

The complaint

Mrs Z complains that TSB Bank plc won't refund the money she lost when she was the victim of a scam.

What happened

In 2022, Mrs Z became aware that a jewellery shop she regularly visited offered the opportunity to invest in gold. The owner of the shop told her they had been buying gold wholesale for a number of years, which they then turned into jewellery and supplied to other shops. Mrs Z was told she could invest in gold, and would receive a fixed rate of interest after one year. And as Mrs Z thought this was a good opportunity to make money, she agreed to invest and made a payment of £10,000 from her TSB account to account details the shop owner gave her for their company.

Unfortunately, some time after making the payment, Mrs Z started to hear rumours that other people who had invested were worried about their investments and that there were problems with the shop owner's company. Mrs Z then never received the interest she was told she would receive or her original investment back, and the company went into liquidation. So Mrs Z reported the payment she had made to TSB as a scam.

TSB investigated but said the payment didn't fall under its fraud guarantee, as the company Mrs Z paid had gone into liquidation. So it didn't agree to refund the money she had lost. Mrs Z wasn't satisfied with TSB's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think the evidence available suggested the shop owner had set out to scam Mrs Z or never intended to act in line with the agreement they made. So they didn't think this met the definition of a scam, or that TSB should have to refund the payment Mrs Z made. Mrs Z disagreed with our investigator, so the complaint has been passed to me.

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 don't think it would be fair to require TSB to refund the payment Mrs Z made. I'll explain why below.

Banks are expected to make payments in line with their customers' instructions. And Mrs Z accepts she made the payment here. So while I recognise she now feels she has been scammed by the shop owner, she did authorise the payment. And so the starting position in law is that TSB was obliged to follow her instructions and make the payment. So Mrs Z isn't automatically entitled to a refund.

There are certain activities banks are expected to carry out to try to protect their customers from falling victim to scams, and certain protections in place for customers who do fall victim

to scams. But, before looking at whether TSB has done what we'd expect it to do or whether these protections apply, I must first be satisfied that Mrs Z has been the victim of a scam.

The relevant test for whether someone has been the victim of a scam comes from the FCA handbook. This defines a scam as where a customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person. Or where the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

So in order to determine whether TSB should refund the payment Mrs Z made, I first need to consider whether she has been the victim of a scam – or, in other words, whether she was deceived about the purpose of the payment to the point where she and the shop owner intended different purposes for the payment and the shop owner set out from the beginning with the intent to defraud her.

I've thought very carefully about this, and I think it's a finely balanced matter in this case. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is likely to have happened, based on the evidence I do have.

Mrs Z has said she had visited the jewellery shop several times over a period of several months, it had a wide selection of jewellery items available, and she purchased a number of items from it during those visits. But I think this suggests the jewellery shop was at least attempting to operate as a legitimate business, as I wouldn't expect a scam to have physical premises for such a significant period of time or to make seemingly genuine sales like this.

Mrs Z has also said the shop was very popular and had a good reputation in the local community, and that she initially found out about the potential investment from hearing other customers talking about it with the shop owner. But I also wouldn't expect a scammer to be able to arrange this kind of good local reputation or to contact potential victims in this way.

The shop owners' company had also been listed on the government's register of limited companies and filed accounts for a number of years before the payment Mrs Z made to it. And it has now been placed into liquidation, with insolvency practitioners appointed. And I think both of these things suggest the company was operating as a legitimate business.

I've also seen statements for the account Mrs Z sent her money to, and the activity on this account appears to show the funds being used as Mrs Z was told they would be.

So, based on the evidence I've seen, I think it's likely the shop owner Mrs Z paid was attempting to operate as a legitimate business at the time but that other factors ultimately meant Mrs Z didn't receive the interest she was told she would.

I don't think I can safely say the circumstances here meet the high legal threshold and burden of proof for fraud. I don't think the evidence I've seen suggests the shop owner Mrs Z paid deceived her about the purpose of the payment or set out from the beginning with the intent to defraud her. I think both Mrs Z and the shop owner's intentions for the payment were the same – to invest in gold. So I don't think the circumstances here meet the definition of a scam from the FCA handbook.

And so I don't think the protections in place for victims of scams apply here, or that it would be fair to require TSB to refund the payment Mrs Z made.

I sympathise with the position Mrs Z has found herself in, and I'm in no way saying she did anything wrong or that she doesn't have a legitimate grievance against the shop owner she

sent the money to. But I can only look at TSB's responsibilities here and, for the reasons I've explained above, I don't think it would be fair to hold TSB responsible for the money she lost.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs Z to accept or reject my decision before 1 August 2024.

Alan Millward
Ombudsman