

## The complaint

Mr M complains about Tesco Personal Finance PLC trading as Tesco Bank.

He says that Tesco didn't do enough to protect him when he became the victim of a scam and would like Tesco to refund him the money he has lost as a result.

## What happened

In November 2018, Mr M had just become unemployed and was concerned about making ends meet. He thought he may be able to make some extra money by investing and did some research online.

He came across a company that he thought looked genuine and legitimate and entered his details into the website.

Mr M then received a call from an individual, who explained that he would help Mr M with his investments.

Mr M was persuaded to make the following payments using his Tesco credit card. V is a legitimate investment company, and J is a cryptocurrency exchange.

Date	Amount	Handling fee	Payee
12 November 2018	£237.35	£6.52	V
13 November 2018	£1,000	£39.90	J
13 November 2018	£4,500	£179.90	J
26 November 2018	£3,000	£119.70	J

Mr M paid a total of £8,737.35 directly to the scam and was charged £339.15 in handling fees for the transactions.

Mr M thought that he could see his 'investment' in the account the individual who contacted him had set up on his behalf, but when he wanted to withdraw his money found that he was unable to and became aware that he had been the victim of a scam.

Mr M then complained to Tesco, but it didn't uphold his complaint. He then brought his complaint to this Service where it was considered by our Investigator.

Our Investigator thought that the scam could have been prevented by Tesco from the point when payment of £1,000 was made when Tesco spoke with Mr M about what he was doing. They said that Tesco should have been aware of how scams like the one Mr M fell to work – and that it hadn't shown that it gave Mr M an effective warning when it spoke with him.

However, our Investigator also felt that Mr M hadn't done enough to mitigate his own losses and felt that a deduction of 50% should be applied.

Mr M accepted this, but Tesco didn't.

Tesco said that;

- While the call recording is no longer available, it was not fair to say that it didn't question Mr M about the payment or provide an effective warning
- V was not on the Financial Conduct Authority (FCA) or the International Organisation of Securities Commissions (IOSCO) warning lists at the time the first payment was made, and hasn't been added to either list since, so there was no effective warning to provide regarding V to Mr M
- While a warning could be provided about investments and scams, with no material evidence that Mr M was dealing with a scammer, there would be no reason he wouldn't continue to invest
- Not all investments are scams, and the fraud block was an indicator that it was concerned with Mr M's spending with J. It goes on to say that investments in crypto are high risk anyway, and Mr M actively sort out this type of investment.

As Tesco didn't agree, the complaint has been passed to me to make a 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 decided to uphold this complaint in part, for materially the same reasons as our Investigator. I'll explain why.

While Tesco has suggested that there was no indication that Mr M was dealing with a scammer, I believe that he was. Both V and J are legitimate companies – but the services they provide can be used by scammers as a way of obtaining funds from individuals as part of a scam which is what I believe has happened here.

Everything that Mr M has told this Service about how contact was made with him, how he was unable to access his supposed profits, the pressure to pay more money, that the scammer abruptly cut contact with Mr M, the use of AnyDesk, and the platform he was using to monitor his supposed investment suddenly disappearing are all hallmarks of this type of scam. So, I'm satisfied that Mr M was the victim of a scam here.

However, even when it is clear that a scam has taken place, and an individual has been tricked out of their money, it doesn't necessarily follow that a business will need to refund the money that has been lost.

In deciding what's fair and reasonable in all the circumstances of a complaint, 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 having been good industry practice at the time.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what's fair and reasonable in this case.

However, taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider having been good industry practice at the time, I consider Tesco 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.

In this case, I need to decide whether Tesco acted fairly and reasonably in its dealings with Mr M when he authorised payments from his account or whether it could and should have done more before processing them.

*Did Tesco act fairly and reasonably in Mr M's case?*

I wouldn't expect the initial payment made to V to have triggered any response from Tesco to check with Mr M about the payment he was making – it was relatively low value, and businesses can't be expected to intervene in every payment a consumer makes.

However, it is clear from the notes Tesco has provided that it did have concerns with the £1000 payment Mr M made to J - as it placed a fraud block on Mr M's account and spoke with him on the phone.

Tesco says Mr M confirmed the payment was genuine – and I have no doubt that at the time he thought it was – but Tesco clearly was suspicious about the payment – and so asking Mr M to confirm if the payment was genuine doesn't go far enough.

I understand Tesco says the intervention would have warned him about the potential concerns about this type of payment – but its notes don't support this. They only say that Mr M confirmed the payment was genuine. While I wouldn't necessarily expect the call recording to be available given the time that has passed, if Tesco had questioned Mr M accordingly about this payment, I would expect the notes to reflect what questions he was asked, and that a warning was given.

I haven't seen anything to suggest that Mr M had been told to lie about the payment he was making – so if Tesco had asked him, I think that he would have told it that he has been contacted by an individual after submitting his details onto a website offering investment and had been instructed to download Anydesk onto his computer and to purchase crypto.

This should have been enough of a red flag to Tesco to inform him that it was likely he was being scammed – and that he shouldn't proceed with the payment. And had Tesco given such a warning to Mr M, I don't think he would have continued with the payment.

So, I think that Tesco missed an opportunity here to prevent the loss from this point.

That said, I do need to consider if Mr M did enough here to mitigate his own losses, and if I need to apply a reduction for contributory negligence here.

Mr M says that he was researching online for an investment – and entered his details into a website he found that seemed on the face of it to be legitimate – but he doesn't appear to have done any further research or checks. After receiving a call from an individual who he

had no reason to trust, he was told of unrealistic promises of return and allowed remote access to his computer, while also sending a large amount of money in one day. Therefore, I feel that responsibility for the loss should be split equally between Mr M and Tesco, and in this instance feel that a reduction of 50% would be appropriate given the circumstances.

#### *Recovery of the payments Mr M made*

After the payments were made, I wouldn't expect Tesco to do anything to recover the payments until it had been told that something had gone wrong. However, I am not persuaded that there was any reasonable possibility of any of the payments being recovered here.

While Mr M could potentially have raised a claim for the payment to V under the Section 75 Consumer credit Act 1974, I don't think that he would have been able to provide the necessary evidence for this to succeed.

And as the other payments were made to J – a cryptocurrency provider – the debtor (Mr M) - creditor (Tesco) - supplier (scammer) chain is broken, as the 'supplier' in this scenario and according to the statement is the cryptocurrency provider ('J') itself, and it provided the services requested of it – which was the purchase of crypto and subsequent transfer to a wallet of Mr M's choosing.

I also don't think that it's likely a chargeback request for any of the payments would have been successful here either for similar reasons.

#### **Putting things right**

Tesco Personal Finance PLC trading as Tesco Bank should refund Mr M from the £1000 payment with a deduction of 50% for contributory negligence.

I calculate this to be £4,250.

It should also refund Mr M 50% of the fees it applied to these transactions. I calculate this to be £169.58.

On top of this, Tesco Personal Finance PLC trading as Tesco Bank should also pay Mr M 8% simple interest from the dates of the payment until settlement (minus any lawfully deductible tax).

#### **My final decision**

I uphold this complaint in part. Tesco Personal Finance PLC trading as Tesco Bank should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 6 November 2023.

Claire Pugh  
**Ombudsman**