

complaint

Miss A is unhappy TSB Bank plc has refused to refund the £9,750 she lost after falling victim to a scam involving, what she thought was, a new business grant.

TSB says it's not liable for Miss A's loss because she authorised the payments, they weren't unusual or significant given the previous activity on her account and she didn't exercise reasonable care when making the payments.

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 think the fair and reasonable outcome, in all the circumstances, would be to uphold this complaint in part.

I can see the timeline of events, each party's testimony and how the transactions were made were covered in our investigator's view and I haven't repeated everything that was said there. I will, of course, refer to those aspects which form the basis of my decision. And I can assure Miss A and TSB that I've considered the file thoroughly, including what TSB said in response to our investigator's view.

It's not in dispute that Miss A authorised the payments of £3,750 and £6,000. She was duped by the scammers into instructing her bank to transfer those sums to their accounts. They deceived her by phone and email into thinking that she had been given a grant to help set up her new business. And she needed to contribute some money herself before she would be given access to the grant.

Although Miss A didn't intend on giving money to fraudsters, she did authorise the transfers and, under the Payment Services Regulations 2017, and the terms and conditions of her account, she is presumed liable for the loss in the first instance. 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.

With this in mind, I've looked at how Miss A used her account in the months preceding the scam and I don't think the first payment, of £3,750, was out of character. However, I note the second online payment was made soon after a transfer in and cash deposit, the transfer was to a new payee and was quite a lot more than the highest of Miss A's previous outgoing

transactions. In the circumstances, and despite what TSB has said, I do think the £6,000 was sufficiently unusual and significant that it should've triggered the bank to ask further questions.

I'm also satisfied, if the bank had asked her about the transfer, that Miss A would've willingly explained what it was for – her contribution in order to get a new business grant. I say that because there's no suggestion in this case that the scammer had given Miss A a cover story or otherwise told her to lie about where the money was going. With this in mind, TSB has said this type of grant scam is well known so I think the bank could, relatively easily, have identified and warned Miss A of the possibility she was being scammed.

TSB has suggested Miss A didn't exercise enough reasonable care and should've realised nobody who gives grants would expect such a large personal contribution. But I disagree. Miss A tells us she undertook some checks to ensure the company that was administering the grants was genuine. I've also seen some of the correspondence she had with the scammer and can see why she didn't suspect she was being scammed. The emails are professional looking, include links to the company's website, report and accounts and a YouTube video. Miss A also tells me that, what turned out to be a fake, Mastercard account was set up which she was able to access and view the grant money. Overall, I think this was a very sophisticated and believable scam, particularly for someone in Miss A's situation who did not – as I understand it – have any previous experience about applying for this type of grant.

I'm satisfied Miss A had been entirely duped by the scammers. But I don't think it follows that she would have ignored warnings from her own bank if it had contacted her in relation to the second transfer. She was paying a large amount of money and I think she would have taken seriously the warnings from a trusted third party. I think it's more likely than not, in this particular case, that TSB's intervention would have uncovered the scam and prevented the losses occurring in relation to the second payment.

I think TSB could, and arguably, should have done more in this case to protect Miss A. So, I think it should refund the money she sent in the second transfer minus the £608.89 which TSB has already managed to recover from the recipient bank. Miss A tells me she had to borrow that money from a friend and I think it's also fair for the bank to pay interest too.

TSB has already accepted that it didn't handle Miss A's complaint as well as it should've and has paid £550 compensation in recognition of this. I think that's a fair award in the circumstances.

my final decision

My final decision is that I uphold this complaint in part and instruct TSB Bank plc to:

- Pay Miss A £5,391.11 within 28 days of receiving notification of her acceptance of my final decision; plus
- Pay 8% simple interest per year on that sum, calculated from the date Miss A made the transfer to the date of settlement*.

*If TSB considers it's required by HM Revenue & Customs to take off income tax from the interest, it should tell Miss A how much it's taken off. It should also give her a certificate showing this, if she asks for one, so that she can reclaim the tax from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 4 January 2021.

Ruth Hersey
ombudsman