

The complaint

Mrs G complains that Tesco Personal Finance PLC ("Tesco Bank") failed to refund money she lost as part of an investment scam.

What happened

The details of this complaint are well known to both parties, so I will not repeat everything in detail again here. In summary, Mrs G paid £5,250 to FXtrademarket.com using her Tesco credit card in January 2019. She made the following payments to the merchant:

Date	Merchant	Amount	Running total
8 January 2019	FX24	£3,000	£3,000
8 January 2019	FX24	£250	£3,250
8 January 2019	FX24	£2,000	£5,250
		Total	£5,250

Mrs G says she realised she had been scammed when she was unable to withdraw her money and couldn't get hold of anyone at FXTrademarket.com. She raised a dispute with Tesco Bank for help in recovering her lost funds, but the bank declined to provide her with a refund. It said it had immediately blocked the £3,000 transaction she made on 8 January 2019 and sent her a text message, to which Mrs G responded confirming the transaction was genuine. So, given she had authorised the transaction, Tesco Bank declined to refund the money she had lost.

Our investigator upheld the complaint. He noted that Tesco Bank had automatically blocked the £3,000 payment Mrs G made on 8 January 2019, but he didn't think the bank's intervention went far enough. The investigator thought it likely that the scam would have been revealed had Tesco Bank intervened and questioned Mrs G about the investment and who she was paying. So he recommended it refund the entire amount she lost. Tesco did not respond to the investigator's assessment, so the matter has been escalated to me to decide.

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 for the reasons set out below:

- Tesco do not dispute that Mrs G has fallen victim to a scam. And given there is a warning published online by the Financial Conduct Authority about FXTrademarket.com (along with various other anecdotal evidence on online forums about the merchant being fraudulent), I'm not persuaded the merchant had honest intentions, but instead set out to defraud Mrs G of her money.
- It is also common ground that the disputed payments were 'authorised' by Mrs G for

the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. This is because they were made by her using the legitimate security credentials provided by Tesco Bank. But having concluded that this was a scam, it's also necessary to consider whether the disputed payments were unusual or uncharacteristic enough for Mrs G's account such that they ought reasonably to have triggered an intervention by Tesco.

- It isn't in dispute that the £3,000 payment Mrs G made on her Tesco credit card was unusual given that it did trigger the bank's fraud prevention systems and was automatically blocked pending further enquiry. Accordingly, it's just a question of whether the bank went far *enough* in all the circumstances with that intervention.
- Tesco Bank said they sent Mrs G a text message on 8 January 2019 asking her to confirm that the £3,000 payment was genuine, to which she replied that it was. But given it had flagged as a suspicious payment, Tesco ought to have gone further and spoken to Mrs G to find out more about the nature of the transaction she was making before allowing it to be processed, rather than simply asking if it was her making it.
- Tesco Bank 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.
- If Tesco had contacted Mrs G and asked her further questions and for more of the basic surrounding context, I think it's likely she would have explained what she was doing and that she was making an investment off the back of an advertisement she saw on Facebook, where she was being told to send money to a third party broker – all of which are typical features of these sorts of investment scams. Tesco Bank could have also asked Mrs G to check the legitimacy of the broker on the FCA website, where she would have discovered a warning about FXTrademarket.com that had been in place since October 2018.
- Overall, I'm satisfied that a warning to Mrs G from her trusted bank would have probably led her to discover the various scam warnings online and exposed the broker's false pretenses. Even if Mrs G had not worked out that this was a scam, it is likely that a warning would have alerted her to the common issues arising in relation to binary options/forex dealers, which in turn would have revealed the truth behind the supposed broker's representations. This would have probably stopped Mrs G in her tracks. So, but for Tesco Bank's failure to act on clear triggers of potential fraud or financial harm, Mrs G probably wouldn't have lost her money.
- Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000). I do not place too much weight on general but arcane information in the public domain for reasons previously alluded to about the information imbalance between financial professionals and ordinary consumers. In this case, I do not think that Mrs G was to blame for what happened; that she did not foresee the risk of this sort of harm or any harm. I do not think Mrs G could have foreseen the risk that the company she was dealing with was a scam and the trading account she was viewing was likely to be a simulation. In the circumstances, I do not think it would be fair to reduce compensation on the basis that Mrs G should share blame for what happened.

My final decision

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

- (1) Refund Mrs G the £5,250 loss incurred from her credit card as a result of the payments she made as part of the scam, and rework her 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 Mrs G made towards the credit balance as a result of the scam, from the date she paid them to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 1 June 2022.

Jack Ferris
Ombudsman