

The complaint

Ms M is seeking to recover nearly £135,000 from TSB Bank plc, which was stolen from her as a result of a third-party scam. Ms M is represented by her daughter, Miss E.

TSB says it is not liable for the loss because Ms M authorised the payments — and it could not reasonably have intervened or done more to try to recoup the money from the payee banks.

What happened

In 2017, Ms M's relationship of 35 years was abruptly ended by her husband, causing her significant shock and grief. Ms M struggled to process emotionally and mentally what had happened and, regrettably, she experienced anxiety and depression leading her to take medication to help her cope with the trauma.

Six months later, Ms M joined an internet dating site where she met a man who told her he too had been recently divorced, lived locally and like her, was also a parent. Ms M felt that she had found a friend who could relate to what she was going through and in whom she could confide about her own trauma following her recent separation. The conversations between them developed and moved from the online forum to daily private emails, texts and telephone calls. The man sent Ms M photographs of him and his children and shared personal details about himself and his background, thereby slowly gaining Ms M's trust. Soon after, he said he had secured a job overseas to work on a project.

Over the following months, the man – whom we now know was a scammer – proceeded to ask Ms M for money under various guises. And as is often seen in scam cases of this nature, the amounts requested started relatively small and soon became requests for significant payments.

The following table sets out the amounts sent to the scammer including associated international payment fees:

Date	Transactions out of account	Transactions into account	Amount
14/05/2018	Faster Payment		£750
25/5/2018		<i>Credit from a loan</i>	£9,990
28/5/2018	Faster Payment		£1,000 (plus £10 each for Swift payment and international fee = £20)
30/5/2018	Faster Payment		£10,000 (plus £17.50 fee)
5/7/2018	Faster Payment		£3,000 (plus £10 fee)
21/8/2018		<i>Credit from a loan</i>	£10,000
22/8/2018	Faster Payment		£10,000 (plus £17.50 fee)
23/10/2018		<i>Credit of divorce settlement monies</i>	£123,102.87

29/10/2018	Faster Payment		£55,000 (plus £20 fee)
14/11/2018	Faster Payment		£45,000 (plus £20 fee)
29/12/2018	Faster Payment		£10,000 (plus £17.50 fee)
21/1/2019	Faster Payment		£3,000 (<i>since refunded by TSB</i>)
			<i>Total payments (inc. fees, less refund):</i> £134,872.50

The scammer told Ms M that he'd arrived abroad but couldn't open a bank account and needed some money. He asked for £750 which he assured Ms M he would pay back and Ms M sent this to him via bank transfer. A series of further payment requests followed with various explanations which Ms M felt at the time, were credible. These included:

- Needing to purchase machinery;
- Needing the money to pay his employees whilst he had unresolved tax issues;
- Needing the money to pay a tax bill which would have to be cleared so he could return to the UK and asking for that money to be paid into the 'account' of his employer to add credence to his request;
- Needing the money to be paid into a friend's account because the one he had was in overdraft so some of the payment would be lost if credited there;
- Needing the money to pay for the return flight home;
- Latterly, being told that unless she sent the monies to him, he wouldn't be able to return to the UK and pay her back.

The scammer led Ms M to believe they were very much in love; in email exchanges between them, I've seen him dissuading Ms M from listening to anyone else and only trusting her own heart. Text messages from him were affectionate and alluded to the life they would lead together.

Over time, Ms M says she felt increasingly pressured to continue to send the money because she believed it was the only way she would receive back what she was owed. She didn't tell any family what was happening because she felt ashamed of losing the divorce settlement monies which were intended to buy a new home for her and her daughter so they would no longer have to rent.

Miss E (the representative) has explained to us that the fraud only came to light when TSB queried the payment of £3,000 made on 21 January 2019. This was because the beneficiary bank asked for additional information before it would release the money. Ms M then contacted TSB to provide this and the scam came to light. TSB felt that it should have taken quicker action to respond to the beneficiary bank's enquiries and for this reason, chose to refund the £3,000 to Ms M.

TSB has declined to refund the remaining payments to Ms M. With regard to these, TSB contacted the beneficiary banks on the day that the fraud was reported (February 2019) and has since confirmed that none of the funds are available to be recovered.

Ms M received over £123,000 as part of her divorce settlement, all of which she sent to the scammer. She also took out two loans for £10,000 each with two other credit providers to send funds to the scammer as well as using her savings and her overdraft. Ms M is now in an IVA (Individual Voluntary Arrangement) because of the financial difficulty caused by losing her money to the scammer. I've seen medical evidence of the profound effect the scam and resulting financial difficulties has had on her mental health too.

An investigator here assessed the case and upheld Ms M's complaint concluding that TSB should have done more to query the activity on Ms M's bank accounts and that it missed key moments where it ought to have asked more questions, the result of which would likely have led to the earlier unveiling of the scam.

TSB disagreed. It said that it's usual for customers to transfer monies between accounts and to make large payments from a current account. It noted that Ms M had received a large credit of just over £123,000 into her account so it didn't see it as unusual that large transfers were thereafter being made out of the account. As Ms M had an agreed overdraft, it says it didn't consider it unusual that this was being utilised by some of the payments Ms M made to the scammer.

TSB also relied on the warning on the dating website about moving away from the online forum and being asked for money by people posing as friends – it says that Ms M chose to send the monies in spite of this and so it cannot be held responsible. Further, it says Ms M made and authorised the transactions and it was obliged to fulfil these; it also met the industry standards expected of it. TSB has remained steadfast in its position that the nature and level of Ms M's spending was not a cause of concern that would trigger further investigation and nor was it so unusual as to put TSB on notice of potentially fraudulent activity.

As both parties disagree, the case has come 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.

I've also considered relevant guidelines, laws and industry practice in reaching my decision. Having done so, I'm upholding Ms M's complaint – I'll explain why.

I accept that this was an 'authorised payment' even though Ms M was the victim of a sophisticated scam. She used her security credentials to make the payments to the scammer via online bank transfers to his accounts. So, although she did not intend for the money to go to a scammer, under the Payment Services Regulations 2017, and the terms and conditions of her account, Ms M is presumed liable for the loss of her money in the first instance.

However, 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 TSB should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- 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 (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks 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 customers from the possibility of financial harm from fraud.

The evidence before me indicates that TSB failed to make any enquiries of Ms M about both the large sum which was credited to her account because of the divorce settlement or any of the substantial transfers which Ms M made. I've seen Ms M's statements from before and throughout the scam. Ms M's usual banking activity was frequent transactions, most of which were under £100. It seems to me therefore, that at the very least, the transactions for £3,000, £10,000, £45,000 and £55,000 ought to have flagged on its systems as unusual compared to Ms M's usual banking activity and prompted a conversation with her about what these payments were for. Moreover, the majority of the transactions were international payments to new payees, which Ms M hadn't made before, as I've seen from her statements.

Having considered the statements, I can see why the first payment for £750 on 14 May and the payment for £1,000 on 28 May (albeit an international payment), may not have triggered on TSB's systems. They were not particularly unusual or uncharacteristic in and of themselves. There's a balance to be struck when considering whether it's fair and reasonable for a bank to intervene. But I am surprised that the third payment for £10,000 on 30 May, didn't do so. In my opinion, TSB could and should have done more to reach out to Ms M, ask probing questions and get into the detail in order to test the purpose of the payment.

Ms M was vulnerable at the time due to her separation and the effect of this on her mental health. The nature of this type of romance scam is well known by banks. Ms M was coached by the scammer to say that the money was being sent to her daughter's partner, if she was questioned by the bank. Had TSB probed her – e.g. asking why he needed the funds so urgently, what line of work he was in, any evidence she could provide of the request, etc – I'm persuaded that the false reason would have been unravelled and Ms M would have been alerted to this bearing the hallmarks of a scam. In so doing, she and/or the TSB staff would have realised that something was amiss before it was too late. In other words, but for TSB's failure to notice the unusual activity and then subsequently probe - in an appropriate and sensitive way - the scam would probably not have succeeded. As such, the payment for £10,000 could have been stopped and the chain of payments which followed could have been avoided thus preventing the loss of over £130,000.

In light of my conclusions above, it is not necessary in this case to consider whether TSB also exercised enough care and urgency in trying to recover the stolen funds from the payee banks before they were irretrievably removed by the scammer. But for completeness, I will say that, whilst there was no delay by TSB when the scam was unveiled (triggered by the enquiries of the beneficiary bank), it would have made no difference because it found that the scammer withdrew all the money. Given the passage of time from the transfers being made to the scammer and the unveiling of the scam in February 2019, this is unsurprising as I believe scammers often remove funds within hours of the payments being made to avoid them being recalled.

TSB says that Ms M bears the responsibility for being scammed because despite warnings on the online dating site about financial requests from a user being an indicator of fraud, she chose to correspond with him privately and send him money. I do not consider that the warning on the dating site absolves TSB of its responsibility to undertake reasonable transaction monitoring of its customers' accounts and for its systems to be triggered when large and out of character payments are being made – especially to new payees abroad. And in Ms M's case, there was a stark contrast between her usual activity of transactions less than £100 and the five-figure sums being transferred in international payments.

I accept in principle that compensation can be proportionately reduced if a complainant is found partly to blame for what happened. However, it is clear that up to and including the time of authorising the payments, Ms M was completely unaware and simply did not appreciate what she was doing or the consequences of her actions. She thought she was helping a friend in a similar personal situation to her own and was given detailed explanations about the reasons for each transfer and promises of repayment. They communicated frequently and the scammer sent her his passport picture and photos of him with his purported family – she had no reason to doubt that any of this wasn't authentic. I am satisfied there was no contributory negligence on this occasion. Ms M was simply the unwitting and blameless victim of a callous fraudster. The bank was the professional in financial matters; Ms M was a vulnerable layperson who was preyed upon.

Putting things right

In the circumstances, I am satisfied TSB should fairly and reasonably reimburse Ms M for the loss she suffered from 30 May 2018 together with interest to compensate her for being deprived of the money she lost. I am satisfied that had the fraudster not taken the money from Ms M, a significant proportion would have remained in her savings account, so interest on that amount should be at that rate. I also consider that but for TSB's lack of intervention, Ms M would not have taken out the second loan in August 2018 and the proceeds from the first loan on 25 May 2018 could have been stopped before it left the account.

I also think it is appropriate to make a modest award of £350 for the distress and inconvenience Ms M has suffered. In reaching that conclusion I am mindful that her loss was ultimately caused by the callous act of a scammer and the transactions were authorised, but TSB could ultimately have prevented the majority of the payments. I acknowledge that Ms M was vulnerable at the time because her long marriage had suddenly ended. I too acknowledge that being the victim of a scam added further stress and strain on her mental wellbeing such that she was unable to work for several months. However, I cannot fairly hold TSB entirely responsible for this when it's clear that there were various contributory factors which led to the decline in her mental health.

My final decision

For the reasons I've set out above, my final decision is I'm upholding Ms M's complaint against TSB Bank plc. I require TSB Bank plc to:

- refund the unrecovered scam payments made on and after 30 May 2018 (i.e. from the first £10,000 onwards) until and including 29 December 2018, i.e. a total of £133,000;
- refund all associated international fees and charges for this period;
- re-work the account and refund any interest or charges applied to the account from 30 May 2018 to the date of reimbursement;
- after reworking the account, pay Ms M 8% simple interest per year (less any tax properly deductible) from the dates of loss to the date of refund on any funds that were from her current account; and pay her the account interest rate (again, less any tax) for the funds she transferred from her savings account – again, from the dates of loss to the date of refund;
- remove any adverse markers which have been applied to Ms M's account as a result of her indebtedness caused by the scam; and
- pay Ms M £350 for the distress and inconvenience caused to her.

For the avoidance of doubt, I only have the power to award a maximum of £150,000 in this complaint (owing to the respective dates of the events and the referral to us: see DISP Rule

3.7.4 of the *Financial Conduct Authority Handbook*). So I can't bind TSB to more than £150,000. But if interest takes the total amount payable over that sum, which seems possible, the excess will also be binding because interest (and costs) are excluded from our statutory cap on awards (DISP 3.7.5).

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 25 March 2021.

Reena Anand
Ombudsman