

The complaint

Mr H complains that Tesco Personal Finance PLC ('Tesco') won't refund the money he lost in a scam.

What happened

Mr H says that in February 2021 he made two payments to place funds into an online trading account with a company I'll refer to as G. The payments were made by credit card and Mr H used a link to a payment gateway when he made them. The payments were for £250.26 and £1,814.81. Mr H had access to a portal to view his trading account. In April 2021 Mr H asked G if he could withdraw his funds. He expected to receive funds after 30 days, but this didn't happen, and Mr H says that G stopped responding to all correspondence.

At the beginning of June 2021 Mr H contacted Tesco to raise a chargeback. He noted that the payments went to two separate companies, neither of which were G.

Tesco said that Mr H didn't have any dispute rights with Mastercard and couldn't bring a claim under section 75 of the Consumer Credit Act. But Tesco said that when Mr H raised the dispute it should have considered a scam claim and didn't. In recognition of this error, Tesco paid Mr H £50.

Mr H is unhappy with Tesco's response. He says he paid by credit card as he believed this method of payment offered protection in situations like the one he has found himself in, and if this wasn't the case, Tesco should have warned him. Mr H also thinks that Tesco owed him a duty of care to protect him from fraud and that it failed to provide any warnings.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld in part. He said that the first payment wasn't unusual but the second was and Mr H had called Tesco to authorise it. During this call, the fact that the payee name was different went unchallenged and Mr H wasn't provided with any warnings. As a result, the investigator said Tesco should refund this payment but deduct 30% of it to reflect the fact Mr H contributed to his loss and pay interest. But chargeback and S75 wouldn't be successful because Mr H received the service he expected – the purchase of cryptocurrency.

Mr H said he'd accept the investigator's findings in an effort to resolve the case but later asked for a full refund. Tesco didn't agree and asked for a decision, so the complaint has been passed to me to consider. In summary, Tesco said that the call with Mr H was to verify that Mr H consented to the payment and the level of intervention expected by the investigator was disproportionate to the amount of the transaction. At the time of the payment, Tesco had no concerns about it and it's unfair to now apply hindsight. Tesco also said that it didn't think Mr H showed concern about the payment and even if it had provided generic scam warnings he'd have gone ahead with the payment, particularly as Tesco didn't think he'd have found anything online which would have changed his mind.

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 about what has happened and of the impact the scam has had on Mr H. What I need to determine is whether Tesco has acted fairly and reasonably in not doing a chargeback or S75 claim and whether it should have done more to prevent the loss.

Chargeback

Tesco are bound by the card scheme provider's rules which in this case is Mastercard. And whilst there is no 'right' to a chargeback, this service thinks it's good practice to raise one where there is a reasonable prospect of success. There are very limited options for payments that have gone to any type of investment. Mr H's claim was that he could not withdraw his funds from his trading account with G and that they were operating fraudulently. Mastercard's scheme does not consider claims about being unable to withdraw funds from trading accounts and the scheme doesn't provide dispute resolution options for victims of alleged fraud. So, taking all of this into consideration, I think Tesco Bank's decision not to raise a chargeback claim on Mr H's behalf was reasonable.

Section 75 Consumer Credit Act 1974

Section 75 gives a debtor the right to pursue a 'like claim' for breach of contract and/or misrepresentation against a creditor as they would have against the supplier of goods or services. For a section 75 claim to apply there are a number of criteria that need to be met, one of which is an unbroken debtor-creditor-supplier (DCS) relationship between the parties. As Mr H was responsible for repaying the amount owed to his credit card provider, he is the 'debtor'. Mr H's Tesco credit card was used to make the disputed payment, so Tesco is the 'creditor'. And G was the 'supplier'. But the payments Mr H disputes weren't made directly to G – they were made to two other merchants, and via the payment gateway, which breaks the chain/relationship. There is no right under section 75 to pursue a like claim against a third party who was not privy to the DCS relationship I have referred to above. So I also don't think Tesco has acted unfairly in declining a S75 claim.

Mr H said in submissions to this service that Tesco should have told him at the time of payment that there were restrictions to the protection that paying by card can offer. I don't consider it would be feasible for Tesco to set out detailed Mastercard rules (that are not made by Tesco), or legal principles, each time a credit card payment is made though.

Should Tesco have done more to prevent the payments from being made?

Banks are expected to process payments a customer authorises it to make. Under the Payments Services Regulations and the terms and conditions of the account, Mr H is presumed liable for the loss in the first instance, in circumstances where he authorised the payments. That said, as a matter of good industry practice, Tesco should have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam.

But there is a balance to be struck: banks 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.

The first payment Mr H made was too low in value to cause any concerns, so I consider Tesco acted reasonably in allowing this payment to be made. It wasn't sufficiently unusual, uncharacteristic or suspicious to reasonably say Tesco ought to have done more.

The second payment was blocked by Tesco twice, so I've considered what was discussed when Mr H called Tesco about it. Mr H commented that when he tried to make a payment earlier that day, he received a text message that asked if he was making the payment and he confirmed that it was. He had noticed on the website of the company he wanted to pay (G) that his second attempt to pay had also failed and didn't want to make multiple payments. I have set out below what was then discussed. I haven't named the payee but have used the letter 'B'. B was a different company to G but the payments to B were the ones Mr T sent for the scam investment.

Halifax: *Transaction wise I can see it's [B] £1,803.35, that's the one that was declined twice. Is that what you were trying to put through?*

Mr T – *Yeah*

Halifax – *OK, I'm just going to double check a few transactions prior. All I need to know is whether you recognise them or not [transactions discussed]*

We then have [B] for £250.26 back on 11th.

Mr H – *Yep*

Halifax – *Excellent*

Mr H – *That's the same payee, the [B] one that I'm trying to pay now.*

Halifax – *Is it the same? Right, it's shown up slightly differently name wise but I don't know if maybe they use a few different you know names on statements and things like that.*

There was no further discussion and the advisor said he would remove the block so that the payment could be made.

The investigator concluded that the Halifax advisor should have asked more questions about the recipient and provided scam warnings. Tesco say that the call was to ensure Mr H consented to the payment and that the investigator was applying hindsight. But Mr H had already confirmed that it was him via text message and the payment was still blocked.

Mr H was making a second international payment in a few days to the same country. The payment was to a cryptocurrency exchange. I consider that by this time Tesco was aware of scams of this nature which involve a small initial payment followed by larger payments. Only a few months later Tesco stopped all credit card payments to buy cryptocurrency or invest in crypto assets because it said the market was largely unregulated, and an increasing number of people were falling victim to cryptocurrency scams. I'm not persuaded Tesco took this decision lightly or without a considerable amount of evidence that I believe it would have gained over a period of time.

So I believe that when the call took place in February 2021 Tesco was aware of the risk involved in making the £1,814.81. But it took no steps to discuss them with Mr H or to provide him with any warnings about how to protect himself, even though it blocked the payment and had a conversation with Mr H. I'm persuaded that had the Tesco advisor asked Mr H some questions about the reason for the payment and provided advice about scams of this nature Mr H would have completed further checks and not continued with the investment. There were online warnings about the company Mr H's second payment went to from early January 2021 – so before Mr H made this payment.

Tesco said in its response to the investigator's view that it didn't think a 'generic' warning would have made a difference as Mr H was under the spell of the scammer. I think the advisor should have asked Mr H about the reason for the payment and provided a warning tailored to investment scams rather than a generic scam warning. And, as I've mentioned above, there were negative reviews prior to the payment being made. In the circumstances, I consider Tesco should take some responsibility for Mr H's loss.

Finally, I've considered whether the loss should be shared with Mr H. It seems to me that Mr H trusted the reviews sent to him by the scammers and didn't undertake his own research before deciding to transfer his funds. Had Mr H looked at reviews of B (the company his funds went to when he made the second payment) he'd have seen the negative reviews I've referred to above. He also took at face value G's claims that it was regulated. Tesco was the expert here though so should bear most of the responsibility for Mr H's loss. Given these points, I think it's fair to reduce the refund Mr H receives by 30%. In addition to this payment, Tesco should rework Mr H's credit card account to remove any additional interest and charges incurred because of this debt.

My final decision

My final decision is that Tesco Personal Finance PLC should:

- Reimburse 70% of the second payment and rework Mr H's credit card account to reimburse any interest and charges incurred as a result of this debt.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 5 January 2023.

Jay Hadfield
Ombudsman