

The complaint

Ms G complains that Lloyds Bank Plc ("Lloyds") failed to refund £91,379.09 she paid to scammers posing as investment brokers.

The details of this complaint are well known to both parties, so I will not repeat all the details again here. In brief summary, Ms G contacted a merchant (TradeToro) after seeing a cryptocurrency investment opportunity advertised on the television. She was persuaded to invest £250 initially, after which point they told her to download software to her computer in order for them to manage the investment.

The software Ms G had downloaded appeared to be showing profits being made on her investment, so she was subsequently persuaded into investing further sums from her Lloyds bank account. From April 2019, she made the following international payments to TradeToro:

Date	Type of transaction / Location	Amount
25 April 2019	Online Banking Transaction (Foreign Payment)	£892.94
30 April 2019	Online Banking Transaction (Foreign Payment)	£8,930.96
24 May 2019	Online Banking Transaction (Foreign Payment)	£8,152.62
31 May 2019	Online Banking Transaction (Foreign Payment)	£22,818.55
26 June 2019	Online Banking Transaction (Foreign Payment)	£40,404.04 (<i>returned by beneficiary Bank as £39,546.57 on 2 July 2019: meaning a total loss of £857.47</i>).
4 July 2019	Online Banking Transaction (Foreign Payment)	£50,584.02
		Total payments: £131,783.13 Total Loss: £91,379.09

Ms G eventually realised she had been scammed when she could no longer get through to anyone at TradeToro and was also unable to log on to her investment platform. It wasn't then until several months later that Ms G reported the matter to Lloyds, who declined to refund any of the payments she made. Unhappy with this, Ms G referred her complaint to this service and the matter was escalated to me to determine.

I issued my provisional decision on this complaint in January 2022. I said I was minded to reach a slightly different outcome to the investigator and set out the following reasons for upholding the complaint:

It is not in dispute that Ms G has lost her money to scammers, and there was also a warning about TradeToro placed on the International Organisation of Securities Commission (IOSCO) website as of 5 April 2019. But it's also necessary to consider whether the disputed payments were unusual or uncharacteristic enough for Ms G's account such that they ought reasonably to have triggered an intervention by Lloyds.

Unusual or uncharacteristic activity

Lloyds is aware of our general position on a Payment Service Providers' safeguarding and due-diligence duties to protect customers from the risk of financial harm due to fraud. We have published many decisions on our website setting out these principles and quoting the relevant rules and regulations. It is unnecessary to rehearse them again here in detail.

It is common ground that the disputed payments were 'authorised' by Ms G for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. This is because they were made from her account using the legitimate security credentials provided by Lloyds.

These must be regarded as 'authorised payments' even though Ms G was the victim of a sophisticated scam. So, although she did not intend the money to go to scammers, under the Payment Service Regulations 2017, and under the terms and conditions of her bank account, Ms G is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Lloyds 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 its customers were at risk of fraud (amongst 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; and*
- 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.*

In Ms G's case there was a warning published on IOSCO's website about the merchant at the time she made her first transfer to them on 25 April 2019. However, given that the payments she made were 'push payments' (i.e. transfers made from her account) rather than 'pull payments' (such as debit card transactions), Lloyds would not have known which merchant Ms G was paying. So I don't think there was any obligation on the bank to have automatically blocked the payments pending further enquiry as a result of the IOSCO warning.

However, I am satisfied there were still enough 'triggers' in this case to have alerted a responsible regulated bank such as Lloyds that Ms G's account was being subjected to unusual and uncharacteristic activity. In light of the odd pattern of

international payments she made, I think that by the fourth payment of £22,818.55 on 31 May 2019 there were triggers, such that there were reasonable grounds to suspect fraud and therefore justify an intervention (such as phoning her in order to ask discreet questions about the nature and purpose of the payments).

However, I do not think the payments prior to this were particularly unusual or uncharacteristic enough to warrant any intervention. I say this for a couple of reasons. First, Ms G had made several other large payments from her account within the past 12 months, ranging from £9,000 to £25,000. I appreciate these were made to a trusted company of which Ms G is a director, but it had still established a pattern of large payments being made from her account. Second, Ms G had also made an international payment from her account a few months prior to making the first transfer to TradeToro. I accept this was only a small payment of £100. But nevertheless, it still established a history of foreign transactions being made from her account.

As a result, when Ms G eventually made the first payment of £892.94, I'm not persuaded this would have flagged as being suspicious or unusual. I acknowledge it was to a new payee, but the amount paid wasn't out of character when compared to her usual spending patterns. This means that by the time she came to make the second payment of £8,930.96 – although it was an international payment – it was no longer being made to a new payee. And while the amount was higher than the previous international payment she had made, it was not significantly unusual when compared to other payments she had made in the past. So the same would also go for the third payment she made of £8,152.62 on 24 May 2019.

However, the point at which I think Lloyds ought reasonably to have intervened was when Ms G attempted to make the payment of £22,818.55 on 31 May 2019. I appreciate she had made foreign payments of lesser values to the same payee before, but this amount marked a significant departure from her previous pattern of spending when it came to foreign transactions, and it was also the second payment being made to the same payee within the space of a week. Therefore, it would have been reasonable at this point for Lloyds to have properly questioned Ms G before processing the payment in order to satisfy itself that all was well.

If Lloyds had fulfilled its duties and carried out due diligence by contacting Ms G to ask suitably probing questions, there is no reason to doubt that she wouldn't have explained what she was doing. In such circumstances, whilst the bank had no duty to protect Ms G from a bad bargain or give investment advice, it could have invited her to check whether the payee was registered with the FCA. It could have also explained its own customer experiences with merchants like TradeToro in that customers would often be prevented from withdrawing available balances after investing their money.

There is no evidence that Lloyds provided Ms G with any meaningful warnings or gave her other reasons to doubt the legitimacy of the payments she was making. It was therefore a missed opportunity to intervene.

Causation

If Lloyds had asked Ms G what the payments were for and the basic surrounding context, I consider it likely she would have fully explained what she was doing and that everything had been done over the phone and online with TradeToro. Lloyds did not need to know for certain whether Ms G was dealing with a fraudulent merchant or investing in a legitimate (albeit highly risky) product such as cryptocurrency; reasonable grounds for suspicion are enough to trigger a bank's obligations under

the various regulations and principles of good practice. I consider there were such grounds here and, therefore, that Lloyds ought reasonably to have provided a scam warning in light of all the information then known to financial professionals about the risks associated with unregulated traders.

If Lloyds had given a warning, I believe that Ms G would have paused and looked more closely into TradeToro before proceeding. There is no evidence that she was willing to take high risks or had a history of speculative investments. It seems more probable that she would have made further enquiries into the merchant and whether or not TradeToro was regulated in the UK or abroad. Ms G could have discovered they were not, in line with the various regulatory warnings placed on IOSCO about TradeToro. In other words, I am satisfied that a warning to Ms G from her trusted bank would probably have exposed TradeToro's false pretences, causing her to stop investing and preventing further losses.

Contributory negligence

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000). In this case, I do not think that Ms G was to blame for what happened; that she did not foresee the risk of this sort of harm or any harm.

I do not think Ms G could have foreseen the risk that the company she was dealing with was a scam and the trading account she was viewing was likely to be a simulation. In the circumstances, I do not think it would be fair to reduce compensation on the basis that Ms G should share blame for what happened.

So, for the reasons given above, I'm currently minded to uphold this complaint and intend directing Lloyds Bank PLC to refund Ms G's stolen payments totalling £74,260.04 (i.e. those from the £22,818.55 payment on 31 May 2019 onwards), as well as any transaction fees or charges applied to these payments. As these were payments made from Ms G's current account, Lloyds should also add interest to the total sum (less any tax properly deductible) at 8% simple interest per year from the respective dates of loss to the date of refund.

I invited further comments and evidence from both parties. Ms G responded accepting my provisional decision, but Lloyds did not respond with any further comments.

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.

Given that neither party put forward any further comments or evidence for consideration, I see no reason to depart from the conclusions set out in my provisional decision above.

My final decision

For the reasons given above, I uphold this complaint and direct Lloyds Bank PLC to refund Ms G's stolen payments totalling £74,260.04 (i.e. those from the £22,818.55 payment on 31 May 2019 onwards), as well as any transaction fees or charges applied to these payments.

As these were payments made from Ms G's current account, Lloyds should also add interest to the total sum (less any tax properly deductible) at 8% simple interest per year from the respective dates of loss to the date of refund.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 11 March 2022.

Jack Ferris
Ombudsman