

The complaint

Mr W has complained TSB Bank plc won't refund money he lost as the result of an investment.

What happened

After being approached in 2020, Mr W decided to invest £2,500 in a company (who I'll call A) offering generous rates of return and set up as an asset-based commercial lending business. He used his TSB account to send £2,500 to a business (called N) in December 2020.

Subsequently N went into voluntary insolvency and Mr W believes TSB should have intervened in the payment he was making and alerted him to potential risks.

TSB didn't believe there was a case to answer. They weren't convinced Mr W was the victim of a scam rather he'd made an investment which had turned bad.

Mr W referred his complaint to the ombudsman service.

Our investigator felt the evidence wasn't clear that Mr W was the victim of an investment scam. She wouldn't be asking TSB to take any further action.

Mr W disagreed with this outcome. His representatives asked his complaint to be referred to an ombudsman.

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 reached the same outcome as our investigator. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

I don't dispute Mr W strongly believes he was scammed. He didn't consider himself an experienced investor and has now lost £2,500. He has my sympathy about what he has gone through.

However I'm not convinced that the evidence indicates Mr W was the victim of an investment scam. Rather I think he invested money on the promise of excellent, and perhaps unrealistic, returns. N was regulated by the FCA at the time, so TSB wouldn't have been privy to any concerns about payments to N.

There's no dispute that Mr W made and authorised the payment. This was after a transfer of funds from his savings account of £2,500.

I'm satisfied the transaction was authorised under the Payment Services Regulations 2017

It's generally accepted that TSB has an obligation to follow Mr W's instructions. So in the first instance Mr W is presumed liable for his loss. But that's not the end of the story.

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider that TSB should:

- have been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.
- 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 (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which financial institutions are generally more familiar with than the average customer.
- in some circumstances, irrespective of the payment channel used, have taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.

At no stage did TSB intervene or ask Mr W what he was doing. However I don't think I'd consider this an issue or feel they should have done more to note the payment Mr W was making to N. TSB has confirmed that this payment did not register for any warning because it wasn't seen as high-risk. But even if they'd done so, I don't believe they would have felt any reason to alert Mr W he was the victim of a scam as I don't believe he necessarily was.

I say this because:

- TSB should have been alert to any unusual payments Mr W was making but this was a domestic single payment for a relatively low value. I'm aware he'd not made any other payments of this value over the preceding six months, but Mr W was making monthly payments to a savings account of £600-1,000 and his monthly credit card bill was often a similar amount to this payment.
- If this were a scam, we'd more likely see Mr W be persuaded to use more of his savings to pay N for an investment in A. Although I believe he had more money at his disposal, he chose to make a relatively small payment of £2,500 which indicates he was managing his risk and was aware that this investment could be highly speculative.
- There was only one payment. I think it's unlikely from that payment alone TSB would have detected any potential risk to Mr W.
- Even if they had discussed what Mr W was doing, he would have explained the investment he was making and perhaps even the terms. There was no existing alert about N or A. Whilst TSB's staff may be trained to intervene in potential cases of fraud, there was no requirement on them to advise individuals to ensure they get proper financial advice whilst investing.
- It was always open to Mr W – knowing that he was an inexperienced investor – to obtain financial advice himself if he felt that was appropriate. He may well have felt because of the low-level nature of his investment this wouldn't have been merited based on the cost of financial advice.

I've noted the documentation Mr W's representatives have shared with our service which I have considered. I note what they say about clear evidence showing A was operating a Ponzi scheme. However this documentation hasn't caused me to come to a different outcome.

Overall I'm not convinced I'd have expected TSB to intervene or that they should now refund Mr W.

My final decision

For the reasons given, my final decision is not to uphold Mr W's complaint against TSB Bank plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 23 May 2024.

Sandra Quinn
Ombudsman