

The complaint

Mr W complains that Tesco Personal Finance PLC (Tesco) won't refund payments he made to what he says were investment scammers.

What happened

In 2018 Mr W made a series of payments to two different merchants I'll call S1 and S2. S1 initially contacted Mr W and advised they'd show him how to trade and offered to trade on his behalf. They said he could earn at least 10% per month and Mr W invested a small amount of £250 in January 2018 to start with. S2 cold called Mr W and promised him a return of 10% per month and advised he'd be able to get his money out at any time and could make withdrawals if he was unhappy.

When Mr W saw some profits on his S2 trading account, he requested a withdrawal. S2 advised they could only pay in Bitcoin. They subsequently closed all communication with him, along with his account.

Between January 2018 to March 2018, Mr W paid S1 and S2 a total of £10,720.31 using his Tesco Mastercard credit card (this includes transaction fees that Tesco charged him). The first two payments showed on Mr W's statement as going to S1 directly but the remainder went to a different merchant I'll refer to as 'Z'.

Mr W said he approached Tesco in 2018 to assist him with chargeback claims but it chose not to help him. He said he deposited money with S2 via another banking provider and that banking provider successfully recovered his payments via the chargeback scheme. Mr W complained to Tesco in 2020 about not assisting him and it replied advising it had no chargeback options via the Mastercard chargeback scheme, nor did s.75 apply.

Mr W referred his complaint to this office. One of our Investigators suggested that Tesco should refund Mr W's his payments. In summary she thought Tesco should provide a refund under s.75 for the payments to S1. She thought some of the payments to S2 were unusual and that Tesco should have intervened and could have prevented some of those losses. On 20 May 2022, I issued a provisional decision not upholding this complaint. For completeness, I repeat my provisional findings (which form part of this final decision) below:

I have considered all the evidence and arguments to decide what is fair and reasonable in all the circumstances of this complaint.

Having done so I've reached a different outcome to that of our Investigator. So, I'm issuing this provisional decision to give everyone a further opportunity to comment before finalising my decision.

It isn't in dispute that Mr W authorised the payments relevant to this complaint. And I don't think Tesco were wrong to allow these payments to go through mostly unchallenged at the relevant times – I'll consider the payment it did challenge later below. Mr W is seeking reimbursement through either chargeback or s.75. He believes he has been scammed by S1

and S2. Whether S1 or S2 were operating a scam is potentially relevant to chargeback and s.75, so I'll deal with that first.

Not every complaint referred to this office and categorised as an investment scam is in fact a scam. Some cases simply involve high-risk unregulated investments that resulted in disappointing returns or losses. Some of these investments may have been promoted using sales methods that were arguably unethical and/or misleading. However, whilst customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

I've paid particular attention to the Investor Alerts Portal of the International Organization of Securities Commissions ("IOSCO"), the international body that brings together the world's securities regulators. It's my understanding that neither S1 or S2 have any adverse information reported about them on this source. I also wasn't able to find any warnings about S1 or S2 on the Financial Conduct Authority's website (FCA – the UK Regulator). I've noted S2 is still in operation today.

I've no reason to doubt Mr W's testimony about his issues with S1 or S2. But in the communication I've seen from him, the issues he experienced with withdrawals were due to the method by which they were due to be repaid rather than S2 refusing to permit withdrawals at all. I accept our Investigators conclusion that neither S1 or S2 appear to have been regulated, but this doesn't in itself mean they were operating scams. I've noted he was dealing in cryptocurrency which was unregulated at the time of his payments. Overall, I can't say with any certainty that S1 or S2 were operating scams and weren't just offering high risk, unregulated investments.

Chargeback

Tesco are bound by the card scheme providers rules which in this case is Mastercard. And whilst there is no 'right' to a chargeback, I generally think it's good practice to raise one where there is a reasonable prospect of success. Our service has clarified the position with Mastercard themselves and they've confirmed there are very limited options for payments that have gone to any type of investment. The only possible avenue for success is if funds aren't credited from the card to the investment account.

I appreciate Mr W was able to recover his S2 payments via the chargeback scheme and another banking provider but this may have been due to S2's bank not defending the claim or Mr W's other bank being part of another chargeback scheme entirely (subject to different rules). Being the victim of an alleged scam isn't something the Mastercard chargeback scheme provides dispute resolution options for. So taking all of this into consideration I think Tesco declining to raise chargeback claims on Mr W's behalf was a reasonable exercise of its discretion.

Section 75

For this to have been a valid option there must have been an unbroken chain between the debtor (Mr W), creditor (Tesco) and the supplier (S1 and S2 or potentially Z). I'll refer to this as the 'DCS' chain. And any claim being made would have to have related to a breach of contract and or a misrepresentation between Mr W and S1 and S2 (or potentially Z) in relation to a contract that was funded by the Tesco credit card.

Tesco questioned whether there was an unbroken DCS chain for all except the two payments that went directly to S1. As I've mentioned above, the majority of the payments (in

both value and number) went to Z. Should Z have been acting as a payment processor for S2, this wouldn't break the DCS chain. But I'm not going to make a finding in relation to the DCS chain as I don't think this makes a difference for the reasons I'll come to.

The basis of our Investigator upholding the complaint was that she thought S1 had misrepresented themselves as a genuine investment firm and that this had induced Mr W into entering an agreement with them. But as I'm not persuaded there is sufficient evidence to support that S1 were operating a scam, I don't think Mr W has evidenced a valid claim for misrepresentation. Similarly, I've not seen evidence of the contract / agreement between S1 and Mr W to support that there has been a breach of contract. As such, I don't think Mr W has evidenced he has a valid claim under s.75.

In relation to S2, our Investigator concluded that Mr W hadn't presented any evidence to show that the payments via Z went to his trading account with S2. But she felt that Tesco ought to have provided a warning to Mr W when it intervened in his payments to them on 6 March 2018. I've thought very carefully about this as it would appear Tesco contacted Mr W to confirm whether the payment to Z was genuine. Given that I'm not persuaded that S2 operated a scam, I don't think Tesco were required to give Mr W a warning as there was no indication he'd fallen victim to a scam.

Even if I found there was no break in the DCS chain between Mr W, Z and S2, there is no credible evidence that S2 (still in operation) misrepresented themselves to Mr W or breached any agreement they had with him.

I'm of course sorry to hear Mr W lost such a significant amount of money. But on the evidence I've seen so far, I'm not persuaded there is a reasonable basis upon which I can tell Tesco they need to do more to resolve this complaint.

Responses to my provisional decision

Tesco didn't reply and so I assume it has nothing further to add.

Mr W replied, he disagreed with the outcome and provided some further comments and information. He said in summary:

- He's not sure what other evidence he can provide. He's been on websites that show others have been scammed by the same people. His other banking provider agreed and returned his money via chargeback and wouldn't have done so if it wasn't a scam. He was told by the merchants his money was growing each week and as soon as he asked to take profit, they locked him out of his online platform and stopped all communication.

Mr W provided email messages from his S2 account manager dated 22 May 2018 which stated his account made €90 profit and the balance stood at €28,578.

Mr W further provided a link to 'teamviewer' (which is how he communicated with his account manager); a link to 'anydesk' – the screensharing software – sent to him from S2; a personal questionnaire sent to him from S2; a registration document sent to him by S2; a deposit confirmation email from S2 and a link to a forum alleging that S2 were scammers.

Mr W said he's disappointed with Tesco's attitude to this case and he contacted them when he still had contact with the so-called traders and offered to make a small deposit so they could track the funds. He also asked Tesco to block his card so not even he could get money out of the account after it said it couldn't help.

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 don't uphold this complaint and I'll explain why.

Much of the information Mr W provided isn't in dispute. I don't dispute that he had a trading platform with S2 and that he would have needed to have provided personal information to activate this account. But I'm still not persuaded that S2 operated a 'scam' investment trading platform.

I've reviewed the forum webpage Mr W provided about S2 where he states other people said they were scammed by them. I saw one review from an individual that said they were unable to withdraw funds because S2 could only pay in Bitcoin to a cryptoasset provider. This repeats what I noted from Mr W's correspondence with S2. There wasn't a refusal on S2's part to permit Mr W to withdraw his funds, there was a disagreement about the method in which the withdrawal could be paid. I've seen no agreement between Mr W and S2 that would suggest S2 was acting in breach of it.

Mr W provided no new information about S1 or his dealings with them, so I remain of the view that there is no persuasive evidence they operated a scam trading platform. I'm also of the view that Mr W hasn't persuasively demonstrated how they misrepresented themselves to him or that they breached a contract he had with them.

Overall, I don't agree that Mr W has established a valid misrepresentation or breach of contract claim under s.75 for his payments to S1 or S2.

I do appreciate Mr W's point that he was able to recover his payments to S2 via another banking provider through successful chargeback claims. But I can only consider whether Tesco acted fairly when considering chargeback claims in accordance with Mastercard rules. And for the reasons already explained, I don't think Tesco acted unfairly when choosing to decline Mr W's chargeback claim – and that's because the dispute rules didn't allow them the option to do so.

I also appreciate that Mr W didn't find Tesco particularly helpful when he was attempting to recover his payments. But for the reasons I've already explained, I don't think Mr W had any valid options for Tesco to either assist with recovering his payments via the chargeback scheme nor do I think he demonstrated that they were jointly and severally liable to refund them in accordance with s.75.

And so, despite my natural sympathies for Mr W's losses, for the reasons I've explained above, I don't think Tesco acted unreasonably by not refunding his disputed payments.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 15 July 2022.

Dolores Njemanze
Ombudsman