

complaint

Mr B complains that TSB Bank plc won't refund £5,910 that he lost when he fell victim to a scam.

background

I issued a provisional decision in May 2021 to explain why I thought Mr B's complaint shouldn't be upheld. And I said I'd consider anything else that anyone wanted to give me. This is an extract from that provisional decision:

"Mr B had been looking for a car online when he came across an advert on an auction site for a vehicle he thought met his requirements. He contacted the seller to confirm he'd be interested in buying it. Mr B had savings available in his TSB account to fund the purchase of the car.

The seller of the car told Mr B he would have the car delivered to him, by a third-party delivery company, as he was abroad at the time sorting out the sale of the car on behalf of a family member who had recently passed away. The seller provided Mr B with the name of the delivery company and he invited Mr B to search for them online to have a look at the type of service they provided. He also sent Mr B a number of photographs of the car alongside a DVLA issued certificate that showed proof of ownership.

Mr B used the information provided on this certificate to carry out a check online which didn't raise any concerns or suspicions. It appeared that the vehicle was as described by the seller. He also searched for the third-party shipping company and it appeared to have good reviews. He also spoke with someone who purported to be from this company, who told Mr B that they had received the vehicle and it was in good condition. Mr B has said the company sounded very professional and he was convinced by what he was told and that both the seller and the third-party shipping company were legitimate.

So, on 17 May 2018, Mr B logged into his online banking and transferred the total cost of the car to the third-party shipping company, amounting to £5,910. It was Mr B's understanding that this payment would be held in trust for 10 days and once he had confirmed the car had been received and was as described, it would be released to the seller.

Eventually, when the car didn't arrive, Mr B became suspicious and realised he'd been scammed. He called TSB but was unable to get through and so he went into branch but was told the branch could not help him either. He eventually got through to TSB on the telephone on 23 May 2018. Mr B has told us that he had seen online that it would be beneficial for him to tell TSB that he had made the payment by mistake - as this was more likely to get him his money back than telling TSB he had been the victim of a scam.

TSB has sent me a recording of this conversation and in it, I can hear Mr B tells TSB that he hadn't meant to make the payment - the wrong account number or sort-code had been used and the payment had been made by mistake. The result of this conversation was that TSB recorded the payment as an 'error' not as 'fraudulent', and because of this, no fraud claim was instigated and the bank where the funds were transferred to was not contacted to see if any of Mr B's remained in the payee account.

Now satisfied that the payment was made as a result of a scam, TSB has declined to offer Mr B a refund of the amount he has lost. It said it had carried out Mr B's instructions in

making the payment. The payment had been made online and there had been no direct contact between Mr B and TSB and there wasn't anything about the transaction itself that would have prompted further checks from TSB before it was processed. TSB acknowledged it hadn't contacted the beneficiary bank to attempt to recover Mr B's funds but it said this was because Mr B hadn't told them he had been the victim of scam and so it wasn't aware at the time that the indemnity process should've been started.

Mr B brought his complaint to our service and one of our Investigators looked into things. Our Investigator thought Mr B's complaint should be upheld. He thought TSB should've contacted Mr B before it allowed the payment to go through and if it had, the scam could've been prevented.

TSB didn't accept our Investigators findings and asked for an Ombudsman to look into things, so the complaint was passed to me.

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, 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 be good industry practice at the time.

I'm really very sorry to hear about what's happened to Mr B and I have a lot of sympathy for the situation he has found himself in. I can understand why he feels so strongly that his money should be returned to him. But having thought very carefully about what he's told us happened at the time and TSB's actions, I don't think it would be fair and reasonable for me to hold TSB liable for his loss.

So, having considered everything, I'm not currently minded to uphold Mr B's complaint. I do appreciate how disappointing this will be for Mr B, but I don't think I can fairly say that TSB should reimburse him with the £5,910 he has unfortunately lost to the fraudsters. I'll explain why.

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with 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.

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 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.*
- *For branch transactions, those steps may include following the Banking Protocol where appropriate.*

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.

So, in this case, I need to decide whether TSB acted fairly and reasonably in its dealings with Mr B when he transferred £5,910 to a fraudster and when he later spoke to TSB about the transfer, or whether it should have done more than it did.

It is not in dispute that Mr B authorised the transfer himself. Because of this, TSB had an obligation to follow his instructions. 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 above. I consider that as a matter of good practice TSB should've been on the lookout for unusual and out of character transactions.

So, I've first thought about whether the transfer Mr B made could be considered out of character and unusual when compared with his usual account activity. And, having reviewed Mr B's statements for the months leading up to the scam, I'm satisfied a payment of £5,910 was unusual for Mr B and uncharacteristic for this particular account - there had been no comparable legitimate payments in recent times. The transfer is also made to a new payee. And so, I'm satisfied TSB ought fairly and reasonably, and as a matter of good practice, to have done more here. I think it ought to have made enquiries about the purpose of and the circumstances leading up to the payment before it processed it.

Because I'm satisfied TSB should've called Mr B to discuss the payment before it processed it, I've then had to think about whether any further intervention would've ultimately made a difference or not. It is impossible for me to say exactly how any conversation between Mr B and TSB would have unfolded. And so, I must base my decision on what I think is most likely to have happened had TSB intervened further. I've done this by considering the usual types of questions I would've expected TSB to ask Mr B had they contacted him - alongside what Mr B has told us about the circumstances that led to him making the transfer. Having done so, I don't think further intervention from TSB would've made a difference. I'm persuaded it's most likely Mr B would've still gone on to make the payment regardless. I'll explain why.

Had TSB contacted Mr B, it seems likely he would've explained the purpose of the payment was to purchase a vehicle he'd seen advertised online. At this point, I'm satisfied TSB should've probed further, and I've thought about the type of questions TSB should've been asking given what Mr B had already told it. I would've expected TSB to ask questions along the following lines:

- *Have you seen the car in person, if not, why is this not possible?*
- *Have you completed any independent checks to ensure the car exists/is legitimate?*
- *Are you satisfied that the third-party shipping company is legitimate?*

- *Are you happy to continue with the purchase of the vehicle having not seen it in person?*

I've then thought about Mr B's likely responses to these questions. I'm satisfied Mr B would've told TSB that he was satisfied the car would be delivered by a reputable company. He'd researched the company independently himself and had spoken to them on the telephone. Mr B has also told us that some of his colleagues had cars couriered to them before and had reassured him that this was a viable option. Mr B thought his money would be held by this third party until he had confirmed receipt of the car and so his money didn't appear to be at risk or appeared to have, at least, some protection. He'd also have been able to tell TSB that there appeared to be a plausible reason for this – the seller of the car was abroad and selling the car on behalf of a deceased relative.

Crucially, I would have expected TSB to direct Mr B to carry out some independent checks on the vehicle he was purchasing and to warn him about the risks attached to purchasing a vehicle he hadn't seen himself. A common feature of this type of scam is that the vehicle doesn't exist. But Mr B had already been provided with a copy of a DVLA issued certificate which he'd used to carry out an independent check and on the face of it, everything looked legitimate. Mr B would also have been able to tell TSB that he had bought numerous vehicles in the past without seeing them. He'd done this on at least four occasions previously and only had some minor issues with one vehicle – that were minor. And so I think it's unlikely that any of Mr B's answers would've put TSB on notice that he was at risk of falling victim to a scam.

TSB's role is to satisfy itself that the payment their customer is requesting appears to be legitimate based on the information they have. It is not to interrogate their customer or carry out an investigation into the product being purchased. Even if TSB had asked Mr B reasonable questions about what the payment was for, I don't think the scam would've been exposed. And whilst there's no denying Mr B has been the victim here, I don't think it would be fair and reasonable to hold TSB liable for his losses. The fault here lies with the fraudsters.

I've then gone on to consider whether it was possible for TSB to have done any more than it did when Mr B first contacted it to discuss the transfer. I've listened to a recording of this conversation and I'm satisfied Mr B tells TSB that the payment has been made by mistake and because of this 'the payment in error' process is started. This later turns out to be unsuccessful when TSB realise no payment error was made. And so, having listened to this call, I'm satisfied that the reason the indemnity process wasn't started and the receiving bank not contacted was because TSB weren't aware that Mr B had been the victim of a scam at this point. But even if I assume TSB were able to, and should've, contacted the receiving bank following Mr B's earlier visit in branch, I still think it's unlikely Mr B would've had any of his funds returned to him. It seems more likely to me that they were already gone.

I say this because Mr B had been told to wait a number of days for the car to be delivered after he made the transfer. And it was only once the expected delivery date passed that Mr B realised he had been the victim of a scam. This would've provided the fraudster with a number of days to remove the funds before Mr B even realised he had been a victim. And so I think it's more likely than not that the funds would've been removed by the time Mr B contacted TSB in the first instance and so there wouldn't have been anything further TSB could've done by this point to retrieve Mr B's funds.

I am very sorry that Mr B has lost out, and I appreciate this is a lot of money for him to have

lost especially given that it was funded by his personal savings. I also understand this whole experience was very frustrating and upsetting for him. But in the circumstances, I don't think I can fairly say TSB could've done more to help him and should now refund him the money he lost as part of the scam."

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.

TSB responded to say it accepted what I had said in my provisional decision. Mr B responded to say he did not agree and he asked me to consider some additional points which I have summarised below:

- Mr B disputes that he would have gone ahead with the transfer had TSB intervened. Mr B felt this was a theoretical conclusion and any final decision should be based on the facts of the case.
- Mr B drew my attention to the British Standards Institute's Code of Practice ("the BSI") which sets out that banks should have measures in place to detect suspicious activity, such as a large increases in spending and payments made to a new payee. Mr B highlighted that the payment he made during the scam met these criteria but TSB failed to adhere to the principles set out in the code but failing to contact him and offer him a warning.
- Mr B said that had a warning been issued it was in his character carry out further checks and he was unlikely to have continued with the transfer.

I've thought carefully about the additional points raised by Mr B but I have reached the same conclusions as I did in my provisional decision. I'll address each point in turn and I'll explain why.

I want to assure Mr B that when reaching my final decision I took 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. This includes the BSI which he has referred to in response to my provisional decision. Having done so, and as set out in my provisional decision, I agree with Mr B that the scam payment was unusual and out of character for his account and that TSB should've discussed the transaction with him before it allowed it to leave his account.

However, I then have to go on to consider whether I think this intervention would've made a difference. In other words, would a conversation with TSB stopped Mr B proceeding with the payment.

I understand that Mr B is unhappy that my conclusions are based on what I think is most likely to have happened during this conversation. However, it's important that I stress here that it is impossible for me to say exactly how this conversation would have unfolded. So I have to base my decision on what I think is *most likely* to have happened had TSB

intervened further. And I've done this by considering the usual types of questions I would've expected TSB to ask and what Mr B has told me about his circumstances at the time.

I appreciate that Mr B now feels that he would've completed more verifications checks and he wouldn't have agreed to proceed with the payment. But, ultimately, this is with the benefit of hindsight and Mr B has told me that at the time he was persuaded the sale of the vehicle was legitimate - he'd spoken to friends who had vehicles delivered before. He was an experienced car buyer and had bought numerous vehicles without seeing them with virtually no issues. He'd also carried out a verification check and spoken to someone he believed worked for the delivery company independently. And he had been happy, based on all of the above, to proceed with the payment. And so, I'm not satisfied that any further questioning on behalf of TSB would've made a difference here. And I've based this on what Mr B has told me about his circumstances of the time. I'm satisfied that it's more likely than not that Mr B would've continued to make the payment in the belief that he was purchasing a legitimate vehicle. And so I don't think it would be fair and reasonable for me to hold TSB liable for his losses.

my final decision

My final decision is that I do not uphold this complaint against TSB Bank plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 July 2021.

Emly Hanley
ombudsman