

Complaint

Ms L complains that TSB Bank plc (TSB) won't refund £25,000 she lost when she was the victim of a scam.

Background

I issued a provisional decision on 17 November 2020 asking TSB to refund Ms L £25,000 plus account interest. My provisional decision, which I've set out below, explains what happened.

"Upon reading all the available evidence and arguments, I have concluded that the fair and reasonable outcome, in all the circumstances, would be to uphold this complaint for the following reasons:

It is common ground that Ms L authorised a payment of £25,000 on 14 November 2018. She was duped by the scammers into completing an online transfer to a fake investment company to buy a bond.

After selling a house Ms L had a larger than normal balance in her TSB account. As she was concerned her balance wouldn't be protected, she looked in to buying a bond and also transferred funds to a newly opened account. After searching for bonds online Ms L completed some contact details on company A's site and later received a call from it. The agent of company A stated it sold the products of a well-known provider. Ms L was provided with details by email and had a number of conversations with company A. Ms L hadn't bought a bond before and says that as her brother is good with money, she asked him to look in to company A. She doesn't know the nature of her brother's search, but he told her he thought company A was a legitimate business. Ms L says she thought her brother had consulted her daughter in law, who was an investment banker, but later discovered he hadn't.

I accept that this was an 'authorised payment' even though Ms L was the victim of a sophisticated scam. She 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, Ms L 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.*

As I've explained above, I consider that as a matter of good practice TSB should have been on the lookout for out of character or unusual transactions. So I've first considered whether the £25,000 payment request Ms L made was out of character and unusual. Having reviewed her bank statements for the six months before the transaction I'm satisfied it was. Ms L made mainly low value payments from the account. The largest payment in the period was a direct debit payment for £4,255.59 to a car finance company. The next largest payments were for £1,500 to family members. Ms L used internet banking infrequently and this was the first international payment she'd made. So I consider the payment to be unusual.

TSB has said the payment Ms L made on 14 November 2018 didn't flag as unusual. It referred to the fact Ms L had a telephone conversation with TSB on 13 November after an online transfer she tried to make the previous evening was stopped and her account locked. The blocked payment was for £60,000 and was to a new bank account Ms L had just opened. During the call Ms L explained she had a high balance in her TSB account because she'd sold a house. She now wished to spread her funds across different accounts as she didn't have FSCS protection for the whole balance and also planned to buy a bond and get an ISA. In the call Ms L said, "so there'll probably be quite a lot of unusual activity going on with that account over the next couple of weeks". TSB said that following this call it was less likely to ask further security questions for payments from the same device.

Despite the call the day before I believe TSB should have identified Ms L may have been at risk of financial harm when she transferred £25,000. The £60,000 payment had not been released, and in any event was to another account in Ms L's name. In fact, the payment was never made and instead Ms L issued a cheque for £50,000. I also don't think it was reasonable to rely on a comment by Ms L that there was likely to be more unusual activity on the account without any further investigation.

I consider TSB ought fairly and reasonably to have identified that Ms L was potentially at risk of financial harm when she made an international transfer for £25,000 and made additional checks before processing the payment. Specifically, I consider TSB should have asked Ms L about the reason for the payment at the time, how she found company A, what checks she had completed, the rate of return and why it was an international payment.

Had TSB contacted Ms L and asked her some questions about the payment I believe it's more likely than not the scam would have become apparent and would have been prevented. I say this because:

- *If Ms L had been asked if company A was FCA registered she would have said she didn't know, as Ms L has confirmed she didn't check this. Company A wasn't FCA regulated and wasn't selling the products of an FCA regulated company but a clone of one.*
- *Any questions about the checks Ms L had completed would have identified she didn't do any herself and wasn't aware of the nature of the checks completed by her*

brother. Whilst Ms L has said her brother was good with money, she hasn't suggested he had any expert knowledge.

- *The annual rate of return for the three-year bond was 10%, which is high and, if discussed, would have been a red flag.*
- *Ms L would have struggled to explain why she was making an international payment for a bond taken out through a company that was supposedly registered in the UK (but was in fact cloned).*

Given all of these factors I consider that had a conversation have taken place it's more likely than not Ms L wouldn't have made the payment.

I have also considered whether Ms L should bear some responsibility for her loss. I'm satisfied Ms L was the victim of a sophisticated scam and that she genuinely believed she was making a legitimate investment through a well-known company. She asked her brother to complete some basic checks on her behalf and at the time of the transfer believed her brother had consulted her daughter in law, who was an investment banker. In the circumstances I don't think Ms L acted unreasonably."

Ms L accepted my findings, but TSB did not. It said:

- The nature and level of Ms L's transaction wouldn't trigger any further investigation and wasn't so unusual as to put TSB on notice of potentially fraudulent activity.
- TSB employs monitoring systems and fraud prevention and detection tools which strike an important balance between allowing legitimate transactions and preventing those that might be fraudulent.
- The requisite industry standard to assess TSB's actions against is whether TSB has proportionately challenged payment instructions where it had reason to believe a customer may be a victim of fraud. The BSI PAS Code shouldn't be applied as a tick list as, for example, adding a new payee is not in itself unusual.
- Ms L's actions in moving funds after her account was credited with a large sum from a house sale were not at all unusual.
- The day before the transaction in question Ms L had attempted to make an online payment of £60,000 to another payee but TSB stopped the payment and blocked her account as the payment exceeded the online Faster Payment limit. This meant TSB was fully aware Ms L was in control of her security details and was in the process of making some large payments.
- Had Ms L have been questioned about the £25,000 payment the outcome would be the same as she'd still have made the payment.
- TSB wouldn't have been aware at the time that the investment was offered by a clone of a genuine investment company. The first warning appeared on the FCA website on 7 March 2019, after Ms L's payment had been made.
- TSB noted that Ms L only found out that only her brother had completed some research (and not her daughter-in-law) after she was aware of the scam. So any questioning by TSB wouldn't have established that her daughter-in-law hadn't looked in to company A.
- The investigator noted that the documentation provided to Ms L was believable and would have enabled her to answer any questions raised by TSB. In the circumstances TSB would have no reason to question the validity of the documents.
- TSB noted Ms L found the investment opportunity herself and wasn't cold called; completed her own research; thought a family member who was an investment

banker had confirmed the legitimacy of the investment; the scammers followed the same process as a genuine investment company; Ms L invested in a common investment opportunity and had a genuine reason to move her money.

My findings

I've re-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 reached the same conclusion as I did in my provisional decision, for largely the same reasons.

In deciding what's fair and reasonable in all the circumstances of the complaint, I've taken in to account the same considerations as I set out in my provisional decision so will not repeat them here.

TSB has said the nature and level of the transaction wouldn't trigger any further investigation and wasn't so unusual as to put it on notice of potentially fraudulent activity, but I disagree. The payment was large given Ms L's previous transactions, was to a new payee and was an international payment. Ms L hadn't made a similar or larger transaction in the period before, had never made an international transfer and very rarely used online banking to make transfers.

I agree with TSB that, for example, setting up a new payee is not in itself unusual. But it is the combination of factors in this case that make the payment request unusual and uncharacteristic. It was a large payment, to a new payee and was an international payment. All of these facts together made the transfer unusual and uncharacteristic for Ms L. I also accept that larger payments may follow a substantial credit, as was the case here. But I don't consider this means TSB shouldn't ask proportionate questions in circumstances where the payment request is unusual and out of character.

I've considered TSB's comments about the potential detriment to customers if all payments such as Ms L's are verified before being released. And I accept there's a balance to be struck between identifying payments that could potentially be fraudulent – and then responding appropriately to any concerns – and ensuring minimal disruption to legitimate payments. But it is a question of fact and degree in each individual case.

I've also thought about TSB's assertion that its fraud detection system didn't identify the transactions as having high risk characteristics. Ultimately, it's a matter for TSB and/or the regulator as to how it chooses to configure its fraud detection systems given the balance between the duty of care towards clients and the duty to execute instructions without undue delay. But on the evidence before me I consider TSB could and should have made additional checks with Ms L before they let the payment through. And the fact Ms L was in control of her security details doesn't mean she was protected from falling victim to a scam. It simply means Ms L willingly made the payment believing she was making a legitimate investment.

I think there are certain cases where, on the specific facts, it would have been fair and reasonable for a bank to take action because the fraud alerts that they are supposed to deploy for regulatory and legal reasons probably could and should have been triggered by transactions sufficiently unusual or uncharacteristic as to arouse reasonable grounds for believing that the authorised payment is in fact an attempt to misappropriate funds. For the reasons I've explained, I'm persuaded that this is just such a case. In short, it would have been fair and reasonable for TSB to have intervened and asked discreet questions about the payment before processing it. This is in spite of the telephone call Ms L had with TSB the

day before the transaction when she said there was likely to be some unusual activity. I consider each payment needs to be considered individually and that a general comment that there may be unusual activity is not enough to dispense with the intervention.

TSB says that even if it did fail in its duty to Ms L, it doesn't consider it is liable for her loss because it doesn't believe its intervention would have made any difference to Ms L making the payment. But I don't agree. If TSB had acted on the triggers outlined above, it seems likely it would have contacted Ms L and asked reasonable but probing questions to verify she wasn't being scammed or at risk of financial harm in relation to the unusual and uncharacteristic payment she'd requested.

The transfer Ms L made was sizeable, so I think that if TSB had discussed with Ms L the possibility that she was not making a payment to a genuine investment company she would most likely have taken TSB's warnings seriously and acted differently. I consider that she would have taken simple steps to verify the details, such as checking the FCA register.

Although the scam warning in respect of company A wouldn't have been on the FCA website at the time of the transfer, Ms L wouldn't have found company A on the FCA register as it has never been FCA regulated. And the cloned investment company she thought she was taking the bond out with had a different name and contact details on the FCA register.

If she'd been given a scam warning I don't consider Ms L would have been content to release the payment when she'd made no checks herself and did not know what checks her brother had completed on her behalf. So, at the very least, I think Ms L would have delayed the payment while she established the nature of her brother's checks, at which point she'd have found out he hadn't checked the FCA register or consulted Ms L's daughter in law. There's no evidence that Ms L was put under any time pressure to make the payment and she hasn't suggested there was any rush to buy the bond.

TSB noted the investigator said the documentation provided to Ms L in respect of the investment seemed genuine. To an inexperienced investor, it did. But there were a number of red flags in the emails and bond pack Ms L has provided. For example, the bond pack says that if the customer has any queries, they should contact company A or the clone of the well-known provider of the bond. The telephone number provided was not that of the well-known provider and the company number was incorrect. Emails from the bond provider didn't show any contact details of the sender and there were some errors. So whilst I can understand why Ms L felt the documentation was genuine, there were some red flags. Action Fraud says anyone considering an investment opportunity should double-check all the details of the firm on the FCA register, including its registration number and its telephone number.

For the reasons given above, I uphold Ms L's complaint against TSB. I don't think it was fair and reasonable for TSB not to refund the amount Ms L lost through becoming the victim of a scam. To put her back in the position she was in before the scam TSB should refund Ms L what she lost through the scam and also refund interest as set out below.

My final decision

For the reasons I've set out TSB Bank plc should:

- Refund Ms L the £25,000 she lost, less any funds recovered;

- Pay interest on the above at the standard rate of 8% simple from date of transfer to the date of settlement. If TSB deducts tax from the interest element of this award, it should provide Ms L with an appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 17 March 2021.

Jay Hadfield
ombudsman