

The complaint

Ms H complains that Tesco Personal Finance PLC (Tesco) is refusing to refund her the amount she lost as the result of a scam.

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Ms H was called from a number she recognised to be that of another bank she also had an account with. Ms H had previously received a text message where she was asked to pay £1,99 for postage of a covid test, so the caller had Ms H's personal details.

The scammer (X) told Ms H that her computer and phone were vulnerable as she had clicked on a link. On X's instruction Ms H downloaded a screen sharing application and logged into each of the accounts she held at different banks. Then behind a blank screen X made payments from Ms H's accounts that she was not aware of.

One of the payments X made was from another account held in Ms H's name at another bank to her Tesco account. Ms H was then asked to move these funds and other funds to a fake safe account that Ms H believed had been set up in her name but in fact the payment went to X.

Ms H has been able to recover other payments that were sent as part of the scam although this payment of £5,500 has not yet been recovered.

Our Investigator considered this complaint and thought it should be upheld in part. They said that Tesco and the bank the payment was sent from should share responsibility for the loss and both refund Ms H 50%.

Tesco disagreed, so this complaint has been passed to me to decide.

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.

It has not been disputed that Ms H has fallen victim to a cruel scam. The evidence provided by both Ms H and Tesco sets out what happened. What is in dispute is whether Tesco should refund any of the money Ms H lost due to the scam.

Should Tesco have reasonably prevented the payment Ms H made?

Two other payments were made from Ms H's Tesco account as part of this scam before the £5,500 payment was made by Ms H as shown below:

| Date | Payment Method | Amount |
|------|----------------|--------|
|------|----------------|--------|

| | | |
|-------------|----------|------------|
| 8 July 2022 | Transfer | £10,000.00 |
| 8 July 2022 | Transfer | £7,538.54 |

I understand Tesco has refunded the above two payments but holds Ms H's other bank responsible for the payment of £5,500.

Banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether Tesco should have been aware of the scam and stepped in and questioned Ms H about the payments she was making. And if it had questioned Ms H would it have been able to prevent the scam taking place.

The first payment made from Ms H's account of £10,000 was out of character for her account and the second payment was made the same day for another large amount. I think these payments should have triggered Tesco's fraud prevention systems prompting it to step in and question the payments that were being made.

Had Tesco stepped in when it should have and asked Ms H appropriate questions about the payments, I think it's likely Tesco would have been able to uncover the scam and prevented the payments from being made. I say this because this is a common scam, I would have expected Tesco to have experience with at the time. Ms H was not coached on what to say to Tesco had she been asked about the payments and there appears to be no reason for her to have given Tesco dishonest answers.

However, I also acknowledge that the payment was originally made from Ms H's account at another bank, and this was an unauthorised payment, so it is equally responsible for Ms H's loss. So, for this reason I only require Tesco to refund 50% of the loss Ms H has suffered as a result of the £5,500 payment being made from her account.

Contributory negligence

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000).

I've thought about whether Ms H should bear some responsibility for this loss by way of contributory negligence (which might justify a reduction in compensation). However, in this case, I don't think this would be fair. On balance, I don't think Ms H was careless in this case, but simply tricked by resourceful and clever scammers who managed to successfully impersonate her bank.

Putting things right

Tesco Personal Finance PLC should refund Ms H 50% of the £5,500 payment (£2,750) that has been disputed. Tesco Personal Finance PLC should also add 8% simple interest to this payment from the date of the payment to the date of the settlement.

My final decision

I uphold this complaint and require Tesco Personal Finance PLC should put things right by doing what I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or

reject my decision before 11 January 2024.

Terry Woodham
Ombudsman