

The complaint

Mr K complains that Tesco Personal Finance PLC, trading as Tesco Bank, won't reimburse the funds he lost when he fell victim to an investment scam.

What happened

The detailed background to this complaint is well known to the parties, so I won't repeat it again here. Instead, I'll provide an overview and focus on giving my reasons for my decision.

In January 2020, Mr K was contacted by someone who claimed to be a representative of a trading firm called Profitix. Mr K was persuaded to invest, and he made three payments using his Tesco Bank credit card to deposit funds. Unfortunately, Profitix later turned out to be fraudulent.

To facilitate his 'trading account' with Profitix, Mr K first sent money to a cryptocurrency exchange platform called Pradexx. It converted his funds into cryptocurrency and then sent it on to the intended destination. Mr K made the following payments using his Tesco Bank credit card:

Date	Merchant	Amount
21 January 2020	Pradexxpayments	£2,073.99 <i>(plus £57.03 foreign exchange fee and £85.03 cash transaction fee)</i>
21 January 2020	Pradexxpayments	£1,769.98 <i>(plus £48.67 foreign exchange fee and £72.57 cash transaction fee)</i>
22 January 2020	Pradexxpayments	£1,189.90 <i>(plus £32.72 foreign exchange fee and £48.79 cash transaction fee)</i>
	Total loss	£5,378.68

The first two payments triggered Tesco Bank's systems and it checked that Mr K had indeed made them. It sent him a text message on the first occasion and called him the next time.

Mr K eventually realised he'd been scammed and reported the matter to Tesco Bank in March 2020. It declined to refund the transactions or raise a chargeback. Unhappy with this, Mr K complained to Tesco Bank before referring the matter to our service.

Our investigator ultimately thought that Tesco Bank ought to have sufficiently questioned Mr K when it called him after he'd authorised the second payment. It was their view that had this happened, it would have stopped Mr K from going ahead with the payment (and the subsequent payment). The investigator asked Tesco Bank to refund the second and third payments along with associated fees, making a deduction of 25% for contributory negligence.

Tesco Bank didn't agree and asked for an ombudsman's 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.

Recovery

I've first looked at whether Tesco Bank could have done more with regards to the recovery of Mr K's funds once he reported the matter to it.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator – MasterCard in this case – ultimately arbitrates on a dispute if it can't be resolved between the merchant and the cardholder. Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed.

Our service has sought clarification from MasterCard, and it has explained that if a merchant (in this case the crypto exchange platform) doesn't make funds transferred to it available for use in the type of transactions for which it received them (in this case, converting fiat money into cryptocurrency), then there may be a chargeback right.

But this isn't what happened here. The nature of Mr K's claim is that he'd fallen victim to a scam. Given that MasterCard has made it clear that there would be no reasonable prospect of success through its scheme for claims of this nature, I don't think Tesco Bank acted unfairly by not pursuing a chargeback.

Duty of care

While I don't think that Tesco Bank could have done more with regards to the recovery of Mr K's funds once it was made aware of the situation, I've also considered whether it ought to have prevented them from sent in the first instance.

The disputed payments were authorised by Mr K using his legitimate security credentials. So, under the relevant regulations, he's considered liable unless there's evidence that Tesco Bank could and should reasonably have done more to protect him against the risk of fraud and scams, and that this would have made a difference to his decision-making.

Tesco Bank ought to have been monitoring accounts to counter various risks; having systems in place to identify unusual transactions or other indicators that its customer was at risk of fraud; and, in some situations, making additional checks before processing payments or declining them altogether to protect its customer from possible financial harm from fraud.

I've considered that the payments were sent to a legitimate cryptocurrency exchange. And I accept that buying cryptocurrency is a legitimate exercise. But both the Financial Conduct Authority (FCA) and Action Fraud had warned of cryptocurrency exchange and forex trading scams in 2018. And in May 2019 Action Fraud published further warnings that such scams had tripled in the past year. This type of insight is something that regulated businesses, including Tesco Bank, ought to take notice of.

What this means is that even if Mr K had been sending money to a legitimate cryptocurrency exchange, it didn't follow that his money was safe, or that he wasn't at risk of financial harm due to fraud or a scam. By the time Mr K made the payment, I think Tesco Bank had or ought to have had a good enough understanding of how these scams worked to have been

able to identify the risk of harm from fraud. Including, that the customer often first purchases cryptocurrency and moves it on to the fraudster under the assumption that they're moving it into their own wallet or account.

I've considered the operation of Mr K's account in the year leading up to the disputed payments. It appears that Mr K had been gradually reducing an outstanding balance on his credit card in the months prior and had not used it for new purchases. So, the first payment of just over £2,000 does appear to be uncharacteristic for the account activity. That said, I also accept that it isn't unusual to make a one-off large-value transaction from time to time. But Tesco Bank did intervene at the time – it sent Mr K a text message to confirm it was him making the payment. Given the amount involved and what appeared to be a one-off transaction at the time, this type of intervention doesn't seem unreasonable.

The second payment on the same day was slightly lower in value, but it triggered Tesco Bank's fraud detection systems once again. And this time, the flagged payment warranted a phone call to Mr K instead of a text message. Given the payment was to a cryptocurrency exchange, and the second such payment Mr K had authorised in a relatively short period of time, I consider it would have been reasonable for Tesco Bank to have properly questioned Mr K before releasing the payment.

I've listened to the intervention call. I find that the agent didn't enquire about the payment in question at all. The questions asked were around confirming Mr K's identity and checking that it was indeed him who had authorised the payment. Had Tesco Bank carried out its due diligence and duties and asked Mr K about the payment, I've no reason to doubt that he would have explained what he was doing and the true purpose of his payment to Pradexx – that he was sending it on to Profitix. He'd been given no reason to think he had to hide this information from his credit card provider, and neither had he been coached to tell them something different.

At the time of the payment, a warning about Profitix hadn't yet been published by the FCA. But warnings had been published about it on the Investor Alerts Portal of the International Organisation Securities Commissions ("IOSCO") by the Financial Markets Authority in New Zealand. I acknowledge that the warning regarding Profitix's fraudulent practices had only recently been added. So, I wouldn't have expected Tesco Bank to have had the chance to update its watchlist and automatically block any payments to Profitix. But Tesco Bank's fraud detection system had triggered nonetheless, and it blocked the payment pending further investigation. An opportunity to look into the intended beneficiary further was missed.

I accept that Tesco Bank had no duty to protect Mr K from a poor investment choice or give investment advice when discussing the payment. But it could have provided information about the steps a customer can take to ensure, as far as is reasonably possible, that they are dealing with a legitimate person or firm – such as checking the firm was authorised by the FCA. Tesco Bank could have also drawn on its own knowledge and information that was in the public domain – mentioned above – about the high risk associated with trading and the potential for fraud and provided Mr K with a potential scam warning.

Had Tesco Bank done more, I'm satisfied that Mr K would have looked further into the investment opportunity in general, including whether Profitix was regulated here in the UK or abroad. He could have discovered that it wasn't. Indeed, it's likely that Mr K M would have come across the various warnings I've mentioned above.

I'm persuaded that Mr K would have paid attention to warnings from his trusted bank, and that a meaningful intervention from Tesco Bank would likely have exposed the scam. It follows that I also think it's more likely than not that the intervention would have caused Mr K

to stop from going ahead with the payment, thereby preventing further losses. I therefore find that Tesco Bank is liable for Mr K's losses from that point.

Contributory negligence

I've also carefully thought about whether Mr K is partly to blame for what happened. And having done so, I think that he is. Mr K told us that he checked Trust Pilot reviews before deciding to invest. But as the investigator pointed out, majority of the published reviews said that Profitix was a scam. Mr K doesn't appear to have carried out sufficient independent research into the investment, the firm, or the investment type to reassure himself that the opportunity as presented to him was genuine.

I think that Mr K ought to bear some responsibility for his losses and that compensation should be reduced accordingly. Having thought about this carefully, I consider that it would be fair to reduce compensation by 25%.

Putting things right

To put matters right, Tesco Bank needs to:

- 1) Refund 75% of the last two payments (including foreign exchange and cash transaction fees);
- 2) rework Mr K's credit card account to reimburse any interest and charges levied directly because of the two payments; and
- 3) Pay simple interest at 8% per year for any period where the account was in credit because of the above steps, calculated from then until the date of settlement (less any tax properly deductible).

My final decision

For the reasons given, my final decision is that I uphold this complaint. I require Tesco Personal Finance PLC, trading as Tesco Bank, to put matters right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 19 December 2022.

Gagandeep Singh
Ombudsman