

## The complaint

Mr B has complained that Tesco Personal Finance PLC (Tesco) has refused to refund him money he lost as the result of a scam.

## What happened

Mr B was looking to invest money and found an advertisement online for the business 23 Traders. 23 Traders claimed to be specialists in binary options and as this was of interest to Mr B, he completed a contact form. 23 Traders contacted Mr B and he was convinced to transfer funds from his credit card. The investments that were made appeared legitimate. Mr B was then convinced by 23 Traders that investing more would maximise his potential profit.

Mr B sent a total of £43,000 to 23 Traders from his Tesco credit card as set out below;

Transaction Number	Date	Merchant	Amount	Running Total
1	02/01/2017	23 Traders	£3,000	£3,000
2	02/01/2017	23 Traders	£2,000	£5,000
3	02/01/2017	23 Traders	£3,000	£8,000
4	02/01/2017	23 Traders	£3,000	£11,000
5	02/01/2017	23 Traders	£3,000	£14,000
6	03/01/2017	23 Traders	£3,000	£17,000
7	03/01/2017	23 Traders	£4,000	£21,000
8	03/01/2017	23 Traders	£5,000	£26,000
9	03/01/2017	23 Traders	£3,000	£29,000
10	03/01/2017	23 Traders	£5,000	£34,000
11	03/01/2017	23 Traders	£5,000	£39,000
12	11/05/2017	23trades.com	£1,000	£40,000
13	11/05/2017	23 Traders	£1,000	£41,000
14	11/05/2017	23 Traders	£1,000	£42,000
15	11/05/2017	23 Traders	£1,000	£43,000

The 23 Traders website was shut down in July 2017 and it stopped replying to Mr B's emails. Our Investigator considered Mr B's complaint and thought it should be upheld. She thought the third payment to 23 Traders of £3,000 made on 2 January 2017 (the third large payment that day) should have been significant enough to trigger Tesco's fraud prevention measures, and it should have stepped in at this stage to ask questions about the payments.

I issued a provisional decision in which I said the following

*"I've considered all the available evidence and arguments to provisionally decide what's fair and reasonable in the circumstances of this complaint.*

*The circumstances of this complaint are not in dispute and the evidence provided by both Mr B and Tesco set out what happened. What is in dispute is whether Tesco should refund any of the money Mr B lost because of the scam.*

*Mr B has accepted he authorised the payments he made to 23 Traders, so the starting point here is that Mr B is responsible. However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.*

*In relation to the first two payments, although it seems that Mr B had not really used his credit card in the previous months prior to these transactions, I think that these payments were not so unusual for Tesco to intervene.*

*That said the third transaction I believe should have been considered unusual. Mr B had been running a balance on his card for a few months with him only paying off a small amount each month. Making two large transactions to a new payee, then crediting his account with £9,000 before making a third large transaction to a new payee should really have prompted Tesco to intervene.*

*I can see that Tesco did contact Mr B on 2 January 2017, but it is not clear at what time exactly. Based on the notes that Tesco provided it seems that all it did was confirm the transactions were genuine. I don't think that this went far enough.*

*At this stage Tesco should have stepped in and asked Mr B in depth questions to find out what the payments related to. Had Tesco stepped in at this point, I think its likely Mr B would have explained the reason he was suddenly making a number of large payments from his card.*

*Tesco would have likely warned him about the high risk of binary option investments and the types of scams they have seen, for example where the 'investment' provider encourages an investor to keep investing large sums as a matter of urgency - which appears to have been similar to what Mr B was experiencing at the time.*

*I note 23 Traders were operating without being licensed by the UK's Gambling Commission (as required at the material time) and they appeared to be pressuring Mr B to pay larger sums quickly. With the information Tesco ought to have known about binary options scams at the time, I think these would have been key red flags and they would have likely explained their concerns that this was likely a scam.*

*In addition to the expectations on Tesco to have effective fraud prevention systems in place, it's expected that customers should take responsibility for their decisions. In the circumstances I don't think it would be fair to say Mr B contributed to the loss. I say this because Mr B had no previous experience in this type of investment and was lulled into a false sense of security by a business that went to great lengths to appear to be legitimate. I can't see that there were any warnings in place when Mr B started using the account.*

*So, I don't think it would be fair to reduce compensation on the basis that Mr B should share blame for what happened.*

## **Section 75**

*While I don't consider the first two payments to 23 Traders ought to have triggered an intervention by Tesco Bank. As these payments were made on a credit card I've then considered whether Mr B has any rights under Section 75 of the Consumer Credit Act 1974 to claim back the money for the first two payments.*

*Mr B used his credit card to directly pay 23 Traders directly. And he did so because he expected it to use his funds to legitimately trade in options. However, the evidence strongly suggests 23 Traders, was not in fact a legitimate investment broker. It misled Mr B into believing he was depositing money for genuine investments and also that he would be able to withdraw the funds he made from these investments. It's most likely Mr B never actually traded, and we know he wasn't able to withdraw any funds. And 23 Traders stopped responding to him and have since removed their website.*

*Considering the above, I believe Mr B does have a valid claim for misrepresentation. He first entered into the contract with 23 Traders because it led him to believe he would be trading and able to make traders and withdraw funds. Mr B's testimony is persuasive and based on this account and the nature of this situation, I consider 23 Traders did claim that he would be trading in lucrative investments and importantly, Mr B was given the assurances that he could withdraw his funds at any time.*

*I have also looked at an archived copy of 23 Traders website from January 2017 and it does purport to be a legitimate trading platform which from my understanding it was not. There are also many negative reviews for 23 Traders left by other victims. And 23 Traders have an entry on the International Organization of Securities Commission (IOSCO) register. So I consider 23 Traders was not operating a legitimate enterprise and that they actually never intended for Mr B to be able to profitably trade and then withdraw these funds. So they did misrepresent their position and this induced Mr B into entering into the agreements.*

*Taking into account the above, I consider Mr B does have a valid claim under Section 75 for the first two transactions he made to 23 Traders. I should also add for the sake of completeness that this would apply to the rest of the payments as well, had I not already said that they should be refunded.*

## **Putting things right**

### **Redress on s75 payments:**

- *Refund the first two transactions;*
- *Pay 8% interest on those sums from the date they were paid to the date of settlement (less any tax lawfully deductible)*

### **Redress on remaining payments**

- *Refund payments 3 to 15 (i.e. the remaining payments to 23 Traders)*
- *Rework Mr B's credit card account to reimburse any interest and charges levied directly because of payment 3 to 15 to 23 Traders.*
- *Pay 8% simple interest, per year, on any repayments Mr B made towards the credit card account in respect of payments 3 to 15 from the date they were paid to the date of settlement."*

Mr B agreed with my findings. Tesco Bank did not respond.

### **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.

Having done so, as neither party has provided any new information or evidence, I see no reason for me to depart from my provisional findings. So my final decision is the same as my provisional decision and for the same reasons so I think Tesco Bank should pay redress as outlined below.

### **My final decision**

For the reasons given, my decision is that I uphold this complaint and require Tesco Personal Finance PLC, trading as Tesco Bank, to put matters right by doing the following;

#### ***Redress on s75 payments:***

- *Refund the first two transactions;*
- *Pay 8% interest on those sums from the date they were paid to the date of settlement (less any tax lawfully deductible)*

#### ***Redress on remaining payments***

- *Refund payments 3 to 15 (i.e. the remaining payments to 23 Traders)*
- *Rework Mr B's credit card account to reimburse any interest and charges levied directly because of payment 3 to 15 to 23 Traders.*
- *Pay 8% simple interest, per year, on any repayments Mr B made towards the credit card account in respect of payments 3 to 15 from the date they were paid to the date of settlement."*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 April 2023.

Charlie Newton  
**Ombudsman**