

Complaint

Mr M is unhappy that Lloyds Bank PLC didn't refund him the money he lost to a scam.

Background

Mr M has an account with Lloyds. In March 2020, he was cold called by someone who persuaded him to invest his money in cryptocurrency. The caller told him they could trade in cryptocurrency on his behalf and gave him an explanation as to how his investment would be managed. He was given the details of a bank account and he was persuaded to transfer £3,900 to it.

Unfortunately, Mr M hadn't been approached by a legitimate financial business, but by a scammer. Once he made the transfer, all contact from the scammer stopped. Mr M realised he must have fallen victim to a scam and so he promptly notified Lloyds.

Lloyds considered his case under the terms of the Contingent Reimbursement Model (CRM) Code and chose to not pay him a refund. Lloyds thought that Mr M should've done more to ensure that the investment opportunity was a legitimate one. It did, however, think it could've handled his complaint better than it did and so it offered him £150 in recognition of the distress and inconvenience this had caused.

Mr M wasn't happy with the answer he received from Lloyds and so he referred his complaint to this service. It was looked at by an Investigator who upheld it in part. The Investigator agreed with Lloyds that Mr M had made the payment with a reasonable basis for believing it to be in connection with a genuine investment opportunity. However, she also thought that Lloyds should've displayed a warning as part of the payment journey. She said that the fact that it failed to do so meant that Lloyds should refund Mr M 50% of his losses.

Mr M disagreed with the Investigator's conclusion. He said that when he opened up his account with Lloyds, he was pressured into taking out online banking at the same time even though he didn't want to. If he hadn't done so, he says he wouldn't have lost out as part of this scam. Lloyds also disagreed with the Investigator's opinion and said the payment Mr M made in connection with the scam wasn't out of character and so didn't suggest there was a risk of fraud.

Because neither Mr M nor Lloyds agreed with the Investigator's conclusions, the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the consumer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the consumer even though they authorised the payment.

The CRM Code sets out standards that firms such as Lloyds are expected to meet in terms of protecting their customers from the risk of financial harm. But it also sets out expectations that a customer should meet. As a starting point, a customer should receive a refund if they fall victim to an APP scam such as this one. However, Lloyds can fairly and reasonably decline to pay a refund if it can show that one of the exceptions in the code applies.

There's no dispute here that Mr M was tricked into making the payments. He thought he was investing his money in cryptocurrency with a broker. But even though he was a victim of a scam, he's not entitled to a refund if Lloyds can establish that he failed to meet his requisite level of care under one or more of the exceptions set out in the code.

Unfortunately, I think the evidence suggests Mr M didn't have a reasonable basis for believing he was dealing with a legitimate financial business when he made the transfer. From what he's told us, he didn't take any steps to verify the legitimacy of the caller and he wasn't given any written information about the nature of his investment. Furthermore, it seems that he wasn't provided with any information about what return he could expect to make. He has said he was given the assurance that it would be risk free because Lloyds would cover his losses.

Overall, I think there were sufficient unusual factors here that Mr M ought to have acted far more cautiously than he did. I'm satisfied, therefore, that Mr M didn't meet his requisite level of care under the code and so Lloyds isn't required to provide him with a full refund.

However, as I explained above, the Code also sets out standards that firms are expected to meet. It says Lloyds needed to be on the lookout for factors that might indicate an enhanced risk that Mr M's payment instruction was part of a scam. Where such a risk is identified, the firm needs to take reasonable steps to provide the customer with an effective warning. In this instance, Lloyds has said that no fraud indicators were identified and so no warning was displayed. It has since said that the payment wasn't out of character and so there was no need for any warning to be displayed.

Broadly speaking, I agree that the payment wasn't significantly out of character. I've seen statement data for the months preceding the payment and it wasn't uncommon for Mr M to authorise payments of around the size of the payment he made to the scammer. Nonetheless, I'm mindful of the fact that the payment was still a significant one and that it was to a new payee. It wouldn't have been too onerous for Lloyds to have displayed a warning to help protect Mr M from the risk of fraud.

Mr M has said that he wouldn't have fallen victim to the scam if Lloyds hadn't pressured him into setting up online banking when he opened his account. This was something he was reluctant to do and if he hadn't done so, it seems unlikely that he could've fallen victim to this particular scam. However, I'm not persuaded that this means that Lloyds should be considered the cause of 100% of his losses. Although it might have taken steps to persuade

him to set up his internet banking facility, it was fundamentally his decision to use it to authorise the payments.

Overall, I agree with the conclusion of the Investigator that a warning should've been displayed. It follows that, under the Code, it should be liable for 50% of Mr M's losses.

Final decision

For the reasons I've set out above, I uphold this complaint.

Lloyds Bank PLC should now pay Mr M 50% of the money he lost to the scam. It should also add 8% simple interest per annum calculated from the date it declined his claim under the CRM until the date a settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 24 April 2022.

James Kimmitt
Ombudsman