

The complaint

Mrs M has complained that Tesco Personal Finance PLC trading as Tesco Bank ("Tesco") has refused to refund her money she lost as the result of a scam.

What happened

Mrs M was contacted by someone who said they worked for a Bitcoin trading company that will call B. From what I can see she made credit card payments to DX*Trading-IMPEX.com to buy cryptocurrency that was forwarded onto B.

The payments that Mrs M made were as follows;

Transaction Number	Date	Merchant	Amount	Running Total
1	10/01/2018	DX*Trading-IMPEX.com	£250.63	£250.63
2	15/01/2018	DX*Trading-IMPEX.com	£2,016.52	£2,267.15
3	15/01/2018	DX*Trading-IMPEX.com	£3,544.24	£5,811.39

Mrs M says that she was told in February by B that all her money had been lost and that she would therefore not be able to get her money back.

Some years later Mrs M raised a complaint with Tesco as she believed that Tesco should have stopped her from making the payments in question.

One of our investigators looked into this matter they decided that any intervention by Tesco would not likely have changed Mrs M's decision to carry out the transactions in question. They also said that Section 75 did not apply as there was no Debtor Creditor Supplier (DCS) link between the company that Mrs M paid and B.

Mrs M did not agree with this and therefore her complaint was passed to me to issue 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.

The circumstances of this complaint are not in dispute and the evidence provided by both Mrs M and Tesco sets out what happened. What is in dispute is whether Tesco should refund any of the money Mrs M lost because of the scam.

Mrs M has accepted she authorised the payments she made, so the starting point here is that Mrs M is responsible for making the payments. However, 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.

In this instance I can see that Mrs M was contacted by Tesco in relation to the first payment. We don't know what exactly was said as, due to the timescales involved, there is no call recording available. But from what Tesco have said the call was just to check that Mrs M authorised the payment. Given the size of the transaction I don't think that it needed to ask any probing questions or do anything more at that point.

It is arguable that Tesco should have intervened during transaction 2 as the size of the transaction was unusual, given Mrs M account usage. So I need to consider what would have happened if it had intervened at that point.

Given when this occurred, scams that involved cryptocurrency were not well known. So had Tesco asked what Mrs M was intending to do and she told them she was purchasing cryptocurrency in order to send it to an investment, I don't think this in itself would have caused Tesco to have become aware that Mrs M was likely being scammed.

All that Tesco could have done was to give a generic warning about the risk of scams in general, such as asking Mrs M to research B and DX*Trading-IMPEX.com and saying that cryptocurrency was a risky investment. Also given that most cryptocurrency firms were unregulated, Tesco could not ask Mrs M to ensure the companies she was dealing with were regulated by the FCA either.

I can't see any credible warnings online from the time this occurred about either B or DX*Trading-IMPEX.com. So I don't think Tesco directing Mrs M to research either company would have changed anything. I am also mindful that Mrs M, by this point, had already made one transaction to B and she says at this point she'd been told by B that her "investment" had grown from £250.56 to £1,500. So I don't think a general warning about the risks of cryptocurrency would have changed her mind to carry on with her transactions. As she had by this point made a substantial "profit", which I think would have persuaded her to continue regardless of any generic warning.

So overall, for the reasons I've explained, I'm not persuaded intervention from Tesco would've made a difference and prevented Mrs M's loss in the particular circumstances of this case.

In terms of Section 75, the Consumer Credit Act says that certain conditions need to be met in order for a claim to be valid. All of the requirements must be present for Section 75 to apply; if any are not met, the claim would fail. One of these criteria in summary is that the payment has to be made directly to the company that the contract is with.

We know Mrs M made payments to DX*Trading-IMPEX.com which correspond with the transaction on her account statements. However, crucially, these are not the same entity as the business that Mrs M says she contracted with, which was B. As there is insufficient evidence to show that the disputed payments were paid directly to B or that B is linked to DX*Trading-IMPEX.com, I must conclude that it was not linked to the payments, which means the requisite criteria of a Section 75 claim has not been fulfilled. So I don't think that Tesco needs to refund the transactions in relation to Section 75.

Overall, having considered everything, I do not uphold this complaint for the reasons given above.

My final decision

For the reasons given above my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 28 September 2023.

Charlie Newton
Ombudsman