DRN-3543668

The complaint

Mr C complains that TSB Bank Plc didn't do enough to protect him when he fell victim to an investment scam.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Between 17 October 2018 and 4 March 2019 Mr C made a series of payments, totalling £191,431.42 to a number of different beneficiaries. He believed they were going to a company based in Hong Kong (I'll refer to as Company G) that offered investment trading platforms, trading in gold and other commodities.

Date	Type of Transaction	Beneficiary	Amount
17/10/2018	Online International Bank Transfer	Beneficiary "A"	£23,430.63
23/10/2018	In-branch Transfer	Beneficiary "B"	£71,165.74
24/10/2018	Online International Bank Transfer	Beneficiary "B"	£15,866.80
14/11/2018	Online International Bank Transfer	Beneficiary "C"	£15,845.99
26/11/2018	Online International Bank Transfer	Beneficiary "D"	£23,968.88
27/11/2018	Online International Bank Transfer	Beneficiary "D"	£16,080.01
29/1/2019	Online International Bank Transfer	Beneficiary "E"	£7,803.88
28/2/2019	Online International Bank Transfer	Beneficiary "F"	£1,697.99
04/03/2019	Online International Bank Transfer	Beneficiary "G"	£15,571.50
		Total	£191,431.42

Mr C has explained that he'd been made aware of an investment opportunity by a friend he met during a social networking event. Mr C has said his friend advised him that her brother worked for Company G. Records of messages from the time show he was told the scammer's brother worked for the Hong Kong Stock Exchange and had information on the global gold trade. The friend also said she'd already invested with Company G and made good profits.

Mr C said he set up an account, having provided personal identification documents, and was able to see the funds in his account. He said he saw his investments making good returns and he was encouraged to keep investing, as he'd receive higher profits and be charged less commission if he increased his holding.

At some point after his initial investment Mr C was told that his account was going to be moved to an elite team to manage his funds. His funds were then transferred to a new account and he started dealing with another company (I'll refer to as Company A). Later he was told there were going to be upgrades to the system and products on offer, and his funds were again transferred, this time to a third company (I'll refer to as Company Z). Mr C was under the impression that all three companies were connected, and he continued to correspond with the same individual via an instant messaging service.

When Mr C tried to withdraw funds from his account his available balance decreased, and he stopped receiving replies from the company. Soon after he was blocked from his online account and his friend stopped replying to his messages. Mr C realised he'd been the victim of a scam. He contacted TSB to seek its help to recover the funds he'd lost.

TSB contacted the beneficiary banks but they advised that no funds remained in the receiving accounts. TSB confirmed to Mr C that it wouldn't refund the money he'd lost as he'd authorised the transactions and it had processed them correctly. It also noted that when Mr C made his transaction in branch on 23 October 2018, due to its high value, bank staff asked him why the payment was being made and Mr C said he was sending money to relatives. When TSB queried this with Mr C after he notified it of the scam, he said the scammers had told him to say it was for relatives as the transaction would be processed quicker than if he'd said it was for an investment. Mr C told TSB he didn't think it was strange that he'd been asked to lie to his bank.

Mr C complained to our service. He said TSB hadn't done enough to protect him from the financial risks of fraud. He said it had failed to carry out any due diligence before processing his transactions and it provided him with no warnings that it could be a scam.

Our investigator didn't uphold the complaint. He didn't think any intervention from TSB could have prevented Mr C's loss. He noted that when Mr C had been asked about his transaction he'd lied and said it was for relatives. But he thought that even if Mr C had told the truth when he made the first transaction, there wasn't enough information available about the relevant companies to know it was a scam.

Mr C disagreed and asked for the case to be referred to an Ombudsman for a final decision. He disputed that he'd have lied had his first transaction been questioned by TSB. He said the scammers had only coached him to say he was sending money to relatives when he made the second transaction in branch. He explained he'd been led to believe that he needed to make the transfer by a certain date to be included in a particular investment opportunity and had been told his transaction would be delayed if he said it was for an investment.

I issued provisional findings on 24 May 2022 so that all parties had the opportunity to provide any additional comments before a final decision was reached.

In brief, I thought TSB ought to have intervened when Mr C gave his first payment instructions on 17 October 2018. I considered the payment instruction was out of keeping with his usual account usage and should have stood out to TSB as unusual or uncharacteristic. Had TSB intervened at this stage, and provided Mr C with appropriate scam warnings and encouraged him to carry out his own research, I thought it was more likely than not Mr C would have cancelled the payment instruction as he would have thought the risk was too high to accept. As a result, I thought his losses would most likely have been prevented.

But I thought Mr C should bear some responsibility for his loss. I considered Mr C had carried out inadequate checks before investing large sums in high risk trading. He'd also lied, albeit following coaching from the scammers, to TSB about the nature of his transfer. Had he not done, some of his losses may have been prevented. As such, I thought he was responsible for 50% of his loss, and so directed TSB to refund 50% of his lost funds.

TSB initially disagreed that any intervention would have prevented the scam. It thought that had it intervened with Mr C's first transaction, Mr C would likely have sought guidance from the scammers before contacting TSB. It thought it was most likely that he would again have been coached to lie about the nature of the transaction (saying it was for relatives rather than an investment).

TSB argued that it wouldn't have been proportionate to the fraud risk for it to have intervened in the first transaction. It pointed to data that showed the majority of similarly sized international payments were not fraudulent.

TSB also thought it was unfair to include Mr C's second transaction in the proposed settlement, as TSB had intervened but Mr C had lied about the nature of the transaction.

After further discussion, both Mr C and TSB accepted my provisional findings. So, I'm now in a position to issue a final decision on this complaint.

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.

I'm sorry to hear Mr C was the victim of a sophisticated and targeted scam and lost a considerable sum of money as a result. I understand this loss had a significant impact on his life and finances. In the circumstances, I can appreciate why he wants to do all he can to recover the money he lost. But I need to decide whether TSB can fairly and reasonably be held responsible for the loss.

It's accepted that Mr C authorised the scam payments which totalled £191,431.42. He provided valid instructions through his online account and in branch. So, although he didn't intend the money to go to the scammers, under the relevant Payment Services Regulations and the terms and conditions of his account, Mr C is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for a bank to take additional steps or make additional checks before processing a payment in order to help protect customers from the possibility of financial harm from fraud.

This service has referenced the relevant rules, codes of practice and good industry practice at the time in many previous decisions published on our website.

TSB's first obligation is to follow the instructions that Mr C provides. But if an instruction is sufficiently unusual or uncharacteristic for the account, I'd reasonably expect TSB to intervene and to ask more about the payment instruction before processing it. I'd also expect it to provide suitable warnings about common scams to help its customers make an informed decision whether to continue with the payment. There might also be cases where it's appropriate for a bank to refuse to follow the instruction if there are good grounds to believe it is being made as a result of a fraud or scam.

Did TSB do enough to identify the risk of financial harm from fraud?

So, the starting point here is whether any of the payment instructions Mr C gave TSB between 17 October 2018 and 4 March 2019 – taken singularly or collectively – were sufficiently unusual or uncharacteristic in relation to his typical account activity to say TSB reasonably ought to have intervened, or have done more than it did, before processing the payment instruction.

The first payment Mr C made as a result of the scam on 17 October 2018 was for

£23,430.63. This was an international payment made to a new payee. It was unusual for Mr C to send this amount of money and particularly so as it was an international payment (something he doesn't appear to have done before). Given Mr C's usual account usage I'd have reasonably expected this to stand out as unusual and uncharacteristic to TSB. The account was typically used for day-to-day spending with card payments, direct debits and bill payments – and most transactions were for up to a few thousand pounds only.

While I've considered TSB's concerns regarding the proportionality of additional checks when viewed against certain fraud statistics, the key here is that banks have obligations to be alert to suspicions of fraudulent activity and to look out for unusual transactions or anything that might indicate one of their customers is in the process of being defrauded or at risk of financial loss. Having considered all the circumstances, I consider the transaction on 17 October 2018 was wholly unusual and uncharacteristic for Mr C and had enough red flags to highlight to TSB that he may have been at risk of financial harm. TSB was therefore obliged to intervene.

Would appropriate intervention have affected Mr C's loss?

If this first payment instruction transaction had flagged up as being unusual and uncharacteristic with TSB – as I think it reasonably ought to have done – I'd have expected TSB to have contacted Mr C before processing his instructions. At that point, questions should have been asked about the nature and purpose of the payment he was making.

TSB has assumed that as Mr C lied about the purpose of his transaction on 23 October 2018, that he'd also have lied about the earlier transaction. But I don't agree the evidence supports this position.

Mr C has provided us with copies of messages he exchanged with the scammers between 11 October 2018 and 1 February 2019. A message dated 23 October 2018 shows Mr C being coached by the scammer *before* making the in-branch payment, to say it was for a relative if he was asked by the bank. This suggests the scammers were aware Mr C's bank was likely to make additional checks before processing the payment. There is no evidence of such prior coaching in relation to the initial online transaction.

Earlier messages between Mr C and the scammer talk about how and where the transactions should be made and whether the transactions could be expedited but there's no suggestion of coaching on the reason for the transaction. I also can't see an immediacy of messaging that suggests to me the scammers could have coached Mr C in the moment had TSB called him.

TSB suggested that had the first payment triggered, Mr C would most likely have contacted the scammers *before* contacting TSB to discuss his transaction. But I don't agree this was the most likely outcome. It's clear Mr C believed he was making a legitimate investment. So had TSB contacted him, or prompted him to contact it, I think it's most likely he would have done so. I can't see there would have been any reason for him to contact the scammers before speaking with TSB.

While it's clear Mr C was susceptible to coaching - which is a common feature of these sophisticated scams and part of the social engineering involved in making them successful - I don't think that means he would have sought out a cover story from the scammers before contacting TSB. To do so would suggest he knew something was wrong with his proposed investment, which I don't think is supported by the evidence.

As such I think it's reasonable to say that had TSB asked Mr C about his payment instruction on 17 October 2018 it's most likely that he'd have answered honestly and explained he was seeking to make a transfer as part of an investment. Given the prevalence of investment scams, particularly those perpetrated from overseas, and given his transfer was going to Hong Kong, TSB reasonably ought to have asked Mr C meaningful, probing questions about the transaction and his intended investment, to protect him against the possibility of financial harm. For example, I think TSB should reasonably have asked Mr C how he was introduced to the investment, what he was investing in and what checks he'd already carried out to confirm its authenticity. I think it's likely Mr C would have revealed some or all of the following details:

- He'd been introduced to the investment by someone he'd met recently through a social networking event.
- The company was based in Hong Kong, and he'd looked up reviews online but hadn't found much information.
- He was intending to trade in gold and other commodities.
- He'd been promised 15% profits, but that these would increase if he invested more.

I think had Mr C revealed any of these details it would have been a strong indicator that he may potentially be falling victim to an investment scam. Turning to the transaction in question, I think TSB should also have been alerted to the fact that Mr C was attempting to transfer a significant sum of money to a named individual, rather than Company G, who Mr C believed he was dealing with. This again would have been a red flag that Mr C was potentially falling victim to a scam.

While it's impossible to know with any certainty what would have happened had TSB intervened, I think it's most likely Mr C's losses could have been prevented.

Having asked Mr C information about his proposed transaction I think TSB should reasonably have offered Mr C clear scam warnings and encouraged him to carry out his own checks into Company G before carrying out his payment instruction. While it doesn't appear there were specific scam warnings about Company G at the time, I think being advised that it was a potential scam would have given Mr C good reason to pause and complete additional checks or seek further advice before proceeding with his transaction. At this stage the fact he'd been unable to find much information about Company G or evidence that it was appropriately registered either in the UK or Hong Kong would likely have given him cause for concern. And I think at this point it's likely Mr C would have thought the risk was too high to accept – so he wouldn't have proceeded, and his losses would have been prevented.

Should Mr C bear some responsibility for his loss?

I have thought carefully about whether Mr C should bear some responsibility by way of contributory negligence (which might justify a reduction in compensation). And I think he should.

It's clear the material cause of Mr C's loss came from being tricked by a sophisticated scam in circumstances where appropriate intervention from TSB could probably have avoided this. But I don't think it's unfair to say Mr C wasn't always as careful as I reasonably think he ought to have been before transferring a considerable sum of money to a company he knew little about.

Mr C has told us that before investing he'd looked at the website of Company G and believed it looked genuine. He'd also carried out a search online and hadn't found anything suspicious. But he's explained that he's since realised the names used by the scammers were similar to names of genuine companies and he may have confused them. The website Mr C initially used to sign up to an account no longer exists so it's not possible to see what information he was presented with at the time. Mr C has also said he'd trusted the scammer and believed what she told him about the investment and her own returns.

While I appreciate Mr C carried out some checks before investing, he seemingly didn't question anything further when things appeared suspicious or the scammers made implausible claims. For example, throughout the scam Mr C was instructed to pay seven different named individuals, each registered at a different address. Some of the addresses provided appear residential and others appear to be connected with businesses that had no connection with the proposed investment. When Mr C asked about this, he was advised that the company operated a number of different bank accounts because it was easier to manage his money. He also told TSB that he'd been told this prevented "trafficking". Mr C also seemingly didn't question why the name of the company he was using kept changing, and instead accepted that this was an upgrade to the system or to move him on to a better fund.

It's also significant that when TSB did try to intervene and asked Mr C about his second transaction he lied and said he was transferring money to relatives. While I accept that Mr C was coached to say this, as he was told it would speed up the transfer, I think he really ought to have questioned why he was being advised to lie to his bank in order to circumvent the processes put in place to protect him.

Overall, while I appreciate Mr C carried out some checks before investing, I don't think he carried out sufficiently thorough checks to enable him to establish the legitimacy of the companies he was dealing with before investing very large sums in high risk trading. I think he ought reasonably to have done more. In the circumstances I think it's fair that he bears 50% of the responsibility of the losses he incurred.

Putting things right

To put things right, TSB should pay Mr C £95,715.71 (50% of his total £191,431.42 loss). To compensate Mr C for being deprived of this money, TSB should also pay him interest on this amount from the date he made each payment to the date of settlement. As Mr C appears to have transferred funds from a savings account before transferring it to the scammers, I consider it would be appropriate for TSB to add the interest that would have applied to those accounts.

My final decision

For the reasons given above, I uphold this complaint and direct TSB Bank Plc to pay Mr C:

- £95,715.71 (50% of his total £191,431.42 loss).
- The interest that would have been applied to the accounts Mr C transferred his funds from.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 13 July 2022.

Lisa De Noronha
Ombudsman