

The complaint

Miss M complains that TSB Bank Plc (“TSB”) didn’t do enough to help her when she was the victim of a scam.

What happened

The detailed background to this complaint is well known to both parties. So, I’ll only provide an overview of some of the key events here:

Miss M was looking for an investment opportunity online when she came across a company she liked the look of. Miss M entered her details into the website and shortly after she was contacted by someone who purported to be a cryptocurrency trader. Unbeknown to Miss M at the time, she was actually speaking with a scammer.

Miss M was persuaded to make an initial ‘trade’ of £250 and she was given access to her own online trading platform – which we now know to be fake. The fake platform showed Miss M that she had made a good return on her initial deposit and so she agreed to invest more funds. Miss M made a further two transfers - £2,500 on 15 June 2022 and a further £5,000 on 5 July 2022.

Miss M firstly transferred the above amounts to an account she held with a third-party electronic money institution (“EMI”) before transferring the money on to the scammers.

After having some trouble withdrawing any of her funds from the fake account, Miss M realised she’d likely been the victim of a scam. So, she contacted TSB to tell it what had happened. TSB told Miss M her money couldn’t be refunded and to contact the provider of her EMI account instead – as this was the account the money was lost from. TSB did compensate Miss M £40 due to the amount of time she had spent on hold when trying to report the scam.

Unhappy with TSB’s response, Miss M raised a complaint. TSB reviewed the complaint but reiterated that it would not look to refund Miss M’s money. It said that as Miss M’s money was initially sent to the EMI account held in her own name, the fraud didn’t occur on her TSB account, so it wasn’t covered by its fraud guarantee.

Miss M remained unhappy, so she brought her complaint to this service and one of our investigators looked into things. Our investigator thought Miss M’s complaint should be upheld. She said Miss M was the innocent victim of a scam which TSB’s fraud guarantee says is covered. And that there wasn’t anything in the guarantee that said scams, where the funds were initially transferred to a third-party account, wouldn’t be covered.

TSB didn’t agree and asked for an Ombudsman’s review. It said its guarantee is clear in that the customer would need to be an innocent victim of fraud *on* their TSB account to be covered under the fraud guarantee and in this particular case, Miss M’s loss stemmed from her EMI account. It said Miss M made a payment to a legitimate account and the funds were

received by the intended beneficiary. So, there was no loss from the TSB account and its fraud guarantee doesn't apply.

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 crux of this complaint is whether the money Miss M has lost should be covered under TSB's fraud guarantee and whether TSB has treated Miss M fairly and reasonably.

I've considered what both sides have said carefully. Having done so, I believe TSB should refund Miss M the amount she lost as a result of this scam. I'll explain why in more detail below:

Miss M says she was the innocent victim of fraud on her account which TSB's fraud guarantee says is covered. She's explained the scammer persuaded her to transfer money out of her TSB account and then on to her EMI account, before it was transferred on to the scammers themselves.

TSB disagrees. It says for its guarantee to apply, the fraud must happen 'on' its customer's account and there can be no intervening transfer between Miss M's account and the scammers – especially where the EMI account had been in regular use prior to the scam. It says the loss didn't occur on Miss M's TSB account, it occurred when she transferred the money on from her EMI account.

TSB's website explains that its fraud guarantee, which was in place at the time of the scam, is a first in UK banking and it goes further to cover TSB customers against fraud than anything that has come before it. TSB's website explains that if a customer is clearly an innocent victim of fraud on their account, the money lost will be refunded – even if the customer makes an honest mistake. And I've seen on the TSB website there is a reference to the range of cover the fraud guarantee provides when compared to what is offered by other banks:

"How is the TSB Fraud Refund Guarantee different to what other banks offer?

At the moment, there are certain times where banks are legally obliged to refund customers, however even these have loopholes. Our guarantee covers customers who are clearly innocent victims of fraud on their TSB account."

After reading TSB's website, I'm satisfied that what happened to Miss M should be fairly and reasonably covered under its guarantee. That's because the wording of TSB's guarantee implies that you will be covered if you're an innocent victim of fraud on your account (which I'm satisfied Miss M was) unless any of the exclusions apply.

So, after considering the wording of TSB's fraud guarantee, I believe its intention is to refund innocent victims of fraud – and Miss M is clearly an innocent victim here. A scammer contacted her to defraud her of the money that was held in her TSB account. So, it's clear to me the scam took place on Miss M's TSB account as the intention was to remove all the money the scammer could obtain from her TSB account by telling Miss M to send the money to her EMI account and then on to their account - likely in the knowledge that this was more likely to be successful.

TSB hasn't raised any of the exclusions in its guarantee as a reason for declining Miss M's claim here because it doesn't think the fraud happened on Miss M's account. But I've considered the exclusions or '*times where the guarantee doesn't apply*' section of the guarantee anyway.

The exceptions explain that the guarantee doesn't apply where Miss M is involved in committing the fraud or if she has abused the guarantee by deliberately ignoring account safety information and/or making repeated claims. It also doesn't apply where Miss M has a dispute with a genuine merchant about goods or service. After considering these exclusions, I'm satisfied that Miss M's situation doesn't apply to any of them.

I understand the point TSB is making here that the money wasn't sent directly to the scammer in this instance, but I don't consider the wording of its fraud guarantee to be clear enough to exclude such a common technique used by scammers. I believe that a reasonable person would consider Miss M's loss to be covered under the fraud guarantee as it stands. And if TSB wants to exclude this common type of scam, then it should be more specific, within its fraud guarantee, about what is and isn't covered.

The service TSB provided

I understand Miss M is also unhappy with the way TSB dealt with this issue when she raised the scam complaint. Specifically, she is unhappy with the amount of time that she had to spend on hold whilst waiting to speak with someone about the scam. However, I understand that TSB has already offered Miss M £40 in recognition of the inconvenience caused to her. And this seems reasonable to me and is in line with what I'd expect in similar cases.

Putting things right

I'm satisfied Miss M's loss should be fairly and reasonably covered under TSB's fraud guarantee. So, it should refund her £7,500 and pay her interest at the rate she was receiving on her ISA from the date her complaint was declined under the guarantee to the date of settlement.

My final decision

For the reasons outlined above, my final decision is that I uphold this complaint.

TSB Bank Plc must:

- Refund Miss M the £2,500 and £5,000 payments she lost to the scammer. These sums must be paid to Miss M within 28 days of receiving notification of her acceptance of my decision;
- Pay interest on the above sums at the rate Miss M was receiving on her ISA from the date her fraud claim was declined under TSB's fraud guarantee to the date of settlement.*

*If TSB considers that it's required by HM Revenue & Customs to deduct income tax from the interest award, it should tell Miss M how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs, if appropriate.

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

Emly Hanley
Ombudsman