

The complaint

Mr S complains that Tesco Personal Finance Plc trading as Tesco Bank (Tesco) didn't do enough to prevent him losing money to a scam.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here. In late 2021 and early 2022 Mr S was sadly the victim of a scam. This resulted in very significant losses to him. The money that Mr S was tricked into sending to the scammers went from his bank accounts with banks that I'll refer to as 'S' and 'B'.

As part of the wider scam, Mr S instructed two money transfers from his Tesco credit card. One was for £20,500 in October 2021 which was paid into his account with S. And another for £15,000 in January 2022 which was paid into his account with B. Mr S made a payment to his credit card on 13 January 2022 of £21,517.15. This cleared the outstanding balance from the initial money transfer and provided enough available credit to enable the second. The money from the transfers to Mr S' accounts with S and B was ultimately paid away to the scammer and lost.

In February 2022 Mr S realised he'd been the victim of a scam. He reported this to the relevant authorities as well as the banks involved. He believes that Tesco ought to have picked up on and intervened in the money transfers which he says were unusual for his account. He believes that if they'd done so, it would have made a difference. Mr S also points out that Tesco had a policy which didn't allow payments to cryptocurrency on their credit cards. He'd like Tesco to remove both transactions and any associated charges along with any negative reporting on his credit record.

Tesco didn't think they'd done anything wrong and one of our Investigator's later considered the complaint. He didn't recommend that Tesco needed to do more. He said that there was no loss to Mr S in transferring money from his credit card to his bank accounts. He also said that even if Tesco ought to have intervened, he didn't think this would have made a difference. Mr S didn't accept this outcome and asked for an Ombudsman to make a decision.

In August 2023 I issued a provisional decision in which I said:

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

I'm aware of Mr S' linked complaints which arise from the same overall scam. But this decision is limited to whether Tesco have acted fairly and reasonably in all the circumstances.

I accept that the money transfers Mr S instructed were made as a result of the wider scam and were unusual compared to the typical usage of his credit card account. I think Tesco too

accept at least the first payment was unusual as their submissions show they took the additional step of verifying the instruction Mr S provided for the £20,500 transfer via text message.

However, I'm not sure that this was a proportionate response to an unusual instruction which used up the majority of the available credit on Mr S' account. This was a significant change in the operation of the account. I've not seen evidence to support that Mr S had previously made use of the money transfer facility on his credit card, nor made any payments of such a significant value. Tesco's reliance on a text message goes some way towards mitigating the risk of an unauthorised transaction. But it doesn't do anything to protect against a fraud or scam. As a regulated firm, Tesco have obligations to try to prevent fraud and scams and to act in their customer's best interests.

Tesco have said that the payment presented less risk as it was confirmed to be going to a UK based account in Mr S' name. I accept this, but I still think Tesco ought to have spoken to Mr S, prior to processing the first money transfer to reassure themselves that he wasn't at risk of financial harm from fraud. Had this happened, then I think Mr S would have explained (as he did to both B and S) that he was making the money transfer to invest in cryptocurrency.

Mr S has pointed out that in July 2021 Tesco published the following policy:

"Hi everyone, we're making a change to our Credit Cards I wanted to let you all know about. Customers won't be able to use their card to buy cryptocurrency, or to invest in cryptoassets from 14 July 2021.

While interest in cryptocurrency is at an all-time high, the market is largely unregulated and more people are falling victim to scams involving cryptocurrency.

We've made the decision to protect Tesco Bank customers from these scams. The most effective way of doing this is to block credit card payments to companies dealing in crypto purchases or trading activities..."

I think this makes clear that Tesco had taken a business decision to no longer facilitate payments to cryptocurrency using their credit cards for the reasons stated above. I asked Tesco what they think would have happened had they had a conversation with Mr S prior to processing his money transfers, if told that the ultimate destination was cryptocurrency. Tesco acknowledged that it's difficult to know for sure, but ultimately said they would have warned Mr S of the risks involved but would have followed his instructions.

I've considered this, but I'm not persuaded that is right. I think it's most likely that Tesco would have followed their own guidance. A money transfer to a bank account doesn't strictly meet the terms of what Tesco have said wouldn't be allowed (direct payments to buy cryptocurrency or invest). However, they are clear that, as a responsible credit provider, they don't want the credit they provide to be used to purchase cryptocurrency and as such they took a decision to prevent their customer's from using their cards to purchase cryptocurrency or invest in cryptoassets to protect them from falling victim to scams involving these. And I've no reason to think Mr S wouldn't have told Tesco that this was the purpose of his money transfer. As such, in these circumstances, I think Tesco should have refused to process the initial money transfer for that reason. And for completeness, I think they also should have refused to follow the instruction for the second money transfer. The impact of this is that I don't think Tesco should have permitted either money transfer. So next I need to consider what needs to be done to put things right.

Whilst I intend to conclude that Tesco shouldn't have allowed these money transfers, this

isn't a basis upon which I can say they should refund Mr S with those payments. I could only fairly direct them to do so if Tesco's actions would've prevented those losses from arising – for example Mr S coming to the realisation that this was a scam.

Having carefully considered Mr S' linked complaints about B and S, I don't think there was anything that Tesco reasonably could have said or done (including refusing his instructions) that would have resulted in the discovery of the scam. So I can't say that Tesco's failure here allowed the scam to continue. And ultimately, I think Mr S would have found alternative sources for the funds used from his credit card and wouldn't have ended up in a meaningfully different position.

The funds involved in Mr S' payment of over £21,000 on 13 January 2022 (which cleared the balance of the initial money transfer) would most likely have been utilised instead of the initial money transfer itself. And with regard to the £15,000 that followed, I also think it's most likely that Mr S would have sourced this money from elsewhere and it would still have been paid away towards the scam. I say this as after that time, there were significant credits to Mr S' account with B. His statements from B show that there was a credit of over £155,000 on 1 February 2022 as well as credits of both £21,000 and £24,000 in the following days. So, I don't think Mr S would have been unable to source further funds but for Tesco permitting the second money transfer.

However, given I'm intending to conclude that Tesco shouldn't have allowed Mr S' money transfers, I don't think it's fair and reasonable for them to profit from doing so. As such, I intend on upholding this complaint and directing Tesco to take the steps outlined below. Mr S did receive the money transfers in his accounts, and whilst I acknowledge he then sent the money on to a scam, that isn't a basis upon which I think it is reasonable to ask Tesco to write off or not pursue any outstanding balance arising from the £15,000 money transfer. Likewise, I'm not persuaded that Tesco shouldn't accurately report the position of Mr S' account to the credit reference agencies.

My provisional decision

For the reasons outlined above, but subject to any further information I receive from either Mr S or Tesco, I'm intending to uphold this complaint in part. I intend to direct Tesco Personal Finance Plc trading as Tesco Bank to:

- *Reimburse Mr S with any fees charged in relation to both money transfers;*
- *Refund any interest Mr S paid with respect to the £20,500 money transfer between the date it was processed and the date Mr S cleared the balance.*
- *Refund any interest Mr S has paid towards the £15,000 money transfer.*
- *Write off any unpaid interest and not apply further interest in relation to any outstanding balance as a result of the £15,000 money transfer.*
- *Add 8% simple interest to any refunds (of interest) arising from payments made after 8 February 2022 (the date the scam was discovered and reported to his bank, S). This is to compensate for Mr S being without the money for that period of time. For payments prior to that date, had Mr S still had that money, I think it's most likely he would have paid it to the scam, so I don't think an interest award is appropriate."*

Mr S responded and said he accepted my provisional decision. Tesco responded and didn't have any further evidence or comments for my consideration.

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 neither party provided any new evidence or comments about the merits of this complaint, I see no reason to deviate from the outcome explained in my provisional decision.

My final decision

For the reasons outlined above my final decision is that I uphold this complaint. Tesco Personal Finance Plc trading as Tesco Bank must:

- Reimburse Mr S with any fees charged in relation to both money transfers;
- Refund any interest Mr S paid with respect to the £20,500 money transfer between the date it was processed and the date Mr S cleared the balance.
- Refund any interest Mr S has paid towards the £15,000 money transfer.
- Write off any unpaid interest and not apply further interest in relation to any outstanding balance as a result of the £15,000 money transfer.
- Add 8% simple interest to any refunds (of interest) arising from payments made after 8 February 2022 (the date the scam was discovered and reported to his bank, S). This is to compensate for Mr S being without the money for that period of time. For payments prior to that date, had Mr S still had that money, I think it's most likely he would have paid it to the scam, so I don't think an interest award is appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 31 October 2023.

Richard Annandale
Ombudsman