Financial Ombudsman Service

complaint

Mrs T and Mr C are unhappy TSB Bank Plc (“TSB”) hasn’t reimbursed them for their losses after they transferred money to an investment company that turned out to be a scam.

background

In March 2018 Mrs T was cold called by a scammer posing as an investment company. She was persuaded to transfer £10,000 from a TSB bank account she shared with Mr C to the scammers. She was told the money would be invested and she would receive an 8% return and guaranteed no loss if she withdrew from the investment after 12 months because she wasn’t satisfied with its performance.

Around four months after the transfer she was contacted by the police who informed her the account she’d paid the money to was under investigation as it was linked to fraudulent activity. She reported the matter to TSB which tried to retrieve the funds, but they’d already been removed from the receiving account. It later confirmed it didn’t feel it was at fault and so wasn’t going to reimburse her for the loss.

Mrs T and Mr C raised a complaint about the way TSB had handled the situation. TSB didn’t change its position but did offer £300 in recognition of a system failure that happened around the time Mrs T was contacted by the scammer. Unhappy with TSBs response, Mrs T and Mr C brought the complaint to our service to consider.

Our investigator upheld the complaint and asked TSB to reimburse them for the loss. They felt that TSB had missed an opportunity to recognise the transfer was significantly unusual activity for this account and make enquiries into what it was for. The investigator felt that had this been done, TSB would’ve likely alerted Mrs T to the scam and the payment wouldn’t have been made.

Mrs T and Mr C accepted the investigator’s findings but TSB didn’t. It didn’t feel the transaction was unusual enough to have triggered an intervention. And, even if it had intervened it didn’t accept it would’ve prevented Mrs T from making the payment because:

- she would’ve told it she was investing in a company that was recommended by a trusted family member who had been investing for years and had seen good returns
- she’d carried out her own research and checks into the investment company
- the investigator had acknowledged that she was fully persuaded by the scammers so intervention from TSB wouldn’t have changed this

As TSB didn’t accept the investigator’s findings the complaint has been passed to me to decide.

my findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

should TSB have done more to prevent the transfer?

There’s no dispute the transfers Mrs T made were ‘authorised payments’ even though she was the victim of a sophisticated scam. She made the payments herself and under the

Payment Services Regulations 2017, and the terms and conditions of her account, Mrs T is presumed liable for the loss in the first instance.

But I've also taken 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. As such I think TSB should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had 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). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

In this case, I think the transfer of £10,000 ought to have prompted TSB to intervene and ask Mrs T and Mr C more about the payment and what it was for.

Whilst I've considered TSB's response regarding this point carefully, the payment was for significantly more than any other transfers out of the account in the two years leading up to it and was being made to a new payee. I agree it's important to take into account the other factors TSB has mentioned in the round. But I don't think any of the other considerations, such as the overall balance across accounts or the fact that a consumer might legitimately be transferring money between accounts before a particular purchase was enough here to ignore the unusually high value of the transfer and the new payee combined.

Overall, I think the transfer ought reasonably to have prompted TSB to contact Mrs T and Mr C to make further enquiries.

would TSB's intervention have made a difference?

Having considered everything carefully, overall I think it's more likely that had TSB intervened and questioned Mrs T about the payment as I think it ought to have, it would've learned enough to have warned her of the scam and the payment wouldn't have been made. I think this because:

- Had TSB contacted Mrs T to ask her about the payment I can't see any reason she wouldn't have told it she was making an investment as this is what she believed she was doing. And after ascertaining this there are a number of enquiries I would've expected TSB to make. For example, was she cold called, what rate of return she was offered and did she feel pressured or coerced into making the payment.

- I would've expected TSB to have given Mrs T warnings about investment scams and how she could best protect herself against them, including directing her to the Financial Conduct Authority's ("FCA") website which has specific pages dedicated to avoiding investment scams. Especially as, according to TSB's records, the firm had indicated to Mrs T it was registered with the FCA but none of the checks Mrs T had carried out appear to have included a search of the FCA register or its website.

- Although TSB has recorded Mrs T was referred to the scammers by a family member, she's said she was cold called and wasn't expecting any contact from them. She's said when they contacted her, she recognised the name and made the connection they'd been working with her father in law which is why she was happy to continue speaking to them. And whilst I recognise they did have a contact in common, I have no reason to doubt Mrs T's recollection of events. Had TSB intervened at the time she made the payment, I can't see why she wouldn't have confirmed how she'd been contacted by the scammers at that point.

- In addition to being cold called Mrs T was offered an 8% return and guaranteed no loss in the first 12 months. In my experience, that's a fairly generous and unlikely return given the type of investment Mrs T was making. I think these facts ought reasonably to have alerted TSB to a potential problem and prompted it to give Mrs T sufficient warning that what she'd described was fairly typical of an investment scam.

- On the day she made the transfer to the scammer, who'd she'd spoken to a number of times, Mrs T said they'd started to 'bombard'' her with contact, and she felt pressured into making the payment on the spot and before she'd received the paperwork she'd been told they would send. Had TSB questioned her, I would've expected it to ask her if she'd felt pressured or coerced into making the payment and based on what she's said I think it's likely she would've answered "yes". And upon learning this, again, I would've expected it to recognise this as a warning sign and communicated this to her.

- A trusted family member of Mrs T was unfortunately victim of the same scam. But at the time she made the payment she believed they'd made a legitimate investment and had received a return. So had she been asked I think it's likely she would've said she trusted the company for this reason and believed the investment was legitimate. But, I think TSB ought to have considered this information in the context of the other clear warning signs. It's not uncommon for scammers to give modest 'returns' to victims in order to lure them into investing further, larger sums. And as a business with experience of this type of scam I'd expect TSB to know this and have taken it into account where a layperson like Mrs T wouldn't necessarily. If it had informed her that this, along with the other points I've mentioned above aren't unusual for investment scams, I think she likely would've thought twice before making the transfer.

- Mrs T has said she carried out many of her own checks on the scammers before making the transfer. She checked Companies House, searched for articles about them, researched the type of investment they said they were involved in and searched their address on the internet. So it's clear she recognised the importance of working with a reputable firm and she had some awareness that scams exist. But, as a professional business with experience of this type of scam I think TSB ought reasonably to have recognised these types of checks don't offer much assurance or protection against fraud. And, as I've mentioned above, I think it ought to have directed her to the FCA for further information.

I've also considered whether Mrs T and Mr C should bear some responsibility by way of contributory negligence. However, it is clear that up to and including the time of authorising the payment, Mrs T still believed she was making a genuine investment. And whilst TSB has suggested this means she wouldn't have been convinced not to make the payment had it intervened, I disagree. TSB was the professional in financial matters and Mrs T was the layperson. Had it asked sufficiently probing questions as I think it ought to have and given her sufficient warnings about how this type of scam worked, I think it's likely it would've dawned on her that she was the victim of a scam and the payment wouldn't have been made.

In the circumstances, I think TSB missed an opportunity to prevent Mrs T and Mr C from making the payment so it should reimburse this to them. In addition, if the transfer hadn't been made I think the money would've likely remained in a savings account. So this amount should be reimbursed together with interest to compensate them for being deprived of the money they lost.

I've also considered the distress and inconvenience Mrs T and Mr C have been caused by the scam and the way TSB handled the situation. It has previously offered £300 for its system failure and the customer service it's provided and overall I think this is fair. If it hasn't paid this already it should do so now.

my final decision

For the above reasons, I have decided it is fair and reasonable to uphold this complaint about TSB Bank Plc – and therefore require it to:

- Pay Mrs T and Mr C £10,000
- Pay interest on that sum at 8% simple from the date the money left the account to the date of settlement*
- If it hasn't already, pay £300 compensation in recognition of the distress and inconvenience caused

* If TSB considers it's required by HM Revenue & Customers to deduct income tax from that interest, it should tell Mrs T and Mr C how much it's taken off. It should also give Mrs T and Mr C a tax deduction certificate if they ask for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Mr C to accept or reject my decision before 1 March 2021.

Faye Brownhill
ombudsman