

Complaint

Mrs S is seeking to recover £20,000 from TSB Bank plc which was stolen from her bank due to a third-party scam.

TSB Bank plc says they're not liable for the loss because Mrs S authorised the payment and it could not reasonably have intervened or done more to try to recoup the money from the receiving bank.

Background

Both TSB and Mrs S accept that Mrs S authorised the two scam payments totalling £20,000. And she was duped by the scammers into transferring the funds to them. They deceived Mrs S into thinking she was investing in a genuine FCA approved investment company I'll call A. Unfortunately for Mrs S she was in fact speaking with *scammers* who'd *cloned* the genuine investment company and persuaded her to invest £20,000 in the form of two payments. Both payments were for £10,000 with Mrs S investing £10,000 via a branch transfer in January 2019 then the same amount via an online transfer in February 2019.

Mrs S believed that she was investing in a monthly income plan – and after the second investment Mrs S received a dividend instalment payment from the scammers making her believe the investment was genuine. However Mrs S became suspicious after not receiving her second monthly dividend and on being unable to contact the scammers.

At this point Mrs S contacted TSB to raise a complaint.

Our investigator looked into Mrs S's complaint but didn't uphold it. He said that TSB had asked Mrs S appropriate questions and there wasn't anything to indicate Mrs S had fallen victim to a scam. He also thought TSB had done enough to attempt to recover the funds.

Mrs S didn't accept our investigator's findings. So it's come 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. And I realise this will disappointment Mrs S, but in doing so I've reached the same conclusion as our investigator for broadly the same reasons.

I accept that both transfers were 'authorised payments' even though Mrs S was the victim of a sophisticated scam. Mrs S used her security credentials to request the payment. So, although she didn't intend the money to go to the scammers, under the Payment Services Regulations 2017, and the terms and conditions of her account, Mrs S is considered to be liable for the loss in the first instance.

But this isn't the end of the story. I also need to take into account the law, regulators rules and guidance, relevant codes and practice and what I consider to have been good industry practice at the time. In summary this says that TSB have a responsibility to monitor accounts and payments made to, amongst other things, prevent fraud and scams. And they need to have systems in place to look out for *unusual* transactions or other *signs* that might indicate its customers are at risk of fraud. TSB also have responsibilities to protect customers from financial crime.

However, taking 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, 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.

Mrs S made the first payment in branch in January 2019. I've thought about what happened in branch when Mrs S visited and whether I think TSB did enough to identify if the transaction was suspicious. After reviewing the evidence, and I realise this may disappoint Mrs S, I think TSB did. There's a dispute between the bank and Mrs S about exactly what happened when Mrs S visited the branch in January 2019 and made the payment. I've seen documentation provided by TSB which states Mrs S was asked if she'd previously invested in A to which she replied she had. Mrs S contests this, and asks why she'd say this considering this wasn't the case. Mrs S instead argues that she asked TSB if A was a *genuine* company or not and the bank responded yes. It's not possible for me to determine exactly what happened when Mrs S visited the branch, but I need to reach my conclusions on what I think most likely happened. I understand that Mrs S is adamant she wasn't asked whether she'd paid A before and therefore didn't advise TSB of this. But, I find the evidence I've seen from TSB persuasive. I say this because it's a document completed at the time of Mrs S's bank transfer, and on balance I can't see a plausible reason why TSB would have a record of this conversation if it didn't happen in the way it was recorded.

This is important to my conclusions – because it impacts on what I'd expect TSB to do in the circumstances. If, as I think on balance occurred, Mrs S informed TSB that she'd made a payment to A before I don't think there were sufficient reasons for TSB to identify the first transaction as an *unusual* transaction. It was a larger than usual transaction for Mrs S, which is a factor TSB should have considered, however once they were informed that Mrs S had made a previously made a payment to A I wouldn't expect it, on its own, to be enough to raise suspicions within the bank.

Even if TSB had asked further questions at their meeting with Mrs S, I don't think this would have impacted on whether they identified the transaction as *unusual* and led to advice from the bank to Mrs S to not make the payment. I say this because unfortunately the documentation Mrs S received from the fraudsters was very convincing. The cloned documentation included an accurate Financial Services Registration number and a warning about the firm being unregulated wasn't added by the FCA until *March 2020*. Mrs S has also explained that her husband had checked the register and searched for any warnings – therefore if TSB had asked what research Mrs S had completed I think it's likely she would have reassured the bank that she'd carried out research to check the legitimacy of the business.

I've moved on to consider the second authorised payment for £10,000 which was made in February 2019 via online bank transfer. This payment wasn't picked up as *suspicious* by TSB and the bank didn't ask Mrs S any questions about its purpose or the intended recipient. However, it's important for me to think about whether or not this payment should have triggered TSB's fraud awareness systems and led them to identify the payment as an *unusual* transaction. I realise this will disappoint Mrs S but I'm satisfied that the payment wasn't sufficiently out of character for TSB to act. I say this because the payment was made to the same payee details as the first payment and wasn't for an unusually large amount in comparison to Mrs S's previous activity – considering the previous transaction of £10,000 in January 2019. And I can't see any other factors which would lead me to conclude TSB should have approached Mrs S to discuss the legitimacy of the payment. For this reason I wouldn't have expected the transaction to trigger TSB's fraud detection systems.

Did TSB do enough when notified about the scam?

TSB have advised that initially on being notified by Mrs S about the scam they used the wrong bank details when contacting the receiving bank, Bank N. And unfortunately by the time TSB made contact with the receiving bank the funds were irretrievably removed by the scammers. However – and I realise this will be very disappointing to Mrs S – I'm satisfied that if TSB had made contact sooner it wouldn't have made a difference because Bank N's record show that the funds were withdrawn within 24 hours of arrival.

For the reasons I've outlined above I won't be asking TSB to do anything further here.

My final decision

My final decision is I don't uphold this complaint.

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

Jeff Burch
ombudsman