

The complaint

Mr S complains that TSB Bank plc won't refund money he lost to a scam.

What happened

Mr S was looking into equity release on a property he owned. He says he found a company – "R" – through a recommendation from a friend who said R could provide the services he needed. Mr S signed a contract with R for equity release of £84,000, the agreement was that he would make six payments of £1,400 each, before the £84,000 would be released to him.

Mr S made the six payments, but did not receive the money he had been promised. So in October 2022 Mr S reported to TSB that he'd been scammed. Ultimately, TSB did not think it was obliged to refund any of the money lost to Mr S, and it said that it felt this was more of a civil dispute than a scam.

Mr S remained unhappy, and referred his complaint about TSB to us. Our Investigator felt that it was more likely that what had happened to Mr S was a scam, but nonetheless did not consider that TSB could have done anything to prevent that scam or that it had any responsibility to refund the money lost to Mr S.

Mr S didn't agree, so the case has been passed to me for a final decision.

What I've decided – and why

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've reached the same conclusion as our Investigator, and for largely the same reasons.

It's not in dispute that Mr S authorised the payments himself as he thought he was dealing with a legitimate company. Broadly speaking, the starting position in law is that TSB is expected to process payments and withdrawals that Mr S authorises it to make, in accordance with the terms and conditions of the account. And Mr S will then be responsible for the transactions that he has authorised.

Because of this, Mr S is not automatically entitled to a refund. But the regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams.

TSB has said it does not believe that what happened to Mr S was a scam, but I'm satisfied that it's more likely than not this was a scam or otherwise fraud in some way. I say this because while the account the funds were sent to does appear to be in the same name as R – who Mr S intended to pay – I'm not satisfied that R was entitled to offer lending, that the

contract Mr S signed was legitimate, or that Mr S was necessarily dealing with the individuals he thought he was dealing with. I don't think we can be certain of exactly what happened here, but there are enough discrepancies to suggest that something untoward was going on and that the equity release agreement Mr S thought he entered into was not a legitimate agreement.

So given that I'm satisfied this was more likely than not a scam, I need to decide whether TSB acted fairly and reasonably in its dealings with Mr S when he made the payment requests, or whether it should have done more than it did to protect him from financial harm.

Mr S made six payments to the scammers, over the course of six months, each payment was for £1,400. And looking at the way Mr S used his account, I can't say that any of these payments were unusual enough to have seemed suspicious or to have stood out to TSB. The payments were relatively low in value – in the wider context of Mr S' account usage – were made to a UK bank account apparently belonging to a legitimate company, and left the account with a healthy balance after they were processed. They also didn't follow a common pattern of scam transactions as they were made over an extended period of time and were not for escalating amounts. To TSB, the transactions appeared to be genuinely authorised payments and there was no reason why they wouldn't have seemed genuine. So I don't think TSB acted unreasonably in processing the payments without making further enquiries.

There is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. If all payments such as the ones Mr S made were blocked while further enquiries were made, many genuine payments would be stopped which would cause significant disruption and delay. So, as TSB had no reason to interact with Mr S at the time of these payments, I'm satisfied it didn't unreasonably miss an opportunity to prevent these payments before they were sent.

After the payments were made, I wouldn't reasonably expect TSB to have done anything further until Mr S notified it he'd been scammed. And I understand this wasn't until October 2022, over a year after the last payment had been made. It's not clear why there was such a long delay in Mr S reporting what had happened, but I've nonetheless thought about whether TSB could have done more to recover the funds after Mr S reported the fraud, as in some circumstances the money can be recovered via the bank raising an indemnity with the receiving bank.

TSB didn't contact the receiving bank directly at the time, as it considered this was a civil dispute case rather than a case of fraud, but even if it had done I'm satisfied TSB would not have been able to recover Mr S' funds. I say this as the receiving bank has confirmed all the funds had been removed before the fraud was reported by Mr S.

I appreciate this will come as a disappointment to Mr S, and I'm sorry to hear he has been the victim of a cruel scam. However, I'm not persuaded that TSB can fairly or reasonably be held liable for his loss in these circumstances, so I won't be asking it to refund any of the funds Mr S has lost.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 30 November 2023.

Sophie Mitchell

Ombudsman