

The complaint

Mr B complains that TSB Bank plc (“TSB”) hasn’t protected him from losing money to scam.

What happened

The background to this complaint is well known to both parties, so I won’t repeat everything here. In brief summary, Mr B has said that in 2020 and 2021 he made some payments as a result of an art investment scam from his TSB account and using his TSB credit card. Ultimately TSB didn’t reimburse Mr B’s lost funds, and Mr B referred his complaint about TSB to us. As our Investigator couldn’t resolve the matter informally, the case has been passed to me for a 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.

Having done so, I’ve decided to not uphold this complaint and for materially the same reasons as our Investigator.

I’m very aware that I’ve summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I’ve focused on what I think is the heart of the matter. If there’s something I’ve not mentioned, it isn’t because I’ve ignored it – I haven’t. I’m satisfied I don’t need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this, reflecting the informal nature of our service as a free alternative to the courts.

I’m sorry things have not worked out for Mr B from his payments as he expected. Ultimately, however, this doesn’t automatically entitle him to compensation from TSB.

TSB’s Fraud Refund Guarantee

TSB’s Fraud Refund Guarantee promises to reimburse customers for funds lost to scams in certain circumstances, and Mr B alleges that he made the payments as a result of a scam. However, this guarantee wouldn’t apply if I’m not persuaded Mr B was scammed. And I agree with our Investigator’s conclusion in this case that there isn’t enough evidence to persuade me that Mr B was scammed by who I’ll refer to as S. I’ll explain why.

Not every complaint referred to us about an alleged scam involves an actual scam. Some cases simply involve investments that resulted in disappointing outcomes. Some of these investments may have been promoted using sales methods that were arguably unethical and/or misleading. However, whilst customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud.

I’m satisfied from the information I’ve seen that S sold art that existed. The existence of art was also confirmed in the High Court hearing on 4 October 2024 held in relation to a

freezing order. I understand that it seems Mr B may never have seen the artwork. But that wouldn't be unexpected if it was held in storage as appears to have been intended. So I can't reliably say here that Mr B paid money for an investment in art that didn't exist.

Value and resale of the art

I understand some concerns have been raised with the value of the prints purchased and their actual resale value and potential. However, ultimately, I have to place weight on the fact Mr B made the payments to S on the understanding that it would purchase specific pieces of art to be held on his behalf, and the evidence indicates this is what most likely happened. We also know that there were contracts in place with the artists whose prints were sold. And that, when contacted, some of the newer artists didn't agree their work had been overvalued.

The value of art is also a subjective area. And the nature of this industry means that markups on print values aren't uncommon. Although I do recognise the markup indicated here is arguably higher than what is generally seen, this isn't enough in itself to say S was running a scam or fraudulent operation.

There has been reference to a judgement handed down in relation to the freezing of accounts linked to S and the alleged scam, and multiple affidavits, including an affidavit from the liquidator which was submitted to the court. I accept that in the freezing order, the judge referenced that there was no real secondary art market for what was purchased and I also accept that this would be contrary to what investors were told. It seems that when sales did take place, S was buying back the art itself to enable the investor to make a profit, rather than actually selling it on to a new customer. So this indicates there may not be a genuine increase in market value or a known market for this art.

I also accept that who bought the art wasn't disclosed to the investors, and that buying the art back may have been a tactic used to get investors to then buy further prints, as it appeared their investment was running successfully. This does raise some questions around how S was operating and the investment scheme, especially in relation to information being misrepresented. But some potentially dubious business/sales practices aren't enough to persuade me that S's intention when taking the payments was to defraud Mr B. And the judge made it clear that the merits of any fraudulent activity taking place (including findings on the actual value of the art and the existence of a secondary market) were not within the remit of the hearing and instead were something that had to be considered in a trial.

A "good arguable case for fraud" and the affidavits

Mr B has seemingly referenced other comments by the judge including their findings that there was a good arguable case for fraud. However, the judgement also makes it clear the threshold for a 'good arguable' case is low – lower than 50%. Considering this test, I'm not persuaded the judge's finding can equate to it being *more likely than not* investors have been scammed. As above, the judge makes it clear that these matters will need to be decided at trial.

I've seen copies of affidavits which were all signed prior to the freezing order from the judge. In particular, I'm aware of the liquidator's first affidavit and sections in it relating to the director receiving proceeds of fraud; fraudulent trading; and breach of trust/fiduciary duty. I recognise the comments made in this document and the conclusions being drawn by the specific sections. But reading this document in full, following these highlighted sections, the liquidator also then moves to "*Full and frank disclosure*" and the five pages that follow set out the arguments that could be made by those involved in S to counter these accusations.

I recognise the conclusions reached despite the inclusion of the disclosure section – and that this section is part of providing a balanced view. But this does indicate that there could possibly be legitimate reasons or explanations for some, or if not all the concerns raised. And this is just the liquidator’s opinion of what could be said in response – it’s possible, if not probable, that S would have had more to say on these matters. Had the case gone to trial, S may have expanded on the points raised, with evidence, beyond the liquidator’s thoughts. And I note that with sight of this document and other affidavits, the judge still determined that trial was the place for these matters to be decided.

I recognise that no trial did take place, and that S agreed to settle matters outside of court. But it has been confirmed that this was on a no admission of liability/guilt basis and so S did not agree it had acted fraudulently or was guilty of what Mr B is now alleging. The settlement is confidential – including the details of how much was paid and what this was actually paid for, so I don’t consider this settlement can fairly be used to evidence the case against S. There are a number of reasons parties may choose to settle outside of court and it can’t fairly or reasonably be assumed that S did so because it was guilty.

Conclusion

We hold evidence that S was engaging in practices you’d expect for a genuine business, and I don’t hold persuasive evidence that its intention, from the start, was to defraud Mr B. Instead, I consider that Mr B’s and S’s purpose for him making these payments did broadly align, so I don’t consider the evidence currently supports the conclusion that his payments were made as a result of a scam. I therefore can’t fairly conclude that TSB ought to be obliged to reimburse Mr B his alleged losses under its Fraud Refund Guarantee.

If new material information does come to light at a later date, then it’s possible that a new complaint might be able to be made by Mr B to TSB. But I’m satisfied, based on the available evidence that I have seen and been presented with at this time, that this is a civil dispute.

Interventions and recovery

As I haven’t concluded that these payments were made as the result of a scam, there is no basis upon which TSB ought to have intervened in Mr B’s payments before they were allowed through to prevent them. But in any event, even if TSB had decided to question Mr B about what he was doing and determined he was investing, I don’t consider proportionate questioning or warnings would have prevented him from going ahead at the time of the payments. At the time he paid the funds, there was nothing in the public domain to suggest a potential problem with S. So even if TSB had directed Mr B to do further research, I don’t consider this would’ve changed his decision to invest at the time.

I’ve then considered whether TSB could’ve done more to recover the funds Mr B sent to S after he reported he’d been scammed. But I’m not persuaded that it could’ve recovered anything – both due to the time passed since the payments were made (in relation to both funds being spent by the receiving party and time limits on card claims under chargeback) and the evidence required to successfully claim funds back.

In relation to the credit card payments evidenced, it’s not clear if a claim under Section 75 was considered. But I’ve not seen any contractual commitments to the value of the art increasing, instead I understand this was stipulated as a potential. And while the value of the art at the time of purchase may have been misrepresented to Mr B, this matter never went to trial. So this allegation was never shown to be true/proved, meaning I haven’t seen any evidence a Section 75 claim would’ve succeeded.

This means, I can't fairly say that TSB has done anything wrong in this case or that it should be required to do anything further.

My final decision

For the reasons explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 3 March 2026.

Neil Bridge
Ombudsman