

The complaint

Mr S complains that TSB Bank plc ('TSB') won't refund the money he says was lost as the result of a scam.

What happened

In 2021, Mr S was looking for investment opportunities. He received a call about buying artwork as an investment. I'll refer to the company offering the investment as P.

Mr S says he looked online and examined reviews of P and he reviewed their website. Mr S says he was aware that P operated from a London gallery and was backed by renowned artists. Mr S expected a return of 20% or more on any artwork he sold.

Mr S made a payment of £10,000 from his TSB account in March 2021, to P's account. Ultimately, P went into liquidation and Mr S believes it was a scam.

Mr S raised a fraud claim with TSB in January 2024, through a professional representative. TSB considered Mr S's fraud claim but declined to refund him. TSB say P were a genuine company who have gone into liquidation, so they're satisfied it was a scam. TSB say the payment wasn't unusual or out of character for Mr S's account.

Mr S was unhappy with TSB's response, so he brought a complaint to our service.

An investigator looked into Mr S's complaint but didn't uphold it. The investigator wasn't satisfied that Mr S had evidenced that it was a scam, and that the funds weren't used for their intended purpose by P. The investigator felt that if TSB had intervened at the time the payments were made, Mr S's loss wouldn't have been prevented.

Mr S disagreed with the investigator's opinion and his representative provided a substantial response and evidence explaining why. In summary, they say the artwork is worthless, P misrepresented itself and the art to investors, and the majority of the investors' funds paid to P wasn't used for the intended purpose.

The investigator addressed the points raised and explained that the evidence didn't change their opinion. But Mr S asked for an ombudsman to review his case, so it has been passed to me to review.

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'd like to reassure Mr S that I have carefully reviewed and considered all of the evidence he has provided, as well as his responses to the investigator's opinion. But I've focused my decision on what I consider to be the crux of the complaint, the answer I've reached and how I've reached it.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities. In other words, on what I consider is more likely than not to have happened in light of the available evidence.

In broad terms, the starting position at law is that TSB is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

Here it's not in dispute that the payments were authorised, albeit Mr S did so not realising he would experience a financial loss as a result. But that doesn't make the payments unauthorised. So, the starting position is that TSB isn't liable for the transactions.

Is Mr S entitled to a refund under the TSB fraud guarantee?

In this case, I need to reach a decision on whether Mr S is entitled a refund under TSB's Fraud Refund Guarantee and whether TSB have treated him fairly in the circumstances.

In April 2019, TSB launched their Fraud Refund Guarantee which says: *"if you're clearly an innocent victim of fraud on your TSB account, we will refund the money you lost from your account"*. It goes on to say *"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. This could be if the item arrives differently to how it was described"*.

In this case, I'm not satisfied that Mr S has evidenced that his loss has resulted from fraud, or that this isn't a dispute where the goods or services didn't meet his expectations. I say this because:

- Mr S hasn't evidenced that his funds weren't used to purchase the art he was investing in. He would need to prove that his art wasn't in storage, or that it had been lost and cannot be located – which he hasn't done. I'm also conscious that Mr S says he sold two pieces of art and used the funds to make further purchases. This supports the position that P used Mr S's funds to purchase art as agreed.
- While there is strong evidence that there was misrepresentation about P's role and involvement in the investment, it is generally accepted that artwork existed. I say this based on the evidence from storage companies confirming the existence of prints. Also, it was confirmed in the High Court hearing of October 2024, held in relation to a freezing order. And, misrepresentation or a failing of fiduciary duty, doesn't necessarily mean that it was a scam.
- There is evidence of contracts with different artists and some secondary market sales. And, while the agreed mark-up of artwork was significant, in the art world, a high mark-up is common. It doesn't mean that it was fraud. It's worth noting that some of the newer artists didn't agree that their work had been overvalued – although I appreciate their view may be biased.
- As part of Mr S's submissions, he included a judgement handed down in relation to a hearing and the freezing of the accounts linked to P. This included multiple affidavits, a response provided by the liquidator answering specific questions Mr S's representative asked, and evidence the liquidator submitted to the court.

- Mr S has pointed to comments by the judge in their findings, that there was a good arguable case for fraud. But the judgement also made it clear the threshold for a “good arguable” case is low – lower than 50%, so falls below the balance of probabilities threshold. Also, the judge was at pains not to conduct a fraud hearing, despite both parties making substantive arguments in that respect. The judge was careful to say the dispute in relation to the price/value of the art and the secondary market were matters for trial and drew no conclusions.
- I’m aware that P and the administrator/liquidator have settled out of court, so a trial didn’t occur. Mr S’s representative says this is an admission of fraud. However, the liquidator/administrator has confirmed that the details of the settlement were confidential, there was no admission of liability or fraud or guilt. And, although P were going to pay a sum to them, the amount was not disclosed or what it related to.
- The liquidator appears to be pursuing P for fraudulent trading and have indicated to Mr S’s representative they believe the matter is a scam due to the overinflated prices that investors were charged for the art. The liquidator potentially reports up to £21million obtained from investors with only £5million being used to purchase prints. But we don’t know what the other £16million was potentially used for i.e. overheads, staff, or whether the money was misappropriated.
- The liquidator says 95% of investor funds went to the company director, but no detail has been provided about what happened to the funds following that or what they were used for. Without clear evidence of exactly what the funds were used for, I can’t fairly say that they weren’t used for the intended purpose.
- The affidavits are individual statements from investors who purchased art from P. In some of these, the investors confirm that there is art in storage or that art was purchased and sold through P. Others aren’t clear as to whether the artwork they purchased has been located. Most refer to allegations of misrepresentation or mis-selling by P, as well as allegations that the art is worthless. In reaching an answer on Mr S’s case I have to consider the wider circumstances and evidence surrounding P and any linked business, as well the individual circumstances of Mr S’s case.

Having carefully considered all the evidence that Mr S has provided, I’m not satisfied that he has shown P didn’t use his funds for the intended purpose – the purchase of art. A lot of the concerns that Mr S has raised relate to the artwork being valueless and P misrepresenting themselves, but neither of these issues would be covered by TSB’s fraud guarantee.

On that basis, I’m satisfied that TSB acted fairly in declining to refund Mr S.

Is there any other reason I could hold TSB liable for Mr S’s loss?

Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider TSB should fairly and reasonably have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams.

Also, I’d expect TSB to have systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And where a potential risk of financial harm is identified, to have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

TSB say the payment wasn’t unusual based on Mr S’s usual account activity. But, even if I was satisfied that TSB should’ve been concerned and intervened when the payment was made, I’m not satisfied that intervention would’ve prevented Mr S’s loss. I say this because all of the information available at the time of the payment, suggested that it was a genuine

investment. P were a UK incorporated company who had been trading for a number of years by the time Mr S made his payment. They had a London office, and they provided professional marketing material in relation to the investment.

Regardless of what questions TSB had asked, I'm not satisfied that the information they would've been given should've concerned them that Mr S was at risk of financial harm from fraud, or that they could reasonably have refused to follow Mr S's payment instructions.

It's possible that material new evidence may become available at a later date, for example, following further investigation by external organisations. If it does, Mr S can ask TSB to reconsider his claim.

I'm really sorry that Mr S has suffered a financial loss, but based on the evidence, I'm not satisfied that I can hold TSB liable.

My final decision

My final decision is that I don't uphold this complaint against TSB Bank plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 29 September 2025.

Lisa Lowe
Ombudsman