

The complaint

Mr N complains Tesco Personal Finance PLC trading as Tesco Bank didn't do enough to prevent him losing money as part of a scam and didn't act fairly when it refused to refund his losses and instead told him he needed to repay his credit card balance along with interest.

What happened

Mr N used to have a current account and a credit card with Tesco Bank. Both are now closed. Mr N says Tesco Bank claims there's an outstanding balance on the credit card and has been asking him to repay this balance despite having closed the account.

Mr N says he heard about a cryptocurrency exchange on social media and decided he wanted to invest in cryptocurrency. He set up an account, sent a £25 payment from his current account to the cryptocurrency exchange in question and was able to transfer this money back to his account. Having carried out this "test" payment, he was happy to go ahead and invest in cryptocurrency.

On 4 March 2021 – the following day – Mr N tried to send a £7,500 payment to the same cryptocurrency exchange, but the payment didn't go through.

On 5 March 2021, Tesco Bank called Mr N to say that it had stopped his payment and blocked his account because it had security concerns. Mr N told Tesco Bank that the payment was one he'd tried to make and that he was investing in cryptocurrency and sending money to a legitimate exchange. Tesco Bank says it told Mr N that he might be being scammed and that he should check the FCA's ScamSmart website, its warning list and its warnings regarding this type of investment. Tesco Bank says it told Mr N that it would call him again the following day once he'd had an opportunity to do his own research and to see if he still wanted to go ahead with the transfer. Mr N was unhappy about this and about the fact that he might lose money because of the delay.

The following day Tesco Bank called Mr N and says it asked him if he'd done his own research and, having done so, if he still wanted to go ahead with the transfer. Tesco Bank says Mr N said he had, and that he wanted to go ahead with the transfer. Tesco Bank says it told Mr N that it would hold any future similar payments he made for 24 hours. Mr N was unhappy with this and complained. In the meantime, Tesco Bank released the £7,500 payment. Mr N made another payment to the same exchange of £850 on 11 March 2021 which went through.

On 15 March 2021 Tesco Bank says Mr N called to say that he believed he'd been scammed – he said he'd tried to transfer the money he'd invested back to his current account and hadn't received the proceeds. He gave Tesco Bank the name of the broker he'd been dealing with and complained that Tesco Bank hadn't done enough to protect him.

Tesco Bank investigated what had happened and said that the broker he'd been dealing with wasn't authorised by the FCA and that the FCA had warned they were known to scam consumers in the UK. Tesco Bank said that it had warned Mr N that the payment he had wanted to make might be a scam and had suggested he conduct his own research, and that

he would have realised he was being scammed had he done so. In the circumstances, Tesco Bank said that it wasn't willing to refund the losses he said he'd made. Tesco Bank did, however, offer to pay Mr N £50 in compensation because there was a delay in investigating his claim. In addition, Tesco Bank offered to waive interest on Mr N's credit card for two months as it said the transfer had gone from his current account which had been funded from his credit card. Mr N was unhappy with Tesco Bank's response and so complained to us.

One of our investigators looked into Mr N's complaint and said that Tesco Bank should have asked Mr N more probing questions when he called him to say it had security concerns. In the circumstances, our investigator thought that Tesco Bank should refund the last two payments Mr N had made, less any amounts already refunded, and pay 8% simple interest from the date of the payments until the date of settlement. They also thought Mr N should have checked the FCA's register for details of the broker they were speaking to. Had Mr N done so, he would have seen that the FCA had published a warning about them. In the circumstances, our investigator thought it was appropriate to apply a 30% deduction for contributory negligence.

Mr N was initially unhappy with our investigator's recommendation but ultimately accepted it although more recently he has said he should receive a full refund. Tesco Bank was also unhappy with our investigator's recommendation saying that it couldn't have done more. Tesco Bank also disagreed with the award of 8% simple interest saying that the funds came from a money transfer from his credit card on which there was still an outstanding balance. Finally, Tesco Bank said that it's not best industry practice to refund consumers who have transferred money into a wallet that they reasonably were aware a third party has access to and that any authorised or unauthorised payments out of that wallet should be for the relevant cryptocurrency exchange to deal with. Tesco Bank said that was what had happened in this case. Tesco Bank asked for an ombudsman to consider this complaint. So, that's what I've done. I issued a provisional decision saying that I agreed that Tesco Bank could and should have done more and that it should, therefore, refund some of his losses. I also agreed that Mr N could have done more and, in the circumstances, I said I thought Tesco Bank should refund 70% of his losses meaning Mr N took responsibility for 30% of them. I also agreed with Tesco Bank that the interest award our investigator had recommended wasn't right in this case, so I instead said Mr N's account should be reworked.

Both parties were invited to comment on my provisional decision. Mr N said that he had purchased cryptocurrency, which was a commodity and that its purchase should, therefore, come under the Sale of Goods and Consumer Credit Acts. Tesco Bank didn't reply.

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 mentioned in my provisional decision, Tesco Bank doesn't appear to be disputing the fact that Mr N has been scammed – he was tricked into making payments into a cryptocurrency wallet by a broker who wasn't authorised by the FCA and was targeting consumers in the UK as part of the scam – and that money appears to have been taken from the wallet by the broker. That's also why Mr N's argument that he purchased a commodity doesn't help him – he did, in fact, buy cryptocurrency which he was then scammed out of. So, I remain of the view that Mr N was scammed, that Tesco Bank's warning wasn't as good as it should have been, and that Mr N could have done more – in line with the approach we take to complaints like this.

In my provisional decision, I said that I thought Tesco Bank should refund 70% of Mr N's losses meaning he took responsibility for 30% of them given that both parties could have done more. I remain of that view. I also remain of the view that the right way to do this – given that the payments in question were funded by Mr N's credit card – would be to rework his credit card.

Putting things right

Given the above, I remain of the view that the right way for Tesco Bank to put things right is to rework Mr N's credit card account as if he'd made a payment of £2,250 on 6 March 2021 rather than a payment of £7,500 and a payment of £225 on 11 March 2021 rather than a payment of £850. In other words, that the right way to put things right in this case is for Tesco Bank to refund 70% of the second and third payments Mr N made and to do so by reworking his credit card account. In the unlikely event that reworking Mr N's credit card account means his credit card account is in credit – because of payments he's made towards his credit card since then – Tesco Bank will need to refund that credit balance along with simple interest at 8% from the date the account was in credit to the date of payment. In the more likely event that reworking Mr N's credit card account means his account is in debit, both parties will have to agree how that remaining balance is repaid taking all the usual considerations into account.

My final decision

My final decision is that I'm upholding this complaint in part and requiring Tesco Personal Finance PLC to rework Mr N's credit card account as if he'd made payments of £2,250 and £255 on 6 and 11 March 2021 respectively in the way I've described above. The parties will have to agree how any outstanding balance, if any, is repaid once the account has been reworked taking all the usual considerations into account.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 22 March 2023.

Nicolas Atkinson
Ombudsman