

The complaint

Mrs T brings a complaint on behalf of the estate of Mr T. She complains that TSB Bank plc didn't prevent Mr T from losing money to multiple scams.

Mrs T is being represented by Mr T1 in this complaint. As he's the main party we've been corresponding with on behalf of the estate, I'll refer to Mr T1 at certain points in my decision and call him 'the representative' to avoid any confusion.

What happened

Mr T lost money to an investment scam in early 2020. Over a seven-week period, he made four payments totalling £85,000 in connection with an investment opportunity offered by a firm "X". His bank statements show he received 'interest payments' totalling just over £1,300 in April and May 2020. But then they stopped. Mr T was unable to make any withdrawals and correspondence between him and X show that in August 2020, he questioned if he'd been scammed.

In December 2020 and the beginning of January 2021, Mr T made two payments totalling £23,000 after a representative of X led him to believe that he could recover his initial investment. But this money was also lost.

Between late January and early April 2021, Mr T fell victim to a recovery scam orchestrated by a firm "L". He sent them just over £20,000 in a series of transactions during that time.

Mr T sadly died in June 2021. Later that year, TSB received a complaint from Mrs T about its failure to prevent Mr T from falling victim to multiple scams. The matter was then referred to our service and our investigator didn't uphold the complaint. The representative didn't agree with our investigator's findings and asked for an ombudsman's 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.

I would first like to acknowledge how distressing it must have been for Mrs T and her family to discover that Mr T had fallen victim to several scams soon after losing him. Despite my natural sympathy for what has happened, I can only uphold this complaint if I find that TSB could have prevented the payments from being sent, or if its acts or omissions prevented the funds from being recovered after it was notified of the scam.

I'd like to reassure the representative and TSB that although I've only summarised the background to this complaint, so not everything that happened or has been argued is set out, I have read and considered everything that the parties have provided in its entirety.

TSB hasn't disputed that Mr T was scammed on these occasions. For completeness, I also think he was scammed rather than losing money to a high-risk investment. The UK financial services regulator issued a warning about X in May 2020. And in September 2021, it

imposed restrictions on another firm “S” which had acted as a security trustee for X and was mentioned by X in its correspondence with Mr T a few times.

As for L, I haven’t come across any regulator warnings about it. Nor is there much information about it in the public domain. But based on what we’ve been told happened here, and the emails Mr T received from L – it has the hallmarks of a typical recovery scam – I think it’s more likely than not that it was also a scam company.

The Lending Standards Board’s Contingent Reimbursement Model (CRM) Code, which requires signatories to reimburse customers who are victims of scams like this one in all but a limited number of circumstances, doesn’t apply in this case. This is because TSB isn’t a signatory. But that code is not the full extent of the relevant obligations that could apply in cases such as this.

In accordance with the law, regulations and good industry practice, a bank has a duty to protect its customers against the risk of fraud and scams so far as is reasonably possible. If, in breach of that duty, a bank fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime, it might be liable for losses incurred by its customer as a result. So, I’ve thought about TSB’s duty of care in relation to the disputed transactions.

Scam 1

From the information I’ve seen, the very first payment Mr T attempted to make to X triggered an alert on the bank’s systems and he phoned them to discuss it. I’ve listened to the recording of the call. The agent asked Mr T probing questions, such as how he’d heard about the investment opportunity and what checks he’d carried out to satisfy himself that it was genuine. Mr T said he’d put X ‘through a scam check[er website]’. The agent then researched X, although they can be heard misspelling the firm’s name. So, it isn’t entirely clear whether the information they found online was about X. The agent said in their opinion they wouldn’t use X as the website didn’t look professional. They said they could be wrong and although it was Mr T’s choice, he could consider other savings options.

I acknowledge that the agent could have questioned Mr T further – it’s easy to be critical with the benefit of hindsight – but I find that the intervention was sufficient under the circumstances. I consider that the call served the purpose of identifying a fraud risk and providing a scam warning. Although TSB had identified red flags, it still fell on Mr T to go away and utilise the information he’d been given by the agent to check whether the opportunity he’d been presented with was genuine before deciding to proceed. Mr T didn’t disagree with any of the agent’s suggestions. Given he was seemingly receptive of the agent’s warning, engaged in the conversation, and more importantly agreed not to send the payment, I don’t think TSB acted unreasonably in removing the restrictions on his account following that discussion.

Around ten days later, Mr T made a payment to X for the same amount. The payment didn’t flag on TSB’s systems and was released. Given it had already flagged a payment to that payee just days earlier and had had a discussion with Mr T, I’m not persuaded that it was unreasonable of TSB to have executed his authorised instruction on that occasion. After all, Mr T had been given the opportunity to check that he was dealing with a legitimate firm. Even if I were to make a finding that TSB ought to have paused the payment pending further enquiry, I’m not persuaded that this would have led to a different outcome.

I say this because I can see Mr T questioned X about its legitimacy following the first failed attempt and TSB’s intervention. In an email he received from X, he was reassured that he was dealing with a genuine company. Reference was made to S, its security trustee, which

X said was regulated by the UK financial services regulator. Had TSB questioned the payment, I think it's more likely than not that Mr T would have said he'd looked into X further and was reassured he was dealing with a genuine company. There were no regulator warnings about X or S at the time of the payment in question, and S's regulatory status would have been confirmed had it been mentioned and had TSB looked it up. Therefore, it wouldn't have been unreasonable for it to have released the payment. The same goes for the subsequent payments to X which were made over the next few weeks. That means I don't think TSB could have done more to stop the payments from being sent.

Thinking next about recovery of the funds subsequently, I can see that TSB sent a recall request to the beneficiary bank as soon as it became aware of the matter in November 2020. It doesn't appear that a response was received, even though TSB chased the beneficiary bank a couple of times. Notwithstanding the lack of response, there was a gap of around eight months between the payment dates and when TSB became aware of the scam. As the investigator has explained, recovery of funds would have been unlikely given that scammers move funds out of the beneficiary bank account very quickly as they know the sending bank could submit a recall request.

Scam 2

In November 2020, Mr T was approached by one of X's representatives about an exit strategy for his investment. He could sell his shares to an interested party based overseas, but he'd need to pay tax. Mr T attempted an international payment for around £14,000 in connection to this, but it was picked up by TSB's fraud detection systems and he ended up calling the bank to discuss it. I've listened to the call recording, and I'm satisfied that the agent asked sufficiently probing questions. Concerns remained despite Mr T's answers and the agent warned him about investment scams and suggested he make further enquiries about why he was being asked to send money overseas.

Although the block on the payment was removed at the time, the payment wasn't released. As TSB remained concerned, it invoked the Banking Protocol which resulted in further questioning and the police getting involved. According to the notes, the scam perpetrated by X was uncovered at this time and Mr T agreed to report the payments he'd made earlier in the year as fraudulent. This is what led to a recall request being sent to the beneficiary bank (see above).

TSB didn't completely block Mr T's account following the intervention. But I don't think the steps the bank took were unfair. Mr T had acknowledged and accepted that he'd fallen victim to a scam. So, it wasn't wholly unreasonable for the bank to have allowed him to continue using his account, while it attempted recovery of funds. Banks have a difficult balance to strike between identifying transactions where there are indications of higher fraud risks and allowing customers to utilise their accounts with minimal unnecessary disruptions.

Around a month after the intervention, Mr T made a payment of £5,000 to a personal account. It was released without additional checks. The payee account details, and the amount involved, were unconnected to the previous scam payments. Looking at Mr T's bank statement, the transaction amount wasn't remarkable. So, I don't consider it ought to have flagged as unusual on the bank's system – despite the earlier intervention. The next payment, to the same payee, was made 14 days later. Although it was larger in value, by that point Mr T had made a payment to the beneficiary before and he hadn't raised any concerns. Having weighed up everything, I'm not persuaded that TSB acted unfairly by executing Mr T's authorised instructions.

Thinking about recovery, it wasn't until sometime later that TSB discovered Mr T sent these payments in connection to the scam. As I've explained, it's unlikely that funds would have remained in the beneficiary account by that point.

Scam 3

Reading through correspondence between Mr T and the scammers, I'm persuaded that he was keen to recover his initial investment. He'd been approached by L who offered to get his funds back. I can see Mr T had engaged with a recovery company in early 2020 in connection with a different investment (not the subject matter of this complaint). So, by the time he'd employed L in January 2021, it wasn't the first time he'd used a recovery firm.

The first payment (of £2,150), which Mr T attempted to send to a business account, flagged on TSB's system and Mr T phoned the bank to discuss it. The agent asked appropriate questions but unlike previous interventions, Mr T wasn't honest about the reason for the payment. He said he was paying off his son's debt. Despite Mr T's misleading responses, the agent was concerned that the payment was high risk based on where it was being sent. They didn't let the payment through and informed Mr T accordingly. Because of the answers he gave, the payment was seemingly unconnected to the scam that had been reported two months earlier. In the circumstances, I don't think it was unreasonable of the bank to have stopped at just blocking that payment and not the whole account.

From what I can make out from the available email correspondence, Mr T informed L of what had happened with TSB. He was provided alternative account details – a personal account this time – and sent the payment the same day. Mr T's actions suggest that he was desperate to make the payment regardless of TSB's earlier warning about the payee being high-risk. As far as the bank was concerned, Mr T's subsequent payment wasn't made to the account it had concerns about. Given it wasn't *that* unusual for the account activity, I'm not persuaded that TSB acted unfairly in not intervening when Mr T authorised the payment in question.

The subsequent payments, to the same personal account, were spread out across the next month and were for insignificant amounts compared to the usual account history. At the beginning of March 2021, the payee details changed. Again, the first transaction to the new payee was low in value. But as the investigator has highlighted, there were three more payments to that payee on the day. Although the individual amounts were low, I consider that multiple payments to a new payee ought to have flagged as unusual to TSB. Certainly, by the time Mr T authorised the fourth payment, the bank ought to have paused it pending further enquiry.

But that's not the end of the matter. Causation is a critical determinative factor when deciding cases involving a scam. I'd need to be satisfied that an intervention by the bank would have more likely than not stopped Mr T in his tracks. By the point Mr T had authorised the fourth payment to the new payee, the scammer had convinced him that he would receive close to £118,000, which included compensation for errors that had been made. Despite his own reservations for some time, Mr T had continued making payments.

I haven't seen anything to suggest that Mr T was coached by the scammer to lie to his bank. But as I've noted above, he wasn't honest with TSB when it had previously questioned a payment. I'm not convinced he would have been forthcoming this time either. I've kept in mind that just a few days later, when he enquired about increasing the amount TSB had lent him (we now know these were used for the scam payments), he said the funds were for improvements to his house. Therefore, I think it's unlikely that an intervention by TSB would have led to it uncovering the recovery scam.

TSB did subsequently restrict Mr T's account when it came to light that he'd continued sending payments in connection with the original scam despite the intervention in November 2020. After Mr T explained what had happened in relation to the recovery scam, TSB raised a fraud claim. It attempted recovery from the beneficiary bank, only to be informed that just £1.41 remained in the beneficiary account for consideration. Having carefully thought about this, I don't think TSB could have done more in this regard.

The representative submits that TSB didn't take account of Mr T's vulnerability and possible lack of capacity. I fully recognise that he feels very strongly about this complaint. A large sum of money was lost to cruel scams. But I can't see that TSB was made aware of Mr T's circumstances during the relevant period as put forward by the representative. And having listened to the call recordings, I don't think they would have been apparent either. I also understand the point the representative's trying to make about limiting Mr T's access to just branch-based banking following the Banking Protocol being invoked. But it's worth noting that at the end of 2020 and beginning of 2021, the country was still grappling with the Covid-19 pandemic. Many businesses, including banks, were having to limit face to face interaction and adhere to social distancing rules.

I recognise that this will come as a considerable disappointment to the representative and Mrs T. But in the circumstances, I'm not persuaded that TSB can fairly or reasonably be held liable to reimburse the estate of Mr T. Any failure on the bank's part in relation to not spotting the subsequent transactions as unusual is not the dominant or effective cause of the loss incurred.

My final decision

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr T to accept or reject my decision before 28 August 2023.

Gagandeep Singh
Ombudsman