

## The complaint

X complains Tesco Personal Finance PLC (Tesco) didn't do enough to protect him from losing over £11,000 to an investment scam.

## What happened

X has explained that in 2020 he saw Bitcoin and investment markets advertised heavily on the internet, and after providing his contact details and hearing back from a merchant going by the name of DMX Markets, he decided to invest.

The payments X made to the 'investment' with DMX Markets appear on his Tesco credit card statements as follows.

Transaction number	Date	Merchant	Amount (£)	Fee (£)	Total (£)
1	29/06/2020	Cryptonet.exchange	408.06	11.22	419.28
2	02/07/2020	Cryptonet.exchange	1,000.00		1,000.00
3	13/07/2020	Cryptonet.exchange	5,000.00		5,000.00
4	13/07/2020	Cryptonet.exchange	5,001.00		5,001.00

X has explained that after a while the app he was provided access to – to track his 'investment' – stopped working, and his balance disappeared. He tried to contact DMX Markets but he didn't hear back; and its website went down.

X got in touch with Tesco to notify it he'd been scammed. Tesco didn't reimburse X for his losses, and it didn't uphold X's complaint. Remaining unhappy, X referred his complaint about Tesco to us. As our investigator (who recommended that the complaint be partially upheld) couldn't resolve matters informally, the case has been passed to me for a decision.

I sent my provisional decision to X and Tesco, explaining why I was minded to partially uphold the complaint, and the compensation I was intending to award. X replied to my provisional decision. And I emailed both X and Tesco on 5 September 2022 to advise them on a slight refinement to the compensation I was minded to award, bearing in mind what X has said. Tesco has not responded to my provisional decision or subsequent email. And I am now ready to explain my 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.

I've reached the same conclusions as in my provisional decision, as clarified in my subsequent emails to the parties, and for the same reasons. I uphold this complaint in part and I will explain why.

Was DMX Markets operating a legitimate enterprise?

Taking everything together, I think it's most likely that DMX Markets was not operating a legitimate enterprise.

I've seen a 17 August 2020 snapshot of the [www.dmxmarkets.com](http://www.dmxmarkets.com) website, which, under the heading "About us", states, *"DMX Markets is an Online Forex (FX) Trading Broker, providing traders across the globe with cutting edge Forex trading technology to offer unmatched top tier liquidity, institutional grade spreads and the security of tight financial regulation."*

The International Organization of Securities Commissions (IOSCO) is an international body that brings together the world's securities regulators. The Financial Conduct Authority (the FCA – the UK regulator) also has its own warning list in place to share alerts and insight about merchants that have been identified as potentially being fraudulent. The IOSCO's Investor Alerts Portal and FCA website contain no information, so far as I can see, about DMX Markets at all.

The FCA banned the sale and marketing of binary options in the UK from 2 April 2019. And immediately prior to this, binary options/forex traders offering services in the UK were required to be regulated by the FCA, and DMX Markets wasn't. Nor was DMX Markets licensed or regulated abroad as far as I'm reasonably aware.

I've found X's account of events persuasive. There are several online reviews, including from customers sharing very similar experiences to that of X. I understand X did receive some credits back from DMX Markets. But there is nothing unusual about this. Typically, it's done to hook the victim in and to keep them sufficiently satisfied and placated, to potentially induce them into further deposits.

#### Recovery – chargeback and section 75 of the Consumer Credit Act 1974

After the payments were made, I couldn't reasonably expect Tesco to have done anything further until X notified it of the scam. Then, because these were credit card payments, the two potential avenues for potential recovery of the payments would have been chargeback, and section 75 of the Consumer Credit Act 1974.

However, X made the payments from his Tesco credit card to the crypto exchange (and not directly to DMX Markets). This means the merchant here, for chargeback and section 75 purposes, would be the crypto exchange (and not DMX Markets). I therefore agree with what the investigator concluded about this. The crypto exchange legitimately provided the services intended (which was the purchase of cryptocurrency). The subsequent transfer of the cryptocurrency onto DMX Markets would not give rise to a valid chargeback claim, and there would be no valid claim under section 75 either, as the debtor-creditor-supplier link is broken given X paid a legitimate crypto exchange. So I don't think these payments were recoverable once they had been made.

#### Should Tesco have reasonably prevented the payments in the first place?

Having decided the above, I can only uphold this complaint if I think Tesco reasonably ought to have prevented some or all of X's payments to the crypto exchange in the first place – therefore preventing his loss.

It's common ground that X authorised the scam payments in question here. He was tricked by the scammers into instructing Tesco to make the payments. I accept these were 'authorised payments' even though X was tricked. So although he didn't intend the payments to go to scammers, X 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 what I consider to have been good industry practice at the time, I consider Tesco should fairly and reasonably:

- Have been monitoring accounts – and any payments made or received – to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams;
- Have had systems in place to look out for unusual transactions or other signs that might indicate its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer; and
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

My fellow ombudsmen and I have referenced the relevant rules, codes of practice and good industry practice at the time in many previous decisions published on our website.

#### *The first two payments*

I've thought about this carefully and I'm not persuaded Tesco should be held responsible for X's loss of these first two payments. I say this because there is a balance to be struck. Banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests. But they can't reasonably be involved in every transaction. And here, I don't think the payments – particularly given their respective amounts at £408.06 and £1,000 – reasonably ought to have stood out to Tesco. Looking at X's credit card account activity in general, I don't think I can reasonably say these payment instructions were sufficiently unusual or uncharacteristic for X's account to say that Tesco ought to have been obliged to intervene before processing X's payment instructions.

#### *The third payment*

The third payment is a closer call, and I can understand why X has focused on this in his response to my provisional decision. It was unusual for X to spend £5,000 in a single payment. And the payment was clearly intended for a crypto exchange – and Tesco ought to have been well aware of the rise in fraud and scams in recent years, including sophisticated scams in relation to crypto. However, as I've explained, there is a balance to be struck. And whilst the parties will see below that I think Tesco ought to have intervened from payment four, I'm not sufficiently persuaded this payment (three) was sufficiently unusual and uncharacteristic to say Tesco reasonably ought to have been obliged to have intervened by calling X before allowing the payment through just yet. I understand X will be disappointed by this and I would reiterate this payment is a close call. But I'm just not sufficiently persuaded I can say this payment, which was more than a week after the previous two smaller payments, was sufficiently unusual yet. It follows that I am not persuaded to hold Tesco for the loss of this payment.

#### *The fourth payment*

This was X's second payment for at least £5,000 in the same day. Tesco ought reasonably to have recognised this as sufficiently unusual and uncharacteristic for the account such that, in order to meet its obligations summarised above, it reasonably ought to have spoken with X on 13 July 2020 to check everything was in order before it processed the payment, to protect him from the possibility of financial harm.

During such a conversation with X, I would reasonably expect Tesco to have asked X who the payment was for, and for the basic surrounding context, and to have then proceeded appropriately from there, with the intention to disturb or unearth a potential fraud or scam. I have no reason to believe X wouldn't have been open with Tesco. Tesco reasonably ought to, therefore, have quickly learned from its conversation with X the basic background to the payment instruction – that X was sending money to cryptonet.exchange specifically to then transfer it on to fund an investment with DMX Markets.

Even if the conversation had identified the payment was going to X's own cryptonet.exchange account, the conversation shouldn't have stopped there on the basis that the money appeared to be going somewhere safe and within X's control. This is because by January 2019 (almost a year and a half before this payment) Tesco had or ought to have had a good enough understanding of how these scams work – including that the consumer often moves money to an account in their own name before moving it on again to the fraudster.

In a situation like this, I think Tesco ought to have been concerned, especially given the rise of sophisticated scams like this in recent years, which again I'll repeat Tesco ought to have been well aware of. So I think Tesco ought to have given X a warning. And here, especially given I'm satisfied X was already exercising some caution, it's just that he wasn't aware of how these sophisticated scams worked, I think it's most likely X would have taken Tesco's warning seriously, and decided that the risk of continuing to 'invest' with DMX Markets was too high to accept. So I think it's most likely if Tesco had done what it reasonably ought to have done, X wouldn't have proceeded with this payment.

### **Putting things right**

I've explained why I don't think X would have made and lost payment four if Tesco had done what it reasonably ought to have done.

I understand from X's response to my provisional decision – as explained in my subsequent clarification emails to the parties – that X incurred a charge of £199.54 in relation to payment four. If X hadn't made payment four, he wouldn't have incurred this charge.

It's reasonable to suppose that if X hadn't made payment four, he also wouldn't have received the credits on 15 July 2020 amounting to £81.90. So X's net loss is £5,118.64 (that is, £5,001 plus £199.54 less £81.90).

I can't reasonably ask Tesco to pay more than this (for example, payments one to three or accompanying fees), given, as I've explained, I don't think I can fairly hold them responsible for the loss of those transactions.

I have thought about whether X should bear some responsibility by way of contributory negligence. However, I am satisfied there was no contributory negligence on this occasion and X was simply the unwitting and blameless victim of a sophisticated scam. The bank was the professional in financial matters; X was a layperson. So I am satisfied no deduction for contributory negligence should be made in this case.

In addition to this, Tesco should rework X's credit card account to remove any additional interest and charges incurred because of the £5,118.64 debt.

I understand from what X has said that he has suffered distress and inconvenience. And I am naturally sympathetic in cases like this where someone is cruelly scammed out of funds, and there is an emotional impact too. However, I am mindful that the scammers were

ultimately the root cause here. And whilst I have concluded Tesco ought to have prevented payment four, I don't think I can reasonably say they ought to have prevented the earlier payments – so I think if Tesco had done what it ought to have done, X would still have been scammed and suffered distress and inconvenience, it's just he would have lost less money. Overall, I'm satisfied the compensation I've set out represents a fair outcome in this case, and so I don't make an additional award here.

### **My final decision**

I uphold this complaint in part and I direct Tesco Personal Finance PLC to pay X £5,118.64 and rework X's account to remove any additional interest and charges incurred because of the £5,118.64 debt.

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

Neil Bridge  
**Ombudsman**