

The complaint

Mr B complains that TSB Bank Plc won't reimburse him, after he made payments towards an investment that he now considers was an Authorised Push Payment (APP) scam.

Mr B is professionally represented in bringing his complaint, but for ease of reading, I'll refer to all submissions as being made by Mr B directly.

What happened

The circumstances of this complaint are well known to both parties, so I won't repeat them in detail here. But briefly, both parties accept that Mr B had been investing in a wine portfolio with a firm I'll refer to as 'E' for a number of years, although due to differences in payment regulations and protections across different years, Mr B is only complaining about some of the later payments he made to E.

Mr E has explained that during the Covid pandemic, he received a call from an agent advising that E was experiencing difficulties and recommended that Mr B transfers his wine portfolio to fine art, with a company I'll refer to as 'S'. While Mr B was told the cost he would sell at would result in a small loss, he was advised this deficit could easily be made up. Mr S therefore agreed and in February 2021, received an invoice from S confirming ownership of an art print package that matched the value of his wine investment.

However, Mr B says he then received a call again from the same agent, stating another firm that I'll refer to as 'L' offered better storage pricing and Mr B should therefore move his investment to this fine art company, which Mr B did.

Overall, Mr B complains about the following payments made from his TSB account towards the two firms:

Date	Payee	Value
9 May 2019	E	£15,000
10 May 2019	E	£12,905
13 December 2019	E	£15,880
24 December 2019	E	£10,000
12 February 2020	E	+£12,000 credit
19 October 2021	L	£5,500
28 March 2022	L	£22,000
2 February 2023	L	+£5,000 credit

Mr B has explained he began to question the legitimacy of the investment when the agent he was speaking to became uncontactable and the requests to sell some of his artwork were not completed. S then went into voluntary liquidation and upon receiving his artwork, he has found most of the associated certificates are missing.

Believing he had fallen victim to a scam, Mr B contacted TSB to raise a claim. TSB reviewed Mr B's claim but didn't consider it was liable to reimburse him, as it considered the evidence

supported that this was a civil dispute between Mr B and the relevant firms. It did however offer £100 compensation for not reviewing the fraud claim from the outset, followed by an additional £200 compensation when the complaint was referred to our service.

Mr B remained unhappy and referred his complaint to our service. An investigator considered the complaint but didn't conclude that there was sufficient evidence that Mr B had fallen victim to a scam, rather than a failed investment. While Mr B has provided a wealth of documents setting out why he believes S was a scam, the investigator highlighted that payments weren't made to S – and he also didn't consider that there was sufficient evidence that payments to either E or L were made as a result of fraud.

Mr B disagreed with the investigator's view. To summarise, Mr B provided further evidence that he considers supports his view that S was a scam firm. In addition, regarding E and L specifically, Mr B has said:

- He never received any evidence in the form of products or pictures to prove that the wine he invested in with E exists;
- While E's online presence appears convincing, this does not preclude the fact that this is a scam;
- Invoices provided by E to Mr B included incorrect VAT calculations, which Mr B considers demonstrates that E either doesn't know how VAT works, or that it didn't care about the VAT payments as it wanted to convince him that the price he was paying was reasonable. Either way, this does not demonstrate the actions of a legitimate firm;
- Mr B considers there are inconsistencies in E's online account balances that support the company being illegitimate;
- When Mr B's portfolio was moved to S, funds weren't first transferred back to Mr B, which is not how legitimate firms operate. The funds transferred over also were used to purchase the exact amount worth of art from S;
- In relation to L, again Mr B's portfolio was transferred over directly from S, rather than first being returned to Mr B;
- L and S have the exact same terms and conditions, with S even being referenced within L's terms and conditions in what appears to be an error. Mr B considers this demonstrates that S and L were defrauding victims together under different names;
- Companies House records indicate L was dormant at the time Mr B made payments to it, which Mr B considers demonstrates that L never had any intention of facilitating real investments for him.
- E and L are also connected, based on a letter Mr B received from L, introducing him to E.

As Mr B disagreed with the investigator's view, the complaint has been referred to me for a final decision.

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 broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

TSB provides a fraud guarantee that covers the period of time these payments were made, whereby customers are protected if they become the innocent victim of fraud. However, the guarantee does not cover the following:

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. I therefore need to consider whether the evidence supports that Mr B has been the victim of an APP scam here, or whether this is a private dispute between him and the firms involved.

In reaching a conclusion on this point, I have focused my consideration on the evidence surrounding E and L – these were the firms Mr B actually made payments to, and he's confirmed that any movement of funds to S was handled between the firms directly and therefore outside of the realms of what TSB could be held responsible for.

I accept that there appears to be a link between these firms and S and that Mr B has provided detailed reasoning as to why he considers S is a scam. However, Mr B's representatives are aware, from other decisions our service has provided, that S has not currently been concluded to be a scam. Therefore I don't think it's reasonable to consider a link to S to be evidence of a scam, or a reason to conclude wrongdoing by E and L. And even if I was to conclude that S was a scam, I'd still need to find evidence to suggest that E and L were complicit in the scam, rather than being deceived also. I've therefore focused on whether I consider E and L's own actions demonstrate a scam has taken place, or are sufficient to change previous considerations regarding S based on their own merit.

Considering first E, from researching the firm online I can see it was incorporated over ten years ago and remains an active firm. I've also contacted the beneficiary account provider for E. While the account provider has provided our service with information – it has done so in confidence. It has provided that which is necessary for the determination of this complaint to allow us to discharge our investigatory functions. Due to data protection laws, our service can't share any information about the beneficiaries, the receiving bank accounts or any investigation and action subsequently taken. However I would like to assure Mr B that I have thoroughly reviewed and considered all the information provided before reaching my decision.

Having done so I don't think the account use supports an allegation that E was set up as a means to defraud. I say this based on payments from the account that would align with E's line of work.

Mr B has raised concerns that he never saw evidence of his wine investment, but I don't think this is particularly suspicious in the circumstances – as it's not unusual for an investor to not see their physical investment and I've not seen evidence of Mr B requesting to see this and being denied. Similarly, while I agree with Mr B that a convincing online presence does not preclude a scam, I think it's important to remember here that E is still actively operating and the overall online feedback currently available (while mixed to an extent) does not support the notion that E is running a scam. E has been featured by a number of credible online newspapers regarding the whiskey and wine investment industry and I'm unaware of any investigations currently taking place regarding E by any authoritative body.

In relation to Mr B's concerns around VAT and accounts discrepancies, while these help to paint an overall picture of how E may be run, I don't think they're sufficient to form a conclusion that E was a scam against the evidence to the contrary and can be equally explained by ineffective business practices, or another variable entirely. For example, Mr B has questioned the difference in E's assets in its account balances across the years he invested and how such a high proportion of E's assets appear to have been purchased by him, but this requires assumptions to be made about what other assets might have been purchased and sold that year, or whether all wine invested in was even owned beforehand by E specifically, rather than via brokers etc. I think there are simply too many unknowns and other possible scenarios to account for the evidence put forward that would not infer a scam has taken place to determine that this is the most likely outcome.

I also have to bear in mind that at the time E contacted Mr B to move his funds, he doesn't appear to have had concerns about the investment and therefore, if it was a scam firm, it's not entirely clear what the benefit of 'moving' Mr B's funds was for E. For example, we may see cases in a scam where an initial beneficiary bank is blocked and therefore victims are told to make payments elsewhere to continue the scam, but Mr B hasn't alleged this and I haven't seen evidence to support this either. As mentioned, E is still an operational business, and so even if it was a scam (which I don't consider to be the case here), it's unclear why E would have involved other companies unnecessarily in the scam, rather than continue to take payments from Mr B directly.

Overall, I don't think the evidence currently available supports the conclusion that E obtained funds from Mr B for fraudulent purposes and therefore I don't think the payments are covered by TSB's fraud guarantee.

Moving onto L, a notable proportion of Mr B's testimony of why L was a scam is based on its association with S. However, as mentioned, our service is not currently of the opinion that there is sufficient evidence to conclude that S was a scam and so an association with S would also of course not lead me naturally to a different conclusion. And as mentioned, even if it was to be later determined that S was a scam, I would then need to be satisfied that L was complicit in the scam, rather than an unwitting associate. Similarly, when considering L and S having the same terms and conditions, this again supports there may be a link between firms (although could also be explained in other ways, such as replication) – but as I'm not of the opinion that S is a scam, it follows that L having the same terms and conditions, or a link between firms doesn't lead me to reach a different conclusion on L.

Mr B has raised concerns regarding his funds being transferred directly between E, S and L, rather than back to him to reinvest, and has suggested this to be illegitimate but I disagree on this point. There are a number of genuine investment options where the transfer of the investment occurs between firms, rather than funds being first returned to the customer. In the circumstances of this complaint, there could be a number of legitimate reasons for doing so (which would also explain the association between firms) such as internal deals or agreements in place that are mutually beneficial for both parties. This would also explain the exact funds transferred being used to purchase prints if a deal was struck between E and S.

When considering L being dormant, I accept this is a concern and suggests funds were being accepted by L but not declared. I agree with Mr B that this may suggest L had a propensity for dishonesty, although on its own, not enough to determine the intent to scam its customers.

I've therefore thought about L more widely and whether there are signs it may have intended to scam from the outset – but the available evidence doesn't support this view. Reviewing L online, I haven't found other concerns raised about the legitimacy of the firm. Similarly, as with E, we've also obtained evidence from L's beneficiary account provider. Again, payments

on the account align with L's line of work and there is also a lack of other claims made against the account, as would be expected for a fraudster.

Mr B has also raised concerns with the same agent advising Mr B both times to move his investment and this demonstrating a link. But again, I'm not disputing there is most likely a link between the firms. But any such link does not demonstrate wrongdoing, particularly when no firm individually has been confirmed as fraudulent and I don't think the evidence suggests that the transfer of Mr B's investment was more likely to be a scam than other possible scenarios such as a business deal between different firms.

Ultimately, I have to decide the case on the facts and information currently available to me. Based on the evidence available, I'm not able to conclude there is sufficiently persuasive evidence that shows TSB was wrong in saying this was a civil dispute and therefore not covered by its fraud guarantee.

If new material information does come to light, at a later date, then a new complaint can be made to TSB. But I'm satisfied, based on the available evidence that I have seen and been presented with by all parties, that this is a civil dispute.

As referenced, TSB offered a further £200 compensation to Mr B for not reviewing his fraud claim from the outset. As I don't think this delay in reviewing his claim had any bearing on the outcome Mr B later received on his complaint, I think the offer made by TSB is fair and reasonable and I'm not directing it to pay anything further.

My final decision

My final decision is that I uphold Mr B's complaint against TSB Bank Plc in part. I direct TSB Bank Plc to pay £200 compensation to Mr B.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 1 September 2025.

Kirsty Upton
Ombudsman