

## **complaint**

Mr and Mrs M complain that TSB Bank plc won't refund money they lost when they fell victim to a scam.

## **background**

I issued a provisional decision – which is attached to and forms part of this final decision, on 6 August 2021. In my provisional decision I explained why I wasn't minded to uphold the complaint. I asked both parties to send me anything else they wanted me to consider before I issued my final decision by 27 August 2021.

TSB didn't respond with any further points it wanted me to consider. Mr and Mrs M responded to say they didn't agree with my provisional decision and, in summary, raised the following points;

- Referring to a 'contact note' in the evidence TSB provided, Mr and Mrs M want the bank to be held accountable for the fact that one of its employees put a note on its system confirming a payment was 'valid', without contacting them.
- Mr and Mrs M say, given in my provisional decision I have found that TSB ought to have intervened but didn't, that the Bank did not follow the expected Code and therefore should be held to account.
- By not contacting Mr and Mrs M, TSB has denied the opportunity for the Ombudsman's theory to be tested.

## **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 decided to maintain my decision not to uphold Mr and Mrs M's complaint. I'll explain why below.

I do understand that this has been a very emotional and upsetting experience for Mr and Mrs M, especially considering what they've told us about how the loss of this money will impact their plans moving forward. So, I am all the more sorry, to have to tell Mr and Mrs M that I don't think their complaint should be upheld.

Mr and Mrs M have said they feel TSB should be held accountable for a note being put on TSB's systems confirming a payment was 'valid', without contacting them beforehand. I do understand that it is frustrating for Mr and Mrs M that further detail can't be provided about how or why this note was added to TSB's systems. I can't say with any certainty whether it was added in error, but in any event I don't think this note being added, in itself, impacts the decision I have reached on this complaint. This is because, as I've explained, I don't think it made a material difference that Mr and Mrs M were not contacted, before the payments were released.

I think it's worth noting that I don't have the power to fine or punish a financial business, just because it did something wrong (that's the role of the regulator). I do have the power to require a business to put things right if something did go wrong that had a detrimental effect on a consumer(s). So I need to look at what would have happened, or what I think is more likely than not to have happened, had there been no wrongdoing – because there are times

where a financial business does something wrong, but where I don't consider it makes a difference, which is the case here.

As I've said in my provisional decision, I do think TSB ought to have intervened and had a conversation with Mr and Mrs M at the time they were attempting to make a payment for £100,000. But even if it had intervened and spoken to Mr and Mrs M at the time the payment was being made (or when the note mentioned above was added), I don't think I can fairly or reasonably say that it would more likely than not have made a difference, and stopped Mr and Mrs M from going ahead with the payments they intended to make.

Mr and Mrs M have provided detailed testimony and explained throughout how much research they carried out about the investment they were intending to make, so I think they held a genuine belief that they were dealing with a legitimate company. This scam also carried many sophisticated features, where fraudsters had been able to clone a legitimate firm. Considering the belief I think Mr and Mrs M had that this was genuine, along with the sophistication of the scam, I don't think there was enough opportunity here for either Mr and Mrs M, or TSB, to have recognised that Mr and Mrs M may have been at risk of financial harm.

Overall, for the reasons I've explained here and in my provisional decision, I can't fairly or reasonably say that Mr and Mrs M's loss was caused by any specific failing on behalf of TSB, so I can't fairly ask TSB to refund them. I understand what an impact, of losing such of lot of money, to such a cruel scam, must have had on Mr and Mrs M. And I want to say how sorry I am for the situation they have found themselves in and that it has taken this long for them to receive an answer on their complaint.

### **my final decision**

My final decision is that I don't uphold this complaint against TSB Bank plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 3 October 2021.

Stephen Wise  
**Ombudsman**

## **COPY OF PROVISIONAL DECISION**

### **complaint**

*Mr and Mrs M complain that TSB Bank plc won't refund money they lost when they fell victim to a scam.*

### **background**

*In September 2018 Mr and Mrs M fell victim to a scam.*

*Based on the submissions of both parties, I understand the fraud occurred as follows.*

*Following Mr M receiving a lump sum from his pension, Mr and Mrs M were looking to invest, with a longer-term view that the funds would be used to pay off their mortgage. Mr and Mrs M have said they researched a number of investments and when looking at the website of a company, who I'll refer to as KH, a pop-up appeared asking if Mr and Mrs M would like to be contacted to discuss potential investments further. KH is a legitimate investment company and Mr M was looking at KH's genuine website, but unknown to him at the time the pop-up was from a fraudster.*

*Mr M accepted the invitation and then received a call. Following this initial call, Mr and Mrs M have said they remained in contact with the fraudster(s), by email and phone over a number of weeks, from September 2018, and received branded emails and literature regarding the products available. Mr and Mrs M were presented with an investment opportunity for a one-year bond in a well-known water company, with an interest rate of 5.296%.*

*Mr and Mrs M have told us they were persuaded by the legitimacy of KH and the product they had been offered, they've told us the success of the fraud was heavily influenced by;*

- *KH identity and brand being used on all correspondence*
- *Mr M had been exploring different fixed term bonds and a pop-up appeared when he was browsing KH's genuine website*
- *The email address the fraudsters used appeared to belong to KH*
- *The fraudsters were professional in their approach and offered financial advice*
- *The amount of research undertaken to check out KH and the degree of discussion with the fraudsters over a matter of weeks – including Mr M exploring and confirming the legitimacy of the bond with the well-known water company and speaking with a friend, in the industry, who confirmed they were a well-known company*
- *The bank account named appeared to be for KH*
- *Communication continued after the initial payment*

*Mr and Mrs M have said they thought they were purchasing a bond from a legitimate company and that all the emails they received appeared to come from KH. Mr and Mrs M have said as everything seemed legitimate, they went ahead and invested.*

*On 1 October 2018, Mr and Mrs M initially tried to make a payment for £100,010.95, but the payment was declined. I've seen from TSB's online notes, that a payment of £50,000 was attempted shortly after, but again this was declined. There is no evidence of any interaction*

with TSB and Mr and Mrs M at this point. The payments were declined as they breached daily transfer limits.

Mr M explained to the fraudsters that, due to online transfer limits, he was only allowed to transfer a maximum of £25,000 at a time – so he told the fraudsters he'd made an initial payment of £24,010.95 and would pay the remaining balance of the investment over the next four days. Mr M went ahead and made payments totalling £100,010.95, a breakdown of the payments is below;

<i>Date</i>	<i>Transaction</i>	<i>Amount</i>
<i>1/10/2018</i>	<i>Online banking transfer</i>	<i>£24,010.95</i>
<i>2/10/2018</i>	<i>Online banking transfer</i>	<i>£20,000</i>
<i>3/10/2018</i>	<i>Online banking transfer</i>	<i>£20,000</i>
<i>4/10/2018</i>	<i>Online banking transfer</i>	<i>£20,000</i>
<i>5/10/2018</i>	<i>Online banking transfer</i>	<i>£16,000</i>

After each payment Mr M received an email from the fraudsters, confirming receipt of the payment and a statement of account was received once all of the payments had been received.

In January 2019, Mr and Mrs M were going through plans for their future finances and attempted to call and email KH, but found the number had been discontinued and the email bounced back. Following this Mr M contacted KH on the number on their website – it was following this call that Mr and Mrs M realised they had been victims to a scam.

Mr and Mrs M reported the fraud to TSB on 28 January 2019, TSB tried to retrieve the funds from the receiving bank account, but no funds remained.

Mr and Mrs M complained to TSB. In summary they were unhappy with TSB's response to the fraud case and the level of security checks it had performed when the payments were made. They were unhappy that the payments were not flagged as unusual account activity. TSB issued its final response on 11 March 2019. It said Mr and Mrs M had made the payments willingly and it had tried to recover the money from the receiving bank account, but no funds remained. It said that it was confident it had not made a mistake. It added that Mr and Mrs M had dealt with investments previously and it did not feel there had been a compromise.

Mr and Mrs M then brought their complaint to our service and one of our investigators looked into things. Our investigator upheld Mr and Mrs M's complaint. She thought the payments Mr and Mrs M made were not usual, compared to the usual activity on their account, and so she would have expected TSB to have contacted Mr and Mrs M to ask questions about the payments. Our investigator thought, had this happened, Mr and Mrs M would have re-considered making the payment, undertaken further research and ultimately wouldn't have then gone ahead with the payments.

Mr and Mrs M agreed with our investigator's opinion. TSB disagreed with our investigator's view. It said there had been no bank error and it didn't think its systems should have triggered. But it added, had they done so, it was not convinced it is more likely than not the fraud would have been uncovered, as Mr and Mrs M would have explained the reasons for the payments and it thinks Mr and Mrs M would have been confident with the payments, given they had done their research.

*The complaint was passed to me for a decision. Having reviewed the case I sent my initial thoughts to Mr and Mrs M, which I shared with TSB, explaining that I was minded to reach a different outcome to our investigator. In summary, I thought the payment Mr and Mrs M attempted, for £100,010.95, was not typical of how they usually ran their account and I thought TSB ought fairly and reasonably to have intervened. But I didn't think, on balance, an intervention would have made a difference, as I considered Mr and Mrs M would have more likely than not been satisfied that they were making a payment for a legitimate investment. I explained to Mr and Mrs M that I wasn't minded to uphold their complaint.*

*Mr and Mrs M disagreed with my initial thoughts, in summary they said;*

- *they didn't agree TSB acted reasonably at the time, or in line with usual procedures*
- *that some banks check accounts into which such sums are being made*
- *larger payments they had made previously were not for investments, but to builders/kitchen suppliers etc. and it would have been apparent these were not investments*
- *they explained Mr M is not an experienced dealer of stocks and shares*
- *they do not accept that the payments were not out of character to how their account is usually run*
- *they referred to another consumer's bank having intervened and prevented a payment for a similar fraud*
- *they also referred to other decisions issued by this service*

### **my provisional findings**

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

*In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.*

*It is important to point out that we're an informal dispute resolution service, set up as a free alternative to the courts for consumers. In deciding this complaint I've focused on what I consider to be the heart of the matter rather than commenting on every issue or point made in turn. This isn't intended as a discourtesy to either party, it reflects the informal nature of our service, it's remit and my role in it. And just because I may not mention something, it doesn't mean that I haven't considered it.*

*I know Mr and Mrs M have referred to other decisions issued by our service. But I would point out that, while on the surface complaints may seem quite similar, each complaint is determined by its own individual circumstances. Here, as I'm required to do, I've looked at the individual circumstances of Mr and Mrs M's complaint.*

*I'm sorry to hear of what's happened to Mr and Mrs M, and I can understand entirely why they feel so strongly that this money should be returned to them, and I don't underestimate the impact they've explained this fraud has had on them. But having thought very carefully about TSB's actions, while I think it ought to have intervened and spoken to Mr and Mrs M when they attempted to make a payment for around £100,000, I consider that even if it had done so I'm not persuaded it is more likely than not it would've made a difference and stopped Mr and Mrs M from going ahead with the payments they made. I also don't think it could have done any more than it did to try and recover the money.*

*So having considered everything, I'm not intending to uphold Mr and Mrs M's complaint. I do appreciate how disappointing this will be for them, but I don't think I can fairly say TSB should reimburse them the money they have unfortunately lost to the fraudsters. I'll explain why.*

*In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.*

*But that is not the end of the story and 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.*

*This means that, particularly with the increase of sophisticated fraud and scams in recent years, there are circumstances where a bank should fairly and reasonably take additional steps, or make additional checks, before processing a payment, or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm.*

*In this case, I need to decide whether TSB acted fairly and reasonably in its dealings with Mr and Mrs M, when they made transfers to a fraudster and when they reported the fraud, or whether it should have done more than it did.*

*Mr and Mrs M have accepted that they authorised the transfers themselves. Because of this, TSB had an obligation to follow their instruction. But there are some situations in which it should reasonably have had a closer look at the circumstances surrounding the transfer - as I've explained, I consider that as a matter of good practice TSB should've been on the lookout for unusual and out of character transactions.*

*I've first thought about whether I think TSB should have made enquiries about the payment(s) before processing them. I can see Mr M initially tried to make the payment of just over £100,000 in one go – but this was prevented. I'm mindful that Mr and Mrs M has said TSB turned off a fraud alert without any contact being made. I've seen evidence of a 'contact note' from TSB, from 3 October 2019, which says 'Blocks Removed – transaction confirmed as genuine'. TSB hasn't provided any other contemporaneous notes relating to this, which is unfortunate in the circumstances. But it has confirmed Mr and Mrs M's attempt to make the payment in one go, was not stopped as a result of a fraud block, it was due to the payment exceeding the internet banking transaction faster payment daily limit of £25,000. And it has*

*added that this would not have triggered any subsequent fraud blocks, as it was not a fraud check preventing the c.£100,000 being sent in one go.*

*But in any event, neither Mr and Mrs M, nor TSB, has suggested there was any interaction between them, at the time any of the payments were made – so I am satisfied and have no reason to doubt that was the case. But for reasons I'll go on to explain, I'm persuaded that, even if there had been an intervention and a conversation had taken place, I don't think it's more likely than not that it would have made a difference.*

*Having looked through Mr and Mrs M's account statements for the months leading up to the transactions, I can see there are some larger transactions, ranging up to £15,000 and some that appear to be for investments. However, where Mr and Mrs M have set up a new payee and attempted to make a payment of over £100,000, that would have cleared around 80% of the account balance, I consider this to be unusual for them and not typical of how they ran their account. I would also add that, from what I've seen, I don't think it is evident that Mr and Mrs M were experienced investors.*

*As I've said, I don't think the payment Mr and Mrs M were making for around £100,000 was typical of their usual account activity, and I think there was an opportunity here for TSB to have intervened and spoken to Mr and Mrs M, before allowing the payment to be processed. Ultimately this payment, for just over £100,000, was declined, because it breached TSB's transfer limits. I can also see that a payment of £50,000 was attempted just a couple of minutes later, but this also didn't go through, presumably again because it breached transfer limits. Where Mr and Mrs M then go on to make a payment of around £24,000, shortly after, I think again there was enough suspicious activity on Mr and Mrs M's account, that I think it was fair and reasonable that TSB ought to have intervened before allowing this payment to be made.*

*Where I find TSB ought to have intervened, this in itself isn't enough for me to say that TSB should refund the money Mr and Mrs M have lost. I also need to be persuaded that its intervention would have made a difference and prevented the payments from being made. I have to base my findings on the balance of probability – that is, what I think is more likely than not to have happened, taking into account what I know.*

*So I've gone on to think about what difference an intervention would have made here. Having thought carefully about this, I don't think I can fairly or reasonably say that it would more likely than not have made a difference and prevented Mr and Mrs M from making the payments and I'll explain why.*

*If TSB had spoken to Mr and Mrs M when they attempted to make the initial payment of c.£100,000, I've no reason to doubt that they'd have told TSB the purpose of the payment was to invest. TSB shouldn't have just accepted the reason for the payment at face value before releasing the funds. At the time of the scam it ought to have been aware of the prevalence of investment scams, even upon establishing that Mr and Mrs M were intending on investing with what appeared to be a genuine investment firm. So I've thought about the sorts of follow up questions TSB should've asked, to reassure themselves Mr and Mrs M likely weren't at risk of financial harm.*

*It is worth explaining that fraud and fraudsters' methods continually evolve over time, as in turn does a bank's awareness of different types of scams and the tactics fraudsters use to defraud their victims. So in considering this complaint, I have to think about what I can reasonably have expected a bank to have been aware of and on the lookout for at the time these payments were made. At the point these payments were made the most typical*

*hallmarks of cloned investment scams involved victims being cold called, being offered returns that were too good to be true and being pressured.*

*With this in mind I'd have expected TSB to ask Mr and Mrs M some questions about the payment, in the context of the particular features of an investment scam. For example, TSB could have asked questions such as, but not limited to, what the payment was for, whether Mr and Mrs M had been looking to invest, what research had they done, whether they had been cold called and what rate of return they were being offered. Had TSB asked these, or similar questions, I'm persuaded Mr and Mrs M would have been able to confidently answer these questions without concerning TSB they might be victims of a scam. While I'm not suggesting they were experienced investors, I think it more likely than not they would have been able to explain they were looking to invest, had researched both the company and the type of bond they were investing in and had checked this out with somebody in the industry.*

*It's fair to say the scam that Mr and Mrs M fell victim to was highly sophisticated for its time and didn't carry the obvious hallmarks of the type of investment scam I can reasonably have expected TSB to have been on the look out at the time. Mr and Mrs M weren't cold-called and they weren't being offered a rate of return that would have appeared to be too good to be true. They were also looking at a legitimate firm's website (not a website that had been copied). Alongside this, Mr and Mrs M were not being pressured. So even if TSB had told Mr and Mrs M about investment scams, and then asked the sorts of questions I've suggested above, I don't think it would have been concerned that Mr and Mrs M were at risk, as the triggers I would reasonably have expected it to be on the lookout for at the time, weren't obviously apparent in the circumstances of this complaint.*

*I'm persuaded, on balance, it's more likely than not the answers Mr and Mrs M are likely to have given would have been sufficient to reassure TSB Mr and Mrs M weren't at risk of financial harm. From the information I've seen and considering the circumstances of what was happening I think Mr and Mrs M would have been confident they were making a payment that was legitimately to buy a bond from what seemed like a legitimate source.*

*Considering this alongside the answers I think Mr and Mrs M would have given to any questions, the level of the research that Mr and Mrs M have told us they carried out, the persuasiveness of the literature and communication they had with the fraudsters and considering the sophistication of how the fraud was engineered, I don't think TSB ought fairly and reasonably to have been concerned that Mr and Mrs M may have been at risk of financial harm.*

*Even if I considered that, at the time, it would have been reasonable to have expected TSB to have signposted Mr and Mrs M to check out the company on the FCA register, I'm not persuaded this would likely have deterred Mr and Mrs M from proceeding with the payment as the company was registered to trade. I can see a warning was added to the FCA's website noting this particular cloned investment scam – but this wasn't until June 2019, so wasn't information that TSB, or Mr and Mrs M would have been aware of at the time.*

*I've gone on to think about whether TSB did what it should've done once Mr and Mrs M had reported the matter to it. I've looked into attempts TSB made to recover the money, once it was aware of the scam. In order for me to be able to fairly ask TSB to refund the money, I need to be satisfied it should have acted sooner in trying to recover the money than it did. And if I don't think it acted soon enough, I need to decide whether it made any difference. In this case I can see the money had unfortunately already left the receiving account by the*

*time Mr and Mrs M reported the fraud to TSB. So, it wasn't able to recover the money Mr and Mrs M had paid, because it had already been removed from the recipient's account.*

*I've thought about what Mr and Mrs M have said about the receiving bank being in a different name, to who they were expecting to pay and had indicated on their payment instruction.*

*At the time the payment(s) was made, the relevant regulations – the Payment Services Regulations 2017 ("PSR 2017") set out that payments are sent according to 'unique identifiers' (typically the account number and sort code).*

*In particular, section 90 of the PSR 2017 states:*

*"(1) Where a payment order is executed in accordance with the unique identifier, the payment order is deemed to have been correctly executed by each payment service provider involved in executing the payment order with respect to the payee specified by the unique identifier"*

*The impact of this is that the payment was correctly processed if it went to the account number and sort code instructed by the payer. There was no regulatory requirement for TSB to check the beneficiary account any further. So I can't fairly say that TSB didn't follow Mr and Mrs M's instruction when it sent the payment to the account number and sort code provided, and I am not persuaded it should have done more to check the beneficiary name in the circumstances of this complaint.*

*I understand Mr and Mrs M's disappointment that I'm not intending to uphold this complaint, especially as our investigator had recommended a different outcome. But we operate a two-stage process. That is if either party – Mr and Mrs M or TSB - was unhappy with our investigator's decision they could appeal it to an ombudsman. And that's what happened in this case. And, in every case I look at I consider all the evidence independently. I then come to my own conclusions about what I consider to be a fair and reasonable outcome, this can on occasions be different to the view of investigators, as is the case here.*

*I am sorry that Mr and Mrs M have lost this money, to what is a cruel and highly sophisticated scam. But for the reasons I've explained I can't fairly or reasonably ask TSB to refund the money Mr and Mrs M have lost.*

***my provisional decision***

*For the reasons set out above, I don't intend to uphold Mr and Mrs M's complaint against TSB Bank plc.*