

## **The complaint**

Mrs W complains that TSB Bank plc ("TSB") refuses to refund her losses after she fell victim to a scam.

## **What happened**

Mrs W made payments from her TSB account to a crypto exchange which I'll call B. She says the money was then sent on from B to a scam investment (which I'll call GG). Under the TSB fraud guarantee scheme, Mrs W asked TSB to refund the money she lost to this scam.

TSB replied that its guarantee only covered scam payments that went directly from the TSB account to the scam company. But in this case, Mrs W paid the money into her own online account held with B. The money then went on to the scammers from there, so the loss hadn't originated from her TSB account. TSB therefore felt, these payments weren't covered by the guarantee. It also said that the transactions on her account were not unusual or suspicious, so it didn't otherwise do anything wrong by allowing the payments to debit her TSB account.

Unhappy, Mrs W referred the complaint to this service. One of our investigators looked into the complaint and felt that TSB should refund the payments under its guarantee. She explained that the guarantee simply says that if TSB's customers fall victim to a scam, then TSB will refund the money. Consumers moving money to a crypto exchange before being moved onto the scammer, was a theme of this type of scam, but it didn't change that Mrs W had been a victim of the scam. So, she felt TSB should refund the money in the spirit of the guarantee.

TSB didn't agree. It re-iterated that it had done nothing wrong, that's its guarantee didn't cover losses customers experienced from their other accounts. That the guarantee only applied to losses made directly from their TSB accounts. It also pointed out that Mrs W had significant credits to her TSB account indicating she was making money from these investments. It further highlighted that the payments she disputed with our service, were different to the ones she initially disputed with TSB.

As an agreement couldn't be reached, the complaint was passed to me to decide.

In my provisional decision of 29 June 2023, I set out why I was minded to not upholding the complaint. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. TSB acknowledged the provisional decision but didn't make any further comments. Mrs W made some additional submissions which I will address below.

## **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.

In my provisional decision I explained the following:

*Firstly, I can see Mrs W regularly sends money to her account held with B. She also regularly trades with her online account with B. There are a significant number of payments going in and out of her account with TSB and she seems to be experienced with making trades of this nature. So, I don't think these transactions would have stood out as unusual or suspicious.*

*So, in order for me to uphold this complaint, I would have to be satisfied that Mrs W was indeed scammed and that the TSB guarantee should have applied.*

*However, based on what I've seen, I'm not satisfied that Mrs W has provided sufficient evidence that she did send (and lose) money to GG; nor, if she did, which transactions in particular from her TSB account were and were not related to the scam. Based on the evidence she has submitted, I cannot tell which transactions were legitimate trades and which went to the scam company. Mrs W's testimony has also changed and whilst I believe she has made every effort to identify which transactions relate to GG (if any), I'm afraid she hasn't provided me with convincing evidence that the transactions she's pointed out relate to the scam. So, I don't intend to ask TSB to refund her any payments under its guarantee.*

*When Mrs W initially contacted TSB to report that she'd been a victim of the GG scam, she disputed the following transactions:*

- 23 April 2021 - £10,000
- 21 April 2021 - £250
- 19 April 2021 - £250

*When she subsequently spoke to our investigator, she disputed the following payments.*

27 April 2021	£1,000	Card payment
27 April 2021	£50	Faster payment
27 April 2021	£9,950	Faster payment
29 April 2021	£2036	Card payment
7 May 2021	£5,000	Card payment

*These are a completely different set of payments to the ones initially claimed from TSB with no explanation as to why she's now requesting a refund of these payments. They are also not for similar amounts that could be explained by an oversight. The first disputed payments amount to £10, 500. Whereas the amounts now disputed amount to £18,036. The dates are also completely different.*

*I would also add that the card payments that Mrs W has disputed did leave her TSB account but do not appear on her account with B. Mrs W hasn't been able to explain why they don't appear on her account with B. It may be that the payments have gone to another account held with B perhaps in error. But the card payments amount to £8,036 – I would think that, if these payments hadn't arrived as expected, Mrs W would have queried this at the time. This isn't an insignificant amount of money. But, in any event, these amounts couldn't have been forwarded on to GG, as they never entered the account, she held with B for which Mrs W has provided statements.*

*I have also asked Mrs W for proof that these payments were made to the scammers' account (GG). Mrs W sent in screenshots of five trades made from her account with B to what she says is GG. But the dates she made these trades on do not match any of the*

*disputed transactions on her TSB account. The screenshot also shows two different destinations indicating they went to two different companies.*

*The screenshots show:*

<i>Date</i>	<i>Destination</i>
<i>15 April 2021</i>	<i>*E93</i>
<i>19 March 2021</i>	<i>*E93</i>

*Both these trades are dated prior to any of the disputed payments leaving her TSB account. So, I don't think these cryptocurrency trades relate to the payments she's asked TSB to refund.*

*The screenshots also show a further three trades that Mrs W says relate to GG.*

<i>Date</i>	<i>Destination</i>
<i>27 April 2021</i>	<i>*qEM</i>
<i>6 April 2021</i>	<i>*qEM</i>
<i>18 March 2021</i>	<i>*qEM</i>

*The latter two transfers again pre-date any of the payments Mrs W has disputed with TSB. The destination of the two lots of payments are also different indicating that they went to two different companies.*

*Based on everything I've seen, I'm afraid it's not clear which payments Mrs W made from her TSB account relate to payments she says she eventually sent on to GG. It's also not clear what payments she made to GG (if any). As I cannot be reasonably satisfied whether Mrs W sent any of the disputed payments to GG, I cannot ask TSB to refund them.*

*I would like to stress that I do not think Mrs W is being dishonest, and believe she's tried to provide me with her best testimony as to what she believes happened. But given the vast numbers of transactions going through Mrs W's account, it may be that she has struggled to identify which payments relate to the scam, and which were legitimate trades. But without a clear explanation and evidence of which payments relate to the scam, I cannot fairly ask TSB to refund the payments she has requested.*

*In order for me to uphold this complaint where there is such ambiguity, inconsistency and uncertainty like this, I'd want see the payments leaving her TSB account, going to her account held with B and then being sent on to GG (the scammers). Only then would I need to consider whether TSB should refund under its guarantee. But I'm afraid Mrs W hasn't been able to persuade me that its more likely than not, that the payments she's now identified, are the payments she sent onto the scam company. I therefore will not be asking TSB to refund these amounts.*

*I will however look at any further evidence Mrs W is able to provide. So, if she able identify which TSB payments relate to the GG scam, and provide documentary evidence of this, I will review this complaint again.*

Mrs W disagreed with my provisional decision for the following reasons:

- Mrs W is unhappy that her complaint was originally upheld and then overturned despite her making every effort to provide the evidence requested. She feels TSB is simply trying to avoid paying a genuine victim of a scam.
- The other payments made to B were not used to trade but simply to buy coins – Mrs W is not an experienced trader but was a victim of a scam.

- Mrs W's friend who fell victim to the exact same scam, had his complaint upheld in his favour and she doesn't know why hers wasn't.
- Mrs W says her testimony regarding which payments were used to buy coins and which were sent to GG changed after she sat down with her friend and realised which payments were actually scam payments. She couldn't find any evidence that she'd confirmed the original payments were the scam payments in writing and wanted to see a copy of this.
- Mrs W isn't able to evidence most of the payments made to GG as B no longer retains this information. But she reiterates that she was a victim of the scam, and that she has been honest. She has instructed solicitors and communicated with the police regarding this matter demonstrating the genuine nature of her claim.
- Mrs W says she's now sent in some screen shots showing a payment made to GG via a Bitcoin transfer for £1,999.35 which she says is the transfer of £2,036 (less costs) and one for £9,950. She also indicated that the other card payments did arrive in her account with B but are for slightly different amounts due to costs.
- Mrs W adds that she received no warnings and at no time did TSB challenge why payments were being sent to B. She feels that, had TSB given her any security warnings, she would have taken them seriously.

Our investigator subsequently clarified with Mrs W that the original payments Mrs W listed as scam payments were reported on a call and not in writing. TSB subsequently tried to recover these payments from the beneficiary bank, so we're satisfied that she did identify those payments as the scam payments. Our investigator also set out that TSB had considered a chargeback claim for the card payments Mrs W made to B, but as there was nothing to suggest that B hadn't delivered the service paid for, or that it had otherwise done anything wrong, it wasn't feasible for TSB to get these payments back via a chargeback request.

Firstly, I'd like to re-assure Mrs W that while I have only set out the most salient points to address, I have read all her submissions and reconsidered her complaint carefully. I appreciate Mrs W must be very disappointed with my findings given that her complaint was originally upheld by our investigator. However, while I sympathise with her position, I am simply not able to uphold this complaint based on the evidence available. And I understand it must be frustrating that other victims, such as her friend, have had their complaints upheld, but each case is decided on the individual merits of that complaint and I've explained why I haven't been able to uphold this complaint.

Mrs W has explained that she identified the second set of payments as the payments made to GG after sitting down with her friend. She stresses she's sure that these are the scam payments and she's been honest in her claims. However, while it may be understandable if Mrs W had added a payment or two that had initially been left off, she's identified a completely different set of payments, for differing amounts and different dates. I don't think it's unreasonable to ask how she now knows these are the payments related to the scam. Other than her testimony, I've seen no evidence that these payments were sent to GG rather than used to buy coins.

I understand Mrs W hasn't been able to provide much evidence of the payments made to GG as B does not retain this information. I appreciate the difficulties she has experienced. But in response to our previous request for evidence of payments made to GG, Mrs W sent in the five screenshots I assessed in my provisional decision. She said:

*“The payments made to [GG] from [B] are via Bitcoin addresses as this is the only way [GG] would accept deposits. Again, I have provided screenshots that are available of my payments made to [GG] via [B].”*

Where there is such inconsistency in a consumer’s testimony, I’m afraid I cannot uphold a complaint based on that testimony. I therefore re-iterate that without the documentary evidence I requested in my provisional decision, there simply isn’t sufficient evidence to clarify which payments Mrs W sent from her TSB account relate to the scam and which were used to buy coins.

The evidence Mrs W has now claimed are the payments made from her TSB account to GG only shows a destination address. I appreciate Mrs W says this is how GG received payments and the only evidence she can provide – but I’d have to rely solely on her testimony that this destination address is the payment to GG. I also note that the transfer of £2,036 left her account with TSB on the 29 April 2021, while the screenshot for £1,995.35 shows the money was received in Mrs W’s account with B on the 27<sup>th</sup> April 2021.

I have reviewed all the screenshots Mrs W has now submitted, but I still cannot see a clear payment journey from Mrs W’s TSB account, to her account with B and then payments made to GG. I’m afraid, given the level of uncertainty in this case, the evidence submitted is not sufficient to counteract the concerns I raised in my provisional decision.

Mrs W has also raised concerns that TSB allowed these payments to leave her TSB account and it didn’t give her any security warnings or contact her to discuss what these payments were for. She feels had TSB done so, she would have taken any security warnings seriously. But businesses like TSB are only obligated to monitor consumer accounts for unusual or suspicious transactions. Mrs W routinely made payments to B which I understand were for purchasing coins rather than investing in other companies. But B was therefore an established payee. She also had a lot of money going through her account with transactions amounts larger than the ones she says are related to the scam.

What this means is that these particular transactions did not stand out as unusual or suspicious, as they appeared normal based on her usual account conduct. So, like I explained in my provisional decision, I wouldn’t have expected TSB to have intervened before allowing these payments to leave her account. So, I don’t think TSB failed in its duty of care towards her by not providing her with any security warnings or stopping any payments.

I am again very sorry that I haven’t been able to help Mrs W get her money back. But as I’ve explained, I’m afraid there isn’t enough evidence that Mrs W sent money to GG or which payments she sent to B were used to invest with GG and which were used to buy coins. Where there is still so much uncertainty, I cannot fairly ask TSB to refund her the money she says she lost under its guarantee. I also don’t think the payments were otherwise unusual or suspicious, so I don’t think TSB did anything wrong by not intervening before the payments left her account. I therefore do not think it’s fair to hold TSB liable for the losses Mrs W says she suffered.

### **My final decision**

For the reasons explained, I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs W to accept or reject my decision before 31 August 2023.

Asma Begum

**Ombudsman**