

The complaint

Mr R complains that Tesco Personal Finance PLC trading as Tesco Bank hasn't reimbursed transactions he made to a scam investment broker.

What happened

In 2017, Mr R found firm 'P' online. He was looking to make some extra money and P suggested it was a broker who could offer him training and support in investing, as well as very lucrative investment opportunities, so he began trading through it.

In 2017, over a period of four weeks Mr R used his Tesco Bank credit card to send five transactions to P totalling £10,000. Following this, he wanted to withdraw some of the funds he'd made, but he was told by P he couldn't do this until sufficient trades had been made to release his bonuses. And then when these further trades were made by P, for Mr R to action his withdrawal, his funds were depleted, and no money was received. He stopped trading with P and let the account go dormant.

In 2019, Mr R was contacted by another company, 'W'. It said it had taken over from P and still had his account with the remaining balance. It offered to help Mr R start trading again and reassured him under its terms he could withdraw. Mr R sent additional funds, £4,000 from his Tesco Bank credit card. But when he went to withdraw from W, again, he was unable to. At this point Mr R realised he'd been the victim of a scam.

Mr R wrote to the businesses who he'd paid the funds from and explained what had happened. Mr R first sent funds using his Tesco Bank credit card, then later used other credit cards. By the time he wrote to the credit card providers, he'd found warnings about P and W from the regulator and many negative reviews saying they were a linked scam firm. He asked for the funds he sent to be reimbursed. I haven't been able to see a copy of Tesco Bank's response to Mr R's complaint, but I understand it wasn't upheld.

Mr R brought his complaint to our service. Tesco Bank didn't agree it was one we could look into and didn't supply our service with a file. I issued a decision stating it was within our jurisdiction and Tesco Bank said it would then send its file and set out why it was defending this case. Tesco Bank have still not done so, despite it being several months since my decision and it saying on a number of occasions it would do this.

Our investigator issued an assessment upholding Mr R's complaint in full and awarding £400 in compensation to Mr R. Tesco Bank still didn't respond to our service, so the case was passed to me for a decision. I issued a provisional decision upholding in May 2022 and my findings were as follows:

It's incredibly disappointing that despite multiple requests from our service, Tesco Bank still has not supplied us with any kind of merits business file. I have therefore had to base my decision on the information Mr R has provided. It's been nearly three months since we confirmed to Tesco Bank this case was within our jurisdiction, so it has had ample opportunity to defend the case and provide the evidence it's required to supply us with when we take on a case.

I've reviewed the credit card statements Mr R has provided us with to support his case. These show that he regularly used his credit card, but not for any large purchases. His monthly statements show a balance owing in the region of £300 to £650 in the lead up to these payments. Tesco Bank is aware it has a duty to protect its customers against the risk of financial loss due to fraud and to undertake due diligence on large transactions to guard against money laundering. And I think it failed in this when Mr R was investing with P.

The first two payments Mr R sent to P were for £250 and £750 respectively. So I can't say these should have been of concern to Tesco Bank, in that it needed to stop these payments and check with Mr R before processing them. But the third payment he made was for £4,000. This is nearly 4x any other payment Mr R has made on his credit card, based on the statements I hold. And a large amount more than he usually spent over a whole month at that time – so this was an unusual transaction for him.

Mr R has given us details about what he was told by P and I think if Tesco Bank had called him and provided a general scam warning, it would've been enough to unravel this scam.

At the time Mr R first invested with P there weren't official warnings about it online. I also accept he was investing before binary options became regulated by the Financial Conduct Authority (FCA), so this limits what information Tesco Bank could have given him in an intervention call. But P was offering unusually high returns on investments and I haven't seen evidence to suggest it held a license with the UK Gambling Commission or had a license in any other jurisdiction – which it should have in 2017. So I consider that Tesco Bank could've explained to Mr R about how these scams generally work, about the Gambling Commission and advised him to go away and do more research into P before sending such a large payment. And I think he would have, preventing him coming back to Tesco Bank and actioning this payment – or sending further funds.

On that basis, I consider Tesco Bank could have prevented Mr P sending £9,000 of the £10,000 he sent to P, so it should refund Mr R these payments.

While I don't consider the first set of payments to P ought to have triggered an intervention by Tesco Bank, as these payments were made on a credit card, I've then considered whether Mr R has any rights under Section 75 of the Consumer Credit Act 1974. I've also considered Mr R's rights under this Act for his payment to W.

Section 75

Mr R used his credit card to directly pay both P and W. And he did so because he expected it to use his funds to legitimately trade. However, the evidence strongly suggests that P, who later rebranded as W, was not in fact a legitimate investment broker. It misled Mr R into believing he was depositing money for genuine investments and also that he would be able to withdraw the funds he made from these investments. It's most likely Mr R never actually traded, and we know he wasn't able to withdraw any funds. And in W's case, it then stopped responding to him.

Considering the above, I believe Mr R does have a valid claim for misrepresentation. He first entered into the contract with P because it led him to believe he would be trading and able to make and withdraw funds. And I'm satisfied that due to his previous experience with P, he then entered into the contract with W. Mr R's testimony is persuasive and based on this account and the nature of this situation, I consider P/W did claim that he would be trading in lucrative investments and they would allow Mr R to withdraw his funds.

Mr R has limited information from his interactions with either firm. And he's explained W used remote access software to 'assist' him in trading, but then also used this to delete evidence of the (false) promises it made him. But even without this evidence, the situation he's described is corroborated by others bringing cases to our service against both P and W, and widely online at this point. There are many negative reviews for P/W left by other victims. And together P and W have multiple entries about them and another linked firm on the International Organization of Securities Commission (IOSCO) register, spanning multiple countries. So I consider P/W was not operating a legitimate enterprise and that they actually never intended for Mr R to be able to profitably trade and then withdraw these funds. So they did misrepresent their position and this induced Mr R into entering into the agreements.

I also consider W breached its contract with Mr R. I find it plausible that he wouldn't have entered into an agreement with W without checking he could easily withdraw funds, considering what happened with P. And we know that when he then tried to do this, he couldn't. So I think it's also highly likely W breached the agreed contract, by not allowing him to withdraw.

Taking into account the above, I consider Mr R does have a valid claim under Section 75 for the remaining deposits he made to P in 2017 – £250 and £750. And the full amount he sent to W – £4,000. So these should also be refunded by Tesco Bank.

I've then thought about whether Mr R is due any compensation from Tesco Bank. It hasn't shown us that it has ever investigated his fraud case properly. And Mr R raised this complaint in March 2020, so over two years ago at this point. By not engaging with our service or Mr R it has delayed a resolution to the fraud case and so closure for Mr R on what he's described as a very difficult time. I consider he's been caused avoidable distress and inconvenience by these actions. I can't award compensation for complaints handling, as this isn't a regulated activity. But Tesco Bank has caused Mr R this distress outside of handling his complaint, by the way it had dealt with his fraud case – so I'm in agreement with the investigator that £400 compensation should also be paid.

Mr R responded and said he had nothing further to add. Tesco didn't respond. So the case has been returned to me for a final decision.

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 Mr R had nothing further to add and Tesco didn't respond to the provisional decision, I see no reason to change any of the findings I reached in my provisional decision. Or to amend the redress which I set out, as Tesco Bank has provided nothing to counter why this is appropriate. So for the reasons set out above, in the background section of this decision, I'm upholding Mr R's complaint and directing Tesco Bank to refund him all the funds lost to this scam, plus to pay him £400 in compensation.

Putting things right

Tesco Personal Finance PLC trading as Tesco Bank should:

- Refund all the payments Mr R made to P – a total of £10,000 and to W – £4,000, plus any associated transaction fees; and rework the account so that all interest and charges caused by those payments are refunded (less any amounts received from P or W).
- Pay 8% simple interest per year on any repayments Mr R made towards his Tesco Bank credit card in relation to the payments he made to P and W;
- Pay him £400 compensation

My final decision

For the reasons set out above, I uphold Mr R's complaint against Tesco Personal Finance PLC trading as Tesco Bank.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 29 June 2022.

Amy Osborne
Ombudsman