

The complaint

Mr P complains about the actions of Lloyds Bank Plc when he was tricked into transferring money because of a scam.

What happened

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

In August 2018 Mr P was contacted over the phone by a merchant – I'll refer to as 'A' - after he was making general enquiries on the internet about investments. Further calls with A took place shortly after and Mr P was provided with a forty-page booklet and told that the start-up investment was £50,000. Mr P then made three payments made up of £5,000 on 21 August 2018 via debit card to a different merchant – I'll refer to as B - £25,000 on 22 August 2018 to a new payee online which was a legitimate trading company (I'll refer to as 'C'), and a further £20,000 on 23 August 2018 also online to C.

When A asked Mr P for a further £100,000, he became suspicious and declined to make a further payment. After the call was ended Mr P could no longer access the website or his investment portfolio. Mr P attempted to contact A but it either didn't answer or wasn't available.

Mr P did some further research into A and became convinced he had been scammed. He contacted Lloyds to raise the scam. Following a review, Mr P was refunded the £5,000 debit card payment. But the faster payments totalling £45,000 had already been withdrawn by the scammers from C so couldn't be refunded. But Lloyds did pay Mr P £250 for the delay it caused when attempting to claim the money back for him.

Our investigator felt the complaint should be upheld. He said Lloyds should've been concerned about the two transactions Mr P made as they were out of character, to a new payee, made within a day of each other and the combined amount used over 58% of Mr P's balance. The investigator added that had Lloyds intervened in the first payment to C then the scam would've been stopped as this type of scam would've been well known. Mr P would've then carried out additional research on the broker which would've led him to online reports that A was operating fraudulently. And the investigator didn't think Mr P acted unreasonably in all the circumstances due to the sophistication of the scam.

The investigator said that Lloyds' offer of £250 for the delays it caused when trying to recover Mr P's money was fair in the circumstances.

Lloyds disagreed and has asked for an Ombudsman's review. It said Mr P's statements showed he'd previously made a large debit card payment of £50,000 in June 2017, a faster payment of £40,000 in July 2017 and a further large debit card payment of £45,000 in February 2018. As these payments were larger than the payments Mr P made to C it didn't consider the payments to be unusual, so it wasn't flagged as suspicious. And that the second payment was made to the same payee so that wasn't flagged as suspicious either.

Lloyds also referred to a court ruling where it was decided there is limited scope to argue that it has a duty of care to prevent the consequences of payments that are authorised by a customer. Lloyds said that Mr P had mentioned in his correspondence that Lloyds had previously told him to double check any investments he made but that Mr P doesn't seem to have done that here. It added that Mr P failed to carry out the required due diligence in relation to these transactions so it shouldn't be held liable for the funds Mr P has lost.

I contacted Lloyds and asked it to provide further information in relation to whether the debit card payment should've flagged as unusual at the time and whether B was known to it when Mr P was making the transactions. And that if B was known to Lloyds then it should refund Mr P the full £45,000 with 8% interest. I added that I was minded to consider that Lloyds should've flagged the second payment Mr P made to C (£20,000) and that this should be refunded with 8% interest if it wasn't aware of B at the time of this scam.

Lloyds didn't agree. It said it was legally required under the Payment Services Regulations 2009 (PSR) to honour the debit card payment Mr P made and it wasn't legally obliged to refund the payment unless Mr P didn't authorise the transaction. It added that this service's approach to Authorised Push Payments (APP) couldn't be applied to a debit card payment, so it wasn't fair that this service was asking it to refund the payment Mr P made to B.

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 conclusion as our investigator but for different reasons.

I've read and considered the whole file. But I'll concentrate my comments on what I think is relevant. If I don't mention any specific point, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is a fair and reasonable outcome.

As Mr P has been refunded the £5,000 and Lloyds hasn't responded to my questions about the merchant code on the debit card transaction to B, I've considered whether the payments Mr P made here should've been flagged by Lloyds and if they had, whether a warning about this common type of scam would've made a difference.

I've previously told Lloyds that the sale of binary options was banned by The European Securities and Markets Authority (ESMA) in July 2018 which was more than a month prior to Mr P's debit card payment on 21 August 2018. Lloyds hasn't responded directly to my questions about whether the information presented to process the debit card transaction should've flagged the first payment of this scam to Lloyds.

I note what Lloyds has said that a debit card transaction is treated differently to APPs. I've considered Lloyds' point that it's legally obliged to honour the debit card payment and that it's not fair to ask it to refund it. To be clear, I'm not asking Lloyds to refund the payment Mr P made to B – that's already been refunded. And although debit card payments aren't considered an APP that doesn't mean Lloyds can't hold a transaction that is unusual or suspicious until it had spoken to Mr P about it and asked some probing questions on why he wanted to make it.

So, in the absence of any further evidence from Lloyds in relation to who the debit card payment was being paid to, I need to make a decision - on balance – as to whether this payment to a well-known scam company should've made Lloyds hold the payment and ask

more questions of Mr P. And if it had, whether that would've made a difference to Mr P's later transactions to C.

Having considered all the evidence both sides have provided, I'm satisfied the debit card payment should've flagged to Lloyds as potentially suspicious. The payment was to a well-known merchant involved in binary options scams which had recently been banned by ESMA. So, I'm satisfied Lloyds should've been aware of the payment being potentially suspicious and should've flagged this and spoken to Mr P about it. So, I've gone on to consider whether Lloyds speaking to Mr P about this payment and providing a warning about these types of scams would've made a difference here.

When speaking to Mr P, I'd expect Lloyds to give him a clear warning about the types of scams it sees and to ask probing questions about the payment and why he was making it. I'm satisfied that Mr P would've been upfront about how he was contacted by A (over the phone). And I've seen no persuasive evidence that Mr P was being coached by the scammers on what to say to the bank for the payment to be sent.

At the time of the debit card payment, Mr P thought he was making a payment to A. But the payment was to B. Firstly, that would've been seen as suspicious to Lloyds quite quickly because that it is a potential warning sign of a common binary options scam. Another common type of scam is to tell the consumer to make various payments over several days to different companies. Here, Mr P was asked to make three payments over three consecutive days. And if Lloyds had asked him when he made the £5,000 payment whether he had been asked to pay more money to the scammers, Mr P would've more than likely told his bank he was planning on making a further payment of £25,000 to C the next day. So, given the circumstances, I'm satisfied a conversation with Lloyds about binary options scams and what A had told Mr P to do here would've caused some concern to Mr P given that he had made some investments before. This would've more than likely led him to conduct further research into A which in turn would've led him to the online reviews warning people about the scam.

Lloyds has said that Mr P's previous investment experience and that it had told him to check his investments before going ahead means he should take some responsibility for the scam. I've considered whether Mr P acted reasonably when making the payments to the scammers here. I believe Mr P fell for a sophisticated scam where he had various telephone calls with the scammers, and they provided a 40-page booklet to him about the investment, the scam companies finances and its address which convinced him he was dealing with a legitimate company. So, I can understand how a reasonable person - including Mr P who had experience in investing before - would've fallen for this scam in the circumstances.

So, Lloyds should've flagged the payment to B and, if it had, I'm satisfied this would've more than likely stopped the scam. As a result, I don't need to consider whether the two subsequent transactions Mr P made should've been flagged by Lloyds.

Lloyds offered Mr P £250 for the way it handled this matter. And for similar reasons given by the investigator, I think that's a reasonable offer in all the circumstances.

Putting things right

I believe Lloyds should've done more here to stop the transactions Mr P made towards this scam. And if they had, I'm satisfied it's more likely than not the money wouldn't have been lost.

So, I believe Lloyds should pay Mr P £45,000 and add 8% simple interest per year to this sum from the date the money was sent to the scammer to the date of settlement.

My final decision

My final decision is that I uphold this complaint. Lloyds Bank Plc must do the following;

- Pay Mr P £45,000 with 8% simple interest per year added to this amount from the date Mr P sent the money to the date of the settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 23 March 2022.

Mark Dobson
Ombudsman