

The complaint

Mr D complains that TSB Bank plc won't refund money he lost when he says he was a victim of an investment scam.

Mr D is represented by a firm I'll refer to as 'M'.

What happened

The background to this complaint is well known to both parties and so I'll only refer to some key events here.

Mr D made a £10,000 payment from his TSB account to a firm, which I'll refer to as 'N', on 30 January 2021 as part of investment. The loan certificate confirms that Mr D would receive a 12% fixed rate of return per year – with it having a two-year term. N was founded in 2015 and went in liquidation in August 2021.

Mr D has explained he thought he'd been scammed when he didn't receive the expected returns. M later complained to TSB, on Mr D's behalf, in July 2024. They said N is now widely accepted to have been a scam and, under the Contingent Reimbursement Model (CRM) code, TSB is expected to reimburse his loss – as they allege Mr D didn't receive any warnings from the bank. M wanted TSB to refund Mr D's loss, pay 8% simple interest and £1,000 compensation.

Mr D's complaint was brought to the Financial Ombudsman. TSB have said the payment wasn't out of the ordinary for Mr D, as he'd made prior payments of this amount, and so, it wouldn't have flagged. But even it had, Mr D thought it was a genuine investment, and the payment was going to a genuine account. TSB considered the matter to be a civil dispute, with the investment not materialising, opposed to a scam.

Our Investigator didn't uphold the complaint and, in short, they said:

- Banks are expected to protect customers from the risk of financial loss due to fraud. But they don't have to protect customers against the risk of bad bargains. Nor do they need to give investment advice.
- There's no adverse information about N on the Investor Alerts Portal of the International Organization of Securities Commissions ("IOSCO"). Nor has the Financial Conduct Authority (FCA) published any warning about N.
- She'd been unable to find any adverse information reported about N at the time of the payment. Nor has she found any compelling information to show the firm was fraudulent. Instead, the available evidence shows N was a genuine firm that was based abroad – which had genuine underlying companies that have since been sold as part of N's liquidation process.
- The investment literature Mr D received made it clear N wasn't regulated by the FCA and so, there wouldn't be any right to complain to the Financial Ombudsman or seek

compensation from the Financial Services Compensation Scheme (FSCS).

- There's no evidence to support N was a scam. And so, a bank wouldn't be expected to intervene and stop a payment to N being made.
- Even if TSB had intervened, this likely wouldn't have made a difference – as Mr D received investment literature and there wasn't information available in 2021 that indicated N was a scam.
- The payment isn't covered by TSB's Fraud Refund Guarantee.

M disagreed. In short, they added:

- TSB has a duty to protect their customers from financial harm. In Mr D's case, he didn't receive sufficient investment advice or warnings about the potential for fraud. And TSB should've questioned the legitimacy of this payment before processing it.
- The TSB Fraud Refund Guarantee was designed to cover cases of fraud. It's reasonable to suggest the loss Mr D incurred points to potential fraud or deceptive practices. And even though N weren't flagged as fraudulent at the time, the fact remains Mr D lost his investment. TSB's lack of safeguards and due diligence should be taken into account when considering whether their Fraud Refund Guarantee applies.
- TSB failed to intervene or flag the payment despite there being red flags. A more thorough examination of the circumstances was warranted to protect Mr D from what, in hindsight, looks like a bad investment or worse, a scam.

Our Investigator asked M to clarify if they thought N was a bad investment or a scam. And to evidence why there would've been concerns N was committing fraud, and operating as a scam, at the time of the payment.

M said TSB had a responsibility to provide clear and explicit warnings to Mr D regarding the unregulated nature of the investment. And that any payment(s) to N wouldn't be protected under the FCA's regulatory framework – which meant neither the bank nor the FSCS would be liable for any refund or compensation if the investment turned out to be fraudulent. This information would've allowed Mr D to understand the risks of making the payment to an unregulated firm – helping him to make a more informed decision.

The matter has been passed to me to decide.

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.

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

M, in the complaint submitted to TSB, referenced Mr D being refunded under the CRM code. TSB however weren't signatories to the code and so, the payment isn't covered by it. I've therefore considered whether it would otherwise be fair and reasonable for TSB to refund Mr D.

In line with the Payment Services Regulations 2017, consumers are generally liable for payments they authorise. TSB is expected to process authorised payment instructions without undue delay. As a bank, they also have long-standing obligations to help protect customers from financial harm from fraud and scams. Those obligations are however predicated on the funds having been lost to a fraud or scam. So, I've considered whether Mr D was a victim of a scam.

For me to conclude that Mr D has been the victim of a scam, I'd have to be satisfied that N deliberately tricked Mr D into making the £10,000 payment for investment services they and had no intention of providing at the time the payment was made. I'm not persuaded I can say that is most likely what happened here, and I will explain why:

- N was founded in 2015 and, seemingly, operated as a legitimate firm until they went into liquidation in 2021 (on the vote of N's directors).
- Liquidator reports indicated that N had genuine underlying companies that have since been sold as part of the liquidation process. These companies were carrying out the activities expected of N.
- Neither IOSCO nor the FCA has published, or is reporting, any warning about N as potentially acting fraudulently or operating a scam.
- The investment literature Mr D received from N appears professional and set out some of the associated risks of investing – including that it wasn't regulated by the FCA.
- There hasn't been any evidence provided by M, or Mr D, demonstrating N was operating as a scam. Nor have I found any information about N to support this.

So, after taking everything into careful consideration, on balance, I can't safely say this meets the high legal threshold and burden of proof for fraud. Instead, and while I know M disagree, this appears to be a case of a failed investment and not a scam. Therefore, TSB's obligations to protect their customers from financial harm from fraud and scams don't apply to this payment.

At which point, I'd like to address some of M's points regarding TSB's alleged failure to provide investment advice and their omission to inform Mr D that the payment wouldn't be protected under the FCA's regulatory framework.

To reiterate, TSB's primary obligation was to carry out Mr D's payment instruction without delay. It wasn't for them to concern themselves with the wisdom or risks of his payment decision. TSB didn't have any specific obligation to protect their customers from potentially risky investments. The investment with N wasn't an investment TSB was recommending or endorsing. TSB's role was to make the payment Mr D had told them to make. Mr D had already decided on the investment. And I find that TSB couldn't have considered the suitability or unsuitability of a third-party investment product without assessing Mr D's circumstances, investment needs and financial goals. Taking such steps to assess suitability without an explicit request from Mr D (which there wasn't here) would've gone far beyond the scope of what I could reasonably expect of TSB in any proportionate response to a correctly authorised payment instruction from their customer.

In any event, the information that M argues that TSB should've provided – that N wasn't regulated by the FCA, and thereby any payment to them wouldn't have been protected under the FCA's regulatory framework - was provided to him in the contract literature. It clearly states:

“(h) by signing this statement, I may lose significant rights;

(i) I may have no right to complaint to either of the following:

(iii) the Financial Conduct Authority; or

(iv) the Financial Ombudsman Scheme; and

(j) I may have no right to seek compensation from the Financial Compensation Scheme.”

I'm therefore satisfied that Mr D had already been aware of the very risks that M argues TSB should've brought to his attention at the time of the payment.

On a final note, I've considered TSB's Fraud Refund Guarantee that provides additional protection to their customers for fraud transactions. The guarantee however has the following exclusion:

“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...”

Here, I'm satisfied Mr D didn't fall victim to a scam. Instead, he didn't receive the expected service that he paid for – that being the investment returns (and return of capital). And, so, while I'm sympathetic to Mr D's situation and the loss he suffered, TSB aren't required to refund him under their guarantee either.

I know this isn't the outcome Mr D is hoping for but, for the above reasons, I don't think TSB has to do anything further.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 3 September 2025.

Daniel O'Dell
Ombudsman