

The complaint

Mrs H has complained that TSB Bank plc won't refund the money she lost after falling victim to a scam.

What happened

Both sides are most familiar with the case, so I'll summarise what happened in brief.

In late 2017, Mrs H was contacted by a property company. They provided documents setting out a corporate bond, backed by an FCA-registered compliance company and a security trustee. Mrs H was persuaded to invest £20,000 for a 7.5% annual return. She funded this with her savings, and paid it from her TSB current account using her online banking. She was provided with a bond certificate.

Mrs H received returns in 2018 and 2019, but these stopped. She was contacted by the police, who were investigating the company. The company has gone into liquidation. Mrs H believes she's been the victim of an investment scam.

In 2023, Mrs H came to our service. She'd appointed representatives to complain to TSB, but it appears their complaint letter went to a different business instead. Her representatives argue that TSB should have prevented the scam by looking further into Mrs H's investment or warning her about the possibility of scams.

Our investigator looked into things independently and didn't uphold the complaint. They found that at the time of the investment, there were no warnings, investigations, or anything else which would have reasonably shown this was a scam. Mrs H's representatives appealed, so the complaint's 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.

From what I can see, investigations into the property company have not concluded, so it has not been determined whether this was really a scam – as opposed to, for example, a company that was run poorly, fell into liquidation, and was no longer able to pay its investors. However, I accept that it's likely and plausible that this was a scam, so I am willing to treat it as such in this decision. I also understand that Mrs H lost a good deal of money here – for which she has my sympathy. I appreciate this can't have been an easy time for her, and I do appreciate why she feels that her money should be returned. It's worth keeping in mind that it's the property company who are primarily responsible for what happened, and who really owe Mrs H her money back. But I can only consider what TSB did. Having carefully considered everything that both sides have said and provided, I can't fairly hold TSB liable for Mrs H's loss. I'll explain why.

It's not in dispute that Mrs H authorised the payment involved. So although she didn't intend the money to go to a scam or a failing investment, under the Payment Services Regulations she is liable for the loss in the first instance. And broadly speaking, TSB had an obligation to follow her instructions – the starting position in law is that banks are expected to process payments that a customer authorises them to make.

TSB should have been on the lookout for payments which could be the result of fraud or scams, to help prevent them. But I also accept that a balance must be struck between identifying and responding to potentially fraudulent payments, and ensuring there's minimal disruption to legitimate payments. I've thought carefully about whether TSB should have done more in Mrs H's case.

I can't see that TSB were made aware of Mrs H being vulnerable or being victim to any previous scams before this. The payment was funded from Mrs H's savings, and it's not unusual for customers to occasionally make very large payments using their savings – indeed, that's a rather normal way to use savings. The payment did not drain Mrs H's current account – the remaining balance was the same as before this incident. Further, this was a singular payment, rather than multiple rapid ones, sent to a UK bank account of a registered business, authorised by their genuine customer. On the other hand, this was indeed a very large payment, to a new payee, which was not really in character with Mrs H's previous spending. So there's an argument that TSB should have intervened.

The thing is that even if TSB had flagged the payment and given Mrs H scam warnings or asked further questions about her reasons for paying, I find it's not likely or plausible that TSB would have uncovered a scam here, and it's more likely than not that Mrs H would've still gone ahead.

I say this because Mrs H was paying an established UK company which had been trading for over two years, for an investment backed by an FCA-registered business. The returns on offer were not unviable, and Mrs H had been given professional documentation setting out a costed plan and the risks involved, and setting out that the bond was safeguarded by an independent security trustee.

At the time, there were no warnings or investigations against the companies involved. It would be unreasonable to expect TSB to have investigated the individual adviser Mrs H spoke to, or to have assessed the investment advice given or even given her investment advice themselves. That would go beyond what I'd expect here. And I can't see that they'd have grounds to do so – the matter would have looked genuine at the time. I do not see that TSB could have reasonably foreseen that Mrs H would be scammed, and there was nothing which reasonably put TSB on notice that the payment would facilitate fraud. Indeed, the police only began investigating this matter some years after Mrs H's payment and are still looking into it. In the circumstances of this case, I don't see how I could reasonably expect TSB to uncover this scam years before the police. Realistically, it's only with the benefit of hindsight that the bank might reasonably know this was a scam.

So even if TSB had questioned Mrs H, I would not have expected them to block the payment. And even if they'd provided her with general warnings about cold callers and the possibility of a scam, I do not see that it was likely to make a difference here. Ultimately, at the time there was not a reasonable basis on which to conclude this was a scam, whereas Mrs H had been given good reason to feel reassured that this was a legitimate investment.

Next, I've considered whether TSB should have done more to try to recover Mrs H's money after they were made aware of the scam. Unfortunately, TSB were only told about this around half a decade after the fact, after the company involved had gone into liquidation. And given what the administrators have said about the likelihood of funds being available, along with the time that's passed and the tendency for scammers to move money on as quickly as possible, I don't think TSB could have reasonably recovered Mrs H's money by the time they were told this was an alleged scam.

So while I'm very sorry to hear about what happened to Mrs H, I don't think TSB should be held responsible for her loss. And so I can't fairly tell TSB to refund Mrs H's money in this case. I realise this will come as a disappointment to Mrs H, though it is not my intention to disappoint her. But I'm unable to reasonably come to another conclusion.

Lastly, I appreciate that TSB did not initially respond to Mrs H's complaint. But it appears that's because her representatives sent the complaint to another business instead of TSB.

My final decision

For the reasons I've explained, I don't uphold Mrs H's complaint in this case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 12 September 2023.

Adam Charles
Ombudsman