

## The complaint

Mrs K complains that Tesco Personal Finance PLC trading as Tesco Bank ("Tesco") won't refund £6,250 she lost to an investment scam.

## What happened

The details of this complaint are well known to both parties so I won't repeat everything again here. In brief summary, Mrs K says she fell victim to an investment scam in February 2021 after her husband ("Mr K") was contacted by a broker ("S"). They were encouraged to invest and Mrs K made a payment of £6,250 using her Tesco credit card, which went to a crypto platform ("B") before being transferred to the scammer. Mrs K realised she'd been scammed when she was being asked to pay upfront taxes in order to withdraw her profits.

Mrs K reported the fraud to Tesco, but it declined to refund the payment. It said there's no credible evidence to demonstrate that the scam was anything more than a high-risk unregulated investment that resulted in a loss. It also said that Mr K had called it and explained that he had since received a refund from B, so there was no loss in any event.

Mrs K said that this wasn't true and that neither she nor Mr K has received a refund from B. Our investigator upheld the complaint as he thought Tesco ought to have made further enquiries when Mrs K made the £6,250 payment, and that this would have likely prevented the scam if it had. Tesco disagreed, so the matter was escalated to me to determine.

I issued my provisional findings on this complaint on 4 January 2024. I said I was minded to reach a different outcome to the investigator, as I didn't intend upholding it for the following reasons:

*Mr K, on behalf of Mrs K, told Tesco on a phone call that he had received a refund from B directly into his account. He said he had spoken to B, and they told him they couldn't refund the money to Mrs K's credit card, but that "they asked us for our [bank] details and sent it directly to us".*

*Mrs K has since tried to say that this is untrue. She told our service that she didn't know what this was about, and that neither her, nor Mr K, ever told Tesco they'd received a refund from B. However, as can clearly be discerned from the phone call they had with Tesco, this testimony is quite clearly false.*

*I appreciate Mrs K may have provided statements showing that she didn't receive a refund into their joint account and has since said she doesn't know why Mr K would have misled Tesco in this way. But given the false and conflicting testimony provided to our service, I cannot be sure that this is the case, and that they haven't in fact received the money into another account, for example.*

*Mr K clearly told Tesco that he had spoken to and received a refund directly from B. There is nothing unclear about what he said here, and I've seen no reasonable explanation to demonstrate why he would have been mistaken about this. As a result, I do not find their submissions to be credible or reliable in respect of whether*

*they have sustained a loss.*

*Therefore, I do not intend upholding this complaint, as I consider the evidence of the conversation Mr and Mrs K had with Tesco to be more plausible and representative of the situation than the conflicting testimony they have since provided this service when they said they hadn't received a refund. So, it wouldn't be fair and reasonable for me to ask Tesco to provide a further refund in such circumstances.*

I invited further comments and evidence in response. Mrs K disagreed with my provisional findings for the following reasons:

- She never said that they didn't tell Tesco there had been a refund. She has acknowledged that the voice on the phone call was Mr K's, but neither of them can fathom why he would have said this as it wasn't true.
- She has not been able to obtain any confirmation from B to show that a refund was not made. It also wouldn't make sense why S would have refunded the money to Mrs K if it was a scam. They expect that the phone call with Tesco was some kind of brain malfunction after being scammed.

### **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 also taken into account Mrs K 's recent submissions, but this has not changed my provisional conclusions. I'll explain why.

Mrs K has said that neither she nor Mr K has ever denied telling Tesco that they'd received a refund. I appreciate that they have since acknowledged that they did say this to Tesco. But this isn't what they originally said in an email sent by their representatives on 8 March 2023, where they alleged that Tesco was providing false information:

*"The phone call being talked about is where [Mrs K] rang Tesco, following the credit card payment to B, and we had been charged a transaction fee. We rang to ask whether they would consider refunding the cash transaction fee as we had not realised that type of transaction would be classed as cash, and they refused. That was it. **We did NOT tell them that I/we had received a refund as it would be incorrect. This is completely false on the part of Tesco**". [My emphasis added].*

As you can see, this is in direct contradiction to what they've since told us. So, I don't consider my description of their testimony being unreliable to be inaccurate. And there has still been no reasonable explanation for why they would have said they received a refund if it wasn't true, which is why I said I do not find their submissions to be credible or reliable in respect of whether they have sustained a loss.

Mrs K has said that neither her nor Mr K can fathom why they would have said this and have put it down to a 'brain malfunction'. I accept that the realisation of being scammed can be stressful and traumatic. But that still doesn't reasonably explain why they told Tesco they'd already received their money back from the crypto platform if they hadn't, or how they would have made up an entire conversation with B about the process for receiving the money. It is not something one could understandably be mistaken about, and Mr K was clear in his conviction when speaking to Tesco that B had asked for his bank details and had paid the money directly to him.

As a result – and given there still hasn't been a plausible explanation provided as to why Mr K would've been mistaken about the refund – I'm still not persuaded it would be fair and reasonable to ask Tesco to reimburse the payment, as this could lead to double recovery of the funds that they initially said have already been refunded.

Mrs K says it wouldn't make sense for S to have given a refund if it had set out to scam them, and I accept that this would be unusual. But Mr K didn't say the refund had been received by S as the scammer, it had been received by the crypto platform B, which was the actual payee account. Victims of scams are often able to make withdrawals from their crypto platforms during or sometimes even after a scam. So, it's not entirely implausible that they could have somehow received a refund or were able to withdraw money from B if there were funds remaining in the account.

As a result, Mrs K's recent submissions have not changed the conclusions set out in my provisional decision.

### **My final decision**

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 22 February 2024.

Jack Ferris  
**Ombudsman**