

The complaint

The estate of Mr T complains that Tesco Personal Finance PLC (Tesco) won't refund the money he lost when he fell victim to a scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat them all again here. Instead, I'll set out the key points and focus on giving the reasons for my decision:

- In 2019, Mr T started trading through a company I'll refer to as X. He made the following payments to them from his Tesco credit card, via genuine cryptocurrency companies with whom X directed him to set up accounts with:

Date	Merchant	Amount
29 May 2019	L	£198.71
30 May 2019	J	£265.21
4 June 2019	J	£3,107.12
7 June 2019	J	£3,120.90
7 June 2019	J	£3,120.90
26 July 2019	E	£8,367.51
26 July 2019	E	£929.72
	<i>Total</i>	£19,110.07

- Shortly after, Mr T realised it was a scam and reported this to Tesco. Mrs T says they were struggling to get hold of X – who they believed had taken out fraudulent loans in their name. Tesco said there were no chargeback rights under the rules of the card-scheme provider, Mastercard, for any trading transactions. And it couldn't recall any payments; they'd already gone through. Unhappy with this response, Mr T referred the matter to our service. It's now being brought by his estate.
- The investigator agreed that a chargeback claim wouldn't have succeeded. But they thought Tesco ought to have prevented some of the transactions, so recommended that it should refund these.
- In early June 2022, I issued my provisional decision explaining why I was minded to uphold the complaint. I invited both parties to submit any further comments and evidence. The deadline for this has now passed. Tesco hasn't responded. And the estate of Mrs T has confirmed they have nothing to add. So I'm proceeding with my consideration of 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.

As I've not received anything further, I see no reason to depart from my provisional findings. For these reasons, I uphold this complaint:

- It's not in dispute that Mr T fell victim to a scam by X. But nor is it in dispute that he authorised these payments. In line with the Payment Services Regulations and general banking terms, Tesco has a duty to execute authorised payment instructions without undue delay. So even though Mr T was duped into making the payments, the starting position is that he's liable.
- That said, there are some situations where we believe that banks and other payment services providers—taking into account relevant rules, codes and best practice—ought to have identified a potential fraud risk, so should have looked at the wider circumstances surrounding the transaction before making the payment. If they failed to do so, and that failure led to a fraudulent loss for their consumer, it may be fair to hold them liable.
- Initially, I don't think Tesco had cause for concern. But by the time of the second payment on 7 June 2019, I think it ought to have identified, and acted on, a possible fraud risk. That's because a pattern of uncharacteristic and suspicious account activity was emerging. Mr T had transferred almost £10,000 to a new, international payee in around a week – and more than £6,000 in one day. This was out of keeping with how he generally used his card. Prior to the scam, it seems he only used it for the occasional, low-level purchase.
- I've therefore considered what would have happened if Tesco had responded proportionately to the fraud risk. I'm not persuaded it was enough to simply check that Mr T had authorised the payment, or get him to confirm that he wasn't victim to a scam or being coerced (as it did when it called him about the payment he went on to make to E). A key feature of these scams is that the consumer is tricked into making the payment, thinking it's a legitimate investment. Given the level of industry knowledge about the prevalence and nature of these scams, I would have expected Tesco to probe Mr T further.
- Another common feature of these scams is that consumers are directed to move money to a cryptocurrency account in their own name before transferring it onto the scammers. Tesco ought to have known to ask about how Mr T came to make these payments, to assess whether all was well. If asked reasonable questions, I think Mr T would have explained that he was trading with X, who he'd found online promising high returns and who'd prompted him to set up the intermediary accounts. And that they also instructed him to download remote access software so they could control the trading. As their name made clear, they were also purporting to offer "forex" trading – yet weren't properly regulated. Tesco ought to have realised, and warned Mr T, that it sounded like a scam. If it had done so, speaking from a position of expertise, I've no reason to doubt that Mr T would have heeded the warning and would therefore have stopped making these payments.
- But for Tesco's failure to respond appropriately, it would have been on actual notice that Mr T was going to suffer financial harm from fraud. The losses ought to have been within the contemplation of, and foreseeable to, Tesco. So it's fair to hold it liable for this.

- I've also considered if Mr T was partly to blame. Initially, without the same level of knowledge as the bank about these scams, I consider it reasonable that he was persuaded by the sophistication of X's scam. They had a professional-looking website. Mr T had a lot of contact with them, and was convinced by the trading platform which appeared to show how his money was being invested. But by the time of the payments in late July 2019, I think he ought to have realised something might be wrong. These were made *after* he and Mrs T found out about the loans taken out fraudulently in their name, which they thought were connected to the scam. I also understand that, by this time, Mr T was struggling to make contact with X. I therefore think he ought to bear some responsibility for the payments he made in July 2019, and that his compensation for these should be reduced accordingly. In the circumstances, I find 50% to be a fair reduction.
- I don't think Tesco could have done more to recover Mr T's loss. The chargeback scheme offers very limited options for recovering money paid to trading accounts. But the wider point is that the funds didn't go directly to the scammers. They first went through legitimate companies, who provided the service expected of them (i.e. transferring the funds/uploading them to the wallet). So there weren't any reasonable grounds for a chargeback claim to succeed against them – as such claims can only consider breaches/misrepresentations etc. against the merchants Mr T paid *directly*. The same is true of claims made under Section 75 of the Consumer Credit Act 1974, meaning Tesco isn't liable on this basis either.

Putting things right

Tesco Personal Finance PLC should refund the estate of Mr T £7,769.52, consisting of the second payment of £3,120.90 which Mr T made on 7 June 2019, plus half of the two payments (of £8,367.51 and £929.72 respectively) made on 26 July 2019. It should also rework the account so that any interest and charges caused by the payments (including the foreign exchange fees, cash transaction fees and the interest accrued) are refunded. And it should also pay 8% simple interest on any sums repaid towards the credit card balance arising from those payments, from the date they were repaid to the date of settlement (less any tax properly deductible).

My final decision

For the reasons given above, I uphold this complaint and direct Tesco Personal Finance PLC to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr T to accept or reject my decision before 26 July 2022.

Rachel Loughlin
Ombudsman