

complaint

Mrs H complains that TSB Bank plc has declined to refund the money she lost when she fell victim to a scam.

TSB says it is not liable for the loss because Mrs H unwittingly authorised the payment — and it could not reasonably have intervened or done more to try to recoup the money from the payee bank.

my findings

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 have concluded that the fair and reasonable outcome, in all the circumstances, would be to uphold this complaint for the reasons I set out below.

Mrs H and her husband were both in their 70's at the time of this scam (March 2018). Initially there appears to have been a 'phishing' attack where they received a call purportedly from their satellite television provider. This appears to have been intended by fraudsters to obtain information and to add to the plausibility of the subsequent scam call.

Mrs H's husband then received a call lasting some considerable duration purportedly from his own bank's fraud prevention team. During this call he was deceived by fraudsters into thinking that several of their accounts were at risk - including Mrs H's current account with TSB. They were persuaded they needed to act quickly to protect their money.

In consequence, Mrs H believed that in order to protect her money, she needed to move it to a temporary 'safe account'. She therefore transferred almost the entire balance of her current account to this 'safe account'. In reality, there was no such safe account and the money had been sent to an account controlled by fraudsters.

Subsequently additional payments were made from her husband's accounts directly to the scammer (accounts held with another bank and now refunded in full by that bank). Again, this was done following the scammer's instructions, both believing in doing so they were protecting their money.

Mrs H's husband then transferred some of his money into her TSB current account. None of these credits reached Mrs H's account until after she'd already sent her own money. TSB blocked their subsequent attempt to transfer money out from Mrs H's account, thankfully preventing further loss. However, as a result of the scam Mrs H had lost the initial payment of £2,300.

TSB doesn't consider it is liable to refund Mrs H the money she lost. In its submissions to this service, it says it doesn't believe it was at fault in carrying out Mrs H's instructions to make the payment. TSB says the payment was authorised and there was nothing about it that should've put the bank on notice that Mrs H might've been at risk of financial harm. It comments that customers often transfer money across to a current account (such as Mrs H's account) in the days prior to a considered purchase or large payment, and it was normal to then make a large transfer out in such circumstances. It also said its website provided scam warnings which should have alerted Mrs H to the risk.

I accept that this was an 'authorised payment' even though Mrs H was the victim of a

sophisticated scam. I'm satisfied the balance of the evidence shows Mrs H took the necessary steps to authorise TSB to make the payment from her account. So, although she did not intend the money to go to the fraudsters, under the Payment Services Regulations 2017, and the terms and conditions of her account, Mrs H is presumed liable for the loss in the first instance.

However, taking into account the law, regulator's 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 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.

I've looked at the activity that took place during the scam and at the pattern of account usage in the six months prior, as provided by TSB to our investigator. In accordance with the fraudster's instructions, Mrs H transferred £2,300 from her current account to the 'safe account', equating to almost the entire balance of her account at that point. I consider the following factors are particularly relevant here:

- Her account history suggests the account was principally being used for day-to-day expenditure comprising smaller value transactions. It was in regular usage throughout the six months prior to the scam.
- Despite this account being in regular usage in that period, Mrs H had made no outbound Faster Payments transfers. So, the scam payment represented the first such made from Mrs H's account for a period of at least six months.
- Her account balance fluctuated relatively little, in the six months prior to the scam the lowest balance was around £1,900, and the highest around £2,500;
- There was no credit greater than £100 in the period prior to the scam. I see nothing in the account history to support TSB's suggestion of a prior transfer of funds in anticipation of a large 'considered payment';
- The largest payment evidenced in the previous six months was a card payment of £300, and that constituted the only payment greater than £100;
- The initial scam payment of £2,300 in itself accounted for over 97% of Mrs H's account balance.
- This payment was being sent to an account that Mrs H had never made a payment to before - a new account payee that Mrs H had set up only a very short time earlier.

Thinking about the above, I'm persuaded the payment was so significantly unusual and out of character for Mrs H that TSB ought to have had concerns that Mrs H might be at risk of financial harm here. Furthermore, this account activity had the hallmarks of a typical safe

account scam - and so was the type of suspicious account activity that I consider TSB should be on the lookout for.

TSB comments that it has an obligation to debit its customer's accounts in line with the account mandate. It says that by allowing the payment to leave the account here, it was simply following Mrs H's payment instructions.

I accept there is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. But for all the reasons I've explained above, I think there was enough here that TSB ought fairly and reasonably to have identified that Mrs H was potentially at risk of financial harm. I'm persuaded that as a matter of good practice, TSB should have carried out additional checks to reassure itself that this was not the case before processing the payment.

Mrs H fell victim to a scam which is sadly all too prevalent – a safe account scam. And it's a type of scam I'm satisfied TSB was aware of at the time. In that light, I've considered what most likely would've happened had TSB contacted Mrs H about this payment as I believe it ought to have done in the circumstances.

I've seen nothing to suggest Mrs H had been given a robust 'cover-story' by the fraudsters or instructed to lie to TSB about the reasons for the payment. And Mrs H doesn't recall that to be the case. This seems supported in the observation that the payment reference she input was simply her own name. I'm satisfied that even the most basic level of questioning as to the purpose and destination of the payment would have meant Mrs H would have struggled to provide TSB with a clear or compelling answer, and the bank would therefore have had cause for further and growing concern about the nature of this transaction.

TSB points to Mrs H's later failure to fully recall some of the relevant events including aspects of the authorisation process. It suggests this indicates she might have deliberately hidden what was happening, had it questioned her at the time. I don't consider this conclusion is supported by the available evidence. The evidence TSB points to here strikes me as simply being consistent with her and her husband experiencing the consequences of being the victims of a traumatic deception and fraud.

On balance, I find that ultimately Mrs H *would* have told TSB she was transferring her money to a 'safe account' upon the instructions of another bank's fraud department. I'm satisfied that such a disclosure ought reasonably to have been sufficient for TSB to immediately identify that Mrs H was about to fall victim to a typical safe account scam. As a result, I would expect TSB to have acted to break the fraudster's spell and in doing so, to have prevented the transfer and subsequent loss.

In light of my conclusions above, it is not necessary in this case to give full consideration to whether the bank also exercised enough care and urgency in trying to recover the stolen funds from the payee bank before they were irretrievably removed by the scammers. TSB has explained that it contacted the receiving bank promptly after the scam came to light, but was informed that no funds remained to be recovered.

As part of my review of this matter, I have also considered whether Mrs H should bear some responsibility by way of contributory negligence.

TSB states that there were warnings both on its website and on its online banking site about this type of scam. It says Mrs H must have failed to take heed of these warnings. It has

provided copies of several possible warnings that could have been displayed. I can see that some of the sample warnings TSB has provided in its submissions on Mrs H's complaint relate to similar scams, but others do not. TSB acknowledges she was not a regular user of internet banking and has not stated which of the various possible warnings she might have been shown on this occasion. I'm not persuaded TSB's records conclusively demonstrate whether a relevant warning message was or was not displayed. Mrs H and her husband say they have no recollection of seeing any such warning.

I've taken TSB's representations on this point into consideration. But I am not persuaded this evidence supports a finding of contributory negligence on the part of Mrs H (or for that matter her husband). Even if I were persuaded there were relevant warnings in place at the time, it's clear they had no impact on Mrs H and the success of this scam – Mrs H still fell victim to it. Given what she and her husband describe having happened, it rather seems to me that in the course of a lengthy phone call with a scammer, and the concern that her money might be at imminent risk of theft, a text box displayed on the side of the screen might reasonably not have had much impact relative to the persuasive verbal prompting of a determined fraudster.

More generally, I consider it clear that up to and including the time of authorising the payment, Mrs H was still totally in the dark and simply did not appreciate what she was doing, this being a reasonable consequence of the scammer's persuasiveness and persistence. She thought she was protecting her account from fraud, not facilitating it.

I am satisfied there was no contributory negligence on this occasion, she was simply the unwitting and blameless victim of a clever fraudster. The bank was the professional in financial matters; here Mrs H was the layperson. In the circumstances I consider TSB should fairly and reasonably reimburse Mrs H for the loss she suffered in making this payment without any reduction, together with interest to compensate her for being deprived of the money she lost.

I also think it is appropriate to make a modest award of £200 for the distress and inconvenience Mrs H has suffered. She has detailed the impact these events had on her and the extent to which this impact has endured. In reaching that finding I am mindful that her loss here was ultimately caused by the callous act of a fraudster and it was a transaction she authorised. However, I consider TSB should ultimately have prevented the payment.

my final decision

For the above reasons, I have decided it is fair and reasonable to uphold Mrs H's complaint about TSB Bank plc — and I therefore require the bank to:

- Refund Mrs H the sum of £2,300 (less any sums TSB Bank plc has already refunded or recovered to Mrs H) within 28 days of receiving notification of her acceptance of my final decision; plus
- Pay interest at the simple rate of 8% per year on that amount (less any tax properly deductible) from the date of loss to the date of refund¹.
- Pay Mrs H £200 for distress and inconvenience.

¹ If TSB Bank plc is legally required to deduct tax from the interest it should send Mrs H a tax deduction certificate so she can claim it back from HMRC if applicable.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 22 January 2021.

Stephen Dickie
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