

The complaint

Ms P is unhappy with the redress offer from TSB Bank plc following its decision to refund her under its fraud guarantee scheme. TSB decided to refund her after it agreed she'd been the victim of an Authorised Push Payment (APP) scam.

What happened

Ms P paid funds to an investor I'll name as B, to what she thought was a legitimate investment scheme in 2021.

Ms P made payments totalling approximately £177,000 over the course of a few months and received returns totalling approximately £120,000. But her losses remained at £57,000.

She brought a scam claim to TSB in July 2022. At the time TSB said its investigation with Ms P's fraud claim would be reviewed once the Financial Conduct Authority (FCA) investigation into B was complete.

Ms P brought her complaint to our service and we have been monitoring the progress of her complaint in the meantime.

It has only recently come to light that the actions of the B were in fact fraudulent. The FCA confirmed in January 2024 that it had charged B with committing fraud by false representation and for carrying out activity without authorisation.

Following this, TSB made an offer to refund Ms P in full for her remaining losses, made as part this scam.

It added that if B was convicted, the court may make a compensation order stipulating how much each investor would receive. It said as a TSB customer Ms P would receive a refund under its fraud guarantee but added that this was subject to any potential recovery once the criminal proceeding concluded.

One of our investigators communicated the offer to Ms P. But Ms P was unhappy with the length of time it had taken for TSB to make an offer. She said it was TSB's decision to await the outcome of the FCA's investigation and because of this she had wait for reimbursement from TSB. As a result, Ms P is seeking compensation in the form of interest to be added to the refund.

The investigator considered Ms P's points but said he thought the offer from TSB was fair, because the actions of B had only recently come to light. At the time Ms P made her claim, in July 2022, given the evidence to support her claim and the returns she received from her investment, it didn't seem unreasonable for TSB to await the FCA's investigation before making a decision under its fraud guarantee.

He added that TSB acted quickly when making its offer, after the FCA's update. At the time she made her claim it was uncertain if there was a valid claim of fraud and not just a suspicion. He concluded TSB did not need to pay compensatory interest or any other

redress in addition to the offer it had already made. Other compensatory schemes that Ms P referenced had no bearing on her complaint.

Ms P didn't accept this and asked for a final decision. She wanted clarification that the settlement would be paid now and not await the outcome of the criminal proceedings. And Ms P said whilst she appreciated the scale and complexity of the underlying issues, she believes TSB could have used a balance of probabilities finding (given the FCA involvement) it was likely a finding of fraud would be made. She asserts that TSB chose to delay its decision causing a delay in her reimbursement.

Ms P said when the ombudsman service makes an award for compensatory interest it is for the time the consumer didn't have the money. Here she didn't have the money as a result of fraud and therefore believes interest should be awarded.

Ms P added that during the time she invested her funds she had immediate access to it. However as soon as the FCA investigation commenced the accounts were frozen and she was deprived of her money.

Ms P has also commented on offers made to other consumers under the different compensation schemes and applying a consistent approach to all consumers who invested with B.

Ms P has provided detail about the principles of the Contingent Reimbursement Model (CRM) code. Ms P has argued that as TSB says it fraud guarantee claims to be more generous and robust than the CRM code. She goes on to say that by this TSB acknowledges the principles of the code as a minimum.

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 I've come to the same conclusions as the investigator, for largely the same reasons. I'll set out my findings below.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Without the TSB fraud guarantee and looking to other good industry guidance, relevant in this instance, and in place at the time Ms P made these payments, then her claim would have not likely been upheld. I say this because in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. So, under the Payment Services Regulations 2017 (PSRs) and the terms of the account, Ms P is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for a bank to take additional steps or make additional checks before processing a payment in order to help protect customers from the possibility of financial harm from fraud.

I'm satisfied that if TSB had intervened with Ms P's payments, I don't think it would have made a difference in this case. I won't go into detail here as it's not required, but on whole given the information that would have been reasonably discoverable at the time, I'm satisfied

that any proportionate intervention here would not have made any difference and Ms P would have continued to make the payments. And so, my conclusion here would have been that TSB is not liable for Ms P's losses. But its fraud guarantee goes beyond this position and guarantees to refund where its customers have been the victim of a scam.

The TSB guarantee says

The guarantee doesn't cover purchase disputes, where you pay for something with your TSB account and the goods or services don't meet your expectations...

That is to say the refund guarantee does not cover civil disputes only instances where their consumer has been the victim of an APP scam.

As the investigator set out, at the time Ms P raised her claim there was a reasonable uncertainty about whether the actions of B would amount to an APP scam. Ms P has provided very little evidence to support her claim that this was a scam or in relation to the overall investment she was making with B. In addition to this there was very little information available for TSB in the public domain about B's actions and activities. Making it very challenging to determine whether Ms P and others had in fact been the victim of an APP scam.

I appreciate the length of time that the investigation into B has taken will have frustrated Ms P. I recognise that she has been without those funds during this period. And whilst TSB didn't require the FCA's investigation to come to its conclusion before it made an offer, I'm satisfied in the circumstances that it wasn't unreasonable to delay its decision here. And without the fraud guarantee Ms P would otherwise have not received a refund for her losses here so she is in a better position than she would have been without the fraud guarantee in place and other redress schemes are not applicable in this instance.

Our power to award interest comes from s229(8) of the Financial Services and Markets Act 2000. DISP 3.7 explains the types of awards (and directions) we may make. The power is a discretionary one and we decide cases on a fair and reasonable basis. Here I've decided that it wouldn't be fair and reasonable to award for compensatory interest given the complex nature of these events and that I'm satisfied it was fair and reasonable for TSB to have awaited the outcome of the FCA's investigation before deciding to refund Ms P.

The CRM code does not apply to Ms P's complaint. It is a voluntary code which TSB has not signed up to. Therefore, its principles and application have no relevance here as would be the case with any other complaint being brought against a non-code firm. But I can and have considered TSB's fraud guarantee and whether its application of that has been fair in the circumstances and I'm satisfied it has.

I'm satisfied that the offer from TSB is fair and no interest or additional award for compensation is warranted.

Putting things right

If Ms P accepts this final decision, TSB should refund Ms P her losses in line with its settlement offer for £57,000.

My final decision

I uphold this complaint, in part, and I direct TSB Bank Plc to make the settlement as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 23 April 2024.

Sophia Smith
Ombudsman