

Complaint

Ms K complains that TSB Bank plc won't refund the money she lost when she was the victim of a scam.

Background

Ms K says she was contacted via a dating website, by someone who said they were a doctor working abroad. They told her they wanted to visit the UK but their luggage had to be sent separately first, so they asked her to pay for the luggage to be shipped. Ms K agreed and made a branch transfer of £4,400 to the shipping company account details she had been given.

Two days after this first transfer, Ms K was contacted by the shipping company again. She was told a large sum of money had been found in the luggage so she needed to pay more for the luggage to be released. Ms K then went into branch again and made a second transfer, for £27,820.

The day after this second transfer, the luggage didn't arrive so Ms K became suspicious and ultimately discovered it was a scam. TSB investigated but said Ms K had told it the transfers were to ship furniture over from her home country and it had no reason to doubt this. And it said the transfers weren't unusual or out of character for Ms K. So it didn't think it should have prevented the transfers and didn't agree to refund them. Ms K wasn't happy with TSB's response so referred her complaint to our service.

One of our investigators looked at the complaint. They thought TSB should've taken further steps to satisfy itself that Ms K wasn't at risk of financial harm. And that, if it had done, the scam would've been uncovered before Ms K sent the second transfer. So they recommended TSB refund the amount of the second transfer, plus interest, and pay Ms K £250 compensation. TSB disagreed, so the complaint has been passed to me.

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 agree with our investigator that TSB should've taken further steps and that, if it had done so, Ms K's loss from the second transfer would've been prevented. I'll explain why below.

It's not in dispute that Ms K authorised both of the transfers. Ms K says she made them both in branch and TSB has said they were authorised using Ms K's card chip and PIN. So, while I recognise Ms K didn't intend the money to go to scammers, the starting position in law is that TSB was obliged to follow her instructions and process the transfers. And so Ms K isn't automatically entitled to a refund.

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 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 made 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.

So I've considered whether TSB should have identified that Ms K was potentially at risk of fraud as a result of either of the transfers.

First transfer of £4,400

Having looked at the evidence of previous activity on the account, I don't think the first transfer of £4,400 was particularly out of character or unusual. The statements for the account show Ms K had made a number of payments of a similar type, and a number of payments for similar or larger amounts, in the 12 months before this transfer.

The transfer was done in branch though, so there would have been some interaction between Ms K and the branch staff about the transfer. And this would've given TSB the opportunity to assess whether Ms K was potentially at risk of financial harm as a result of it. So I've considered whether TSB did enough during this interaction to check whether Ms K was at risk.

TSB says the first transfer of £4,400 would've been authorised by chip and PIN and then, as it was a large amount, it would've been referred to the branch manager. And it's sent us a statement from the branch manager saying Ms K said the transfer was to pay to have furniture shipped over from her home country.

Ms K says she didn't say this, and instead told the branch staff the transfer was to pay for luggage being shipped back for a doctor working abroad. But I can't see why the branch manager would think the transfer was for shipping furniture unless Ms K had said so. TSB has sent us a form filled in for the second transfer which says that was for shipping furniture for Ms K's husband. And I also can't see why this form would've been wrong or why Ms K would've given different reasons for the first and second transfers, particularly when she says she didn't. So I think it's likely Ms K told TSB the first transfer was for shipping furniture.

I've not seen clear evidence of the questions TSB asked Ms K about this transfer. But, as the transfer wasn't particularly unusual, there's a limit to the questions I think it would be reasonable to expect TSB to ask. Ms K also didn't tell TSB the real reason for the transfer and, on the face of it, the reason she gave was reasonable. So, even if it had asked her further questions, I don't think TSB could reasonably have been expected to identify that Ms K was at risk of financial harm. And so I don't think it would be reasonable to ask TSB to refund the first transfer.

Second transfer of £27,820

The second transfer was for a significantly higher amount than the first transfer. And the statements for Ms K's account show the second transfer was also for a significantly higher amount than any other transaction on the account in the previous twelve months. Ms K had made a larger transfer than this out of the account, but this was more than 14 months previously. So I think this second transfer of £27,820 was out of character and unusual in comparison to the previous activity on the account. And so I think TSB should have identified that Ms K was potentially at risk of fraud and carried out additional checks before processing it.

TSB has sent us a copy of a checklist that was filled in by the branch staff when this transfer was made. This includes a question asking if the staff have any concerns that the customer might be the victim of a scam, and has been answered "no". But it doesn't give any further detail on what checks the staff did to satisfy themselves of this. And TSB hasn't been able to send us any further evidence of these checks either.

I accept it's not for this service to dictate the checks TSB should do or the questions TSB should ask. But TSB should take steps designed to protect its customers from the risk of financial harm. Particularly given the size of this transfer, I think in these circumstances it would be reasonable to expect these checks to include questions about the purpose of the transfer, whether the customer had used the company they were sending money to before and whether they had checked the payment details they were given. And, based on the evidence I've seen, I'm not satisfied TSB asked questions like these. And so I'm not satisfied it took sufficient steps to check whether Ms K was potentially at risk of financial harm from this second transfer.

If it had asked further questions, and even if Ms K had again not given the real reason for the transfer, I think TSB would have found out that Ms K had sent money to the same shipping company three days before, had only had contact with the shipping company by email and hadn't checked the payment details. On finding this out, I think TSB should then reasonably have asked further questions, particularly around why Ms K was sending further money to the shipping company for the same delivery only three days later. And it should have warned her about possible similar scams.

Ms K has said she was already scared and didn't know what to do after she was contacted by the shipping company the second time. And she uncovered the scam quite quickly after the luggage didn't arrive the following day. So I think this further questioning and warning from TSB would have caused her to at least investigate further and then likely uncover the scam.

And so if TSB had taken further steps to check whether Ms K was potentially at risk of financial harm, as I think it should have, I think the scam would have become apparent, Ms K wouldn't have gone ahead with the second transfer and wouldn't have lost the £27,820. So I think TSB should refunded the £27,820 to Ms K.

As Ms K wouldn't have lost this money if TSB had done more, she's also now been without that money for a period of time. I therefore also think TSB should pay her compensatory interest at the rate of 8% simple a year, from the date of the transfer until the date it is refunded.

I understand some of the funds from the second transfer were recovered from the receiving bank and have now been refunded to Ms K. So TSB should deduct the amount that was recovered from the £27,820 it refunds to her.

TSB and the receiving bank have sent us conflicting evidence about why the recovered funds weren't refunded to Ms K sooner. But, from the evidence I've seen, it appears at least part of the delay was caused by TSB sending incorrect details about the scam and transfers to the receiving bank. So I think TSB should also pay Ms K £250 compensation for the distress and inconvenience these errors caused.

The first transfer of £4,400 would still have been sent before the scam was uncovered and so we'd expect TSB to take reasonable steps to try to recover those funds from the receiving bank. But, from the evidence the receiving bank has sent us, I think it's likely the funds from the first transfer were removed before Ms K reported the scam. So I don't think TSB could have done anything further to get that money back, and so I won't be asking it to refund the first transfer to Ms K.

My final decision

For the reasons set out above, I uphold Ms K's complaint in part. My decision is that TSB Bank plc should:

- Refund Ms K the amount she lost from the second transfer, less the amount returned from the receiving bank, as set out above
- Pay 8% simple interest a year on that amount from the time of the transfer until the time it's repaid
- Pay Ms K £250 compensation

HM Revenue & Customs may require TSB Bank plc to deduct tax from the interest it pays Ms K. If it does, and if Ms K requests it, TSB Bank plc should provide her with a certificate showing how much tax it has taken off so that she may reclaim it if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 1 April 2021.

Alan Millward
Ombudsman