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.
- 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 its customers from the possibility of financial harm.

The payments were international transfers and the highest value transactions on Mr H's account between January and August 2019. There were three other transactions of a relatively high value - £5,000 being the highest – and these transactions all followed a related transfer into the account from Mr H's savings, as the disputed payments did. But these transactions are much smaller than the payments, and they're faster payments to a consistently used destination. I don't think they're comparable to high value international transfers to new payees. Considering the value of the payments, the type of payments they were and their destination against Mr H's account activity in the same year, I think they stand out as unusual and out of character and, overall, I think it's reasonable to expect TSB to have asked Mr H some further questions about the payments.

TSB has argued that at least one of the payments was transferred to Mr H's own bitcoin trading account, so the loss didn't occur on his TSB account. But cryptocurrency scams often involve money passing through more than one account and they were not uncommon at the time. I think TSB would've been aware of this. The FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018. By April and August 2019, I think TSB ought to have had time to digest these warnings and put mechanisms in place to detect and prevent this type of fraud. So, although Mr H's losses may not have arisen from the initial transfer, I'm satisfied they ought to have been within the contemplation of, and foreseeable to, TSB. And I'm satisfied that TSB can be held responsible for the loss if it could have prevented the scam by asking Mr H some further questions about the payments.

It doesn't appear that Mr H was coached by the fraudster, as is often the case with scams, so I think he would've spoken freely had TSB asked him some questions about the

payments – as he did when he reported the fraud. And I think it would most likely have become apparent that he was being scammed.

By April and August 2019, I think TSB had or ought to have had a good enough understanding of how these scams work – including that the customer often moves money to an account in their own name before it is moved on to a fraudster – to have been able to identify the risk of harm from fraud. With its industry knowledge, I think TSB ought to have asked Mr H some probing questions and given him information regarding the prevalence and typical features of cryptocurrency scams. Mr H has said he had no concerns about investing because the company he was dealing with looked professional, had positive reviews, trained him on trading, and gave him access to an online account through which he could see that his investment was growing – and that's what he may have said if TSB had questioned him. But I don't think the conversation should have stopped there. TSB could've, for example, asked how Mr H had been contacted, whether the investment opportunity had been advertised on social media and mentioned a celebrity, and whether Mr H had parted with personal details in order to open a trading account. These are typical features of cryptocurrency scams.

If TSB had done enough here, I think it would've most likely been obvious to the bank and Mr H that there was a risk of financial harm, and the scam would've unfolded without the payments being made. Of course, TSB could also have declined to make the payments altogether based on the information it had received if Mr H still wanted to go ahead with them despite its warnings, and given the circumstances here, I think it would've been reasonable for it to do so.

I appreciate TSB needs to strike a balance in the extent to which it intervenes in payments, against the risk of unduly inconveniencing or delaying legitimate payment requests and I wouldn't have expected it to interrogate Mr H about the payments. I also acknowledge that the main perpetrator here is the fraudster. But overall, I think appropriate questions should reasonably have been asked in this case, and if they had been Mr H wouldn't have wanted to go ahead or, if he did, TSB could've declined the payments. Either way, I think the scam would've been prevented and Mr H wouldn't have lost his money.

Considering everything, I think the fair and reasonable outcome is to uphold this complaint.

In the circumstances, I don't need to go on to consider whether TSB acted with care and urgency in trying to recover Mr H's money.

I have considered whether Mr H should bear some responsibility by way of contributory negligence. He's admitted he was aware that the company he was investing in wasn't FCA-regulated. But not all legitimate companies are regulated, and I think Mr H's explanation on why he wasn't concerned about the investment opportunity is reasonable. I've looked at the investment paperwork he was provided with and I can understand why Mr H thought it looked professional. I've also seen a statement of his online trading account, and this appears legitimate on the face of it. I'm persuaded that all of this, together with the training Mr H received, the communication I've seen between Mr H and his investment manager, and the 'returns' paid into his bank account was enough to satisfy a reasonable person. Overall, I don't think there was any contributory negligence on this occasion.

I intend to uphold this complaint and instruct TSB to:

- reimburse the £30,998.62 Mr H has lost to this scam from his TSB account (TSB can deduct any 'returns' Mr H has already received on his apparent investment); plus
- pay 8% simple interest per year on that sum, calculated from the date of each payment to the date of settlement.

### Responses to my provisional decision

Mr H and TSB both accepted my provisional decision. Neither party put forward any further comments for me to consider.

### **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.

As both parties have accepted my provisional decision, and neither party has provided any new information for me to consider, I see no reason to depart from the findings and conclusions I set out in my provisional decision.

### **My final decision**

For the reasons I've explained, my final decision is that TSB Bank plc should:

- reimburse the £30,998.62 Mr H has lost to this scam from his TSB account (TSB can deduct the £672.83 in 'returns' Mr H has already received on his apparent investment); plus
- pay 8% simple interest per year on that sum, calculated from the date of each payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 28 March 2022.

Kyley Hanson  
**Ombudsman**