DRN-3334147

The complaint and what happened

Mrs B complains that Lloyds Bank PLC ("Lloyds") won't refund money she lost when she fell victim to a scam.

The full details of this complaint are well known to both parties, so I won't repeat them here. Instead, I'll recap the key points and focus on giving reasons for my decision:

- Mrs B found an investment opportunity online, where she registered her details and later received a call back from a broker called Golden Markets. She was persuaded to invest a total of £12,250. Those investments were made using the available balance in her current account card with Lloyds. As part of the scam, she received credits of £1,850, meaning her total loss was £10,400.
- Mrs B realised she had been the victim of a scam when she tried to withdraw her funds on 14 January 2019 and was unable to do so, at which point she raised a chargeback with Lloyds.
- Lloyds declined to refund the transactions because it said the chargeback would not be successful.
- Our investigator upheld the complaint. They were satisfied the trader wasn't legitimate because Golden Markets wasn't regulated and there was a warning published about the trader on the FCA's website. There were also reports in the public domain which added to a bigger picture of this being a scam.
- Lloyds failed to respond to the investigator's assessment, so the matter has been escalated to me for determination.

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 would like to reassure the parties that although I have only set out the key points above, I have read and considered everything provided. Having done so, I agree with the conclusions reach by the investigator for the following reasons:

- There is no dispute that Mrs B authorised the transaction/s in question; she made the payment using her legitimate security credentials. Whilst Mrs B didn't intend for her money to go to fraudsters, she is initially presumed liable for the loss.
- Lloyds is aware of our approach of expecting it to have been monitoring accounts to counter various risks, have systems in place to identify unusual transactions or other indicators that its customers were at risk of fraud and, in some situations, make additional checks before processing payments, or to have declined them altogether to protect customers from possible financial harm from fraud. And as explained by the investigator, it's considered good industry practice for firms to have updated watch-lists with types of scams and potential fraudsters and for those watch-lists to be updated and communicated internally to staff within one month of an alert being posted by the FCA or IOSCO (International Organisation of Securities Commission).

- Such an alert should automatically trigger its systems and lead to payments being paused, pending further intervention – such as making enquiries, or giving a scam warning.
- In this case, there was a warning about Golden Markets published on the FCA website on 25 May 2018. This was around six months before Mrs B made her first payment of £250 to the trader in November 2018. Given the timing of the alert and when the first payment was made, Lloyds ought to have automatically blocked it. Lloyds had had time to update and communicate its watch-list between the publication of the warning and the payment being made and it should have properly questioned Mrs B before processing the transaction.
- Had Lloyds carried out its due diligence and duties and asked Mrs B about the payment, I've no reason to doubt that she would have explained what she was doing. Whilst I accept Lloyds had no duty to protect Mrs B from a poor investment choice, or give investment advice, it could have provided information about the steps a customer can take to ensure, as far as is reasonably possible, that they are dealing with a legitimate person.
- Lloyds could have drawn on its own knowledge and information that was within the public domain (as referenced by the investigator) about the high risks associated with cryptocurrency investments and the potential for fraud and provided Mrs B with a potential scam warning.
- There isn't any evidence that Lloyds intervened in this instance. Had it done so, I'm satisfied Mrs B would have looked further into the opportunity, about the investment type in general. Mrs B says she was aware the firm was not regulated by the FCA, which she thought was because they were based overseas. But Lloyds could have asked her to check whether the trader was regulated in any other country, where she could have also noted the various warnings about crypto scams. It follows, that a warning from Lloyds would likely have exposed the scam, and caused Mrs B to stop trading, thereby preventing her loss of £10,400.
- The subsequent payments Mrs B made to Finproduct.Trade for £10,000 and £2,000 on 10 January 2019 also ought to have triggered an intervention by Lloyds, given that this marked a significant departure from her normal pattern of spending.
- But that isn't the end of the matter. I have also considered whether Mrs B should bear some responsibility for the situation in which she finds herself. I do not think Mrs B could have foreseen the risk that the company she was dealing with was a scam and that the trading account she was viewing was likely to have been a simulation. Given the sophistication of the scam, I do not think she is to blame for what happened. So, in the circumstances, I do not think it would be fair to reduce compensation on the basis that she should share in any blame.
- Given that I consider Lloyds ought to have intervened before Mrs B made the payments (and so should provide her with a refund on this basis), I do not consider it necessary to explore whether it dealt with her chargeback claim appropriately.

My final decision

For the reasons given above, I uphold this complaint and direct Lloyds Bank Plc to refund Mrs B the total amount she lost to the scam, less any credits she received from the merchant. As the payments were made from Mrs B's current account, Lloyds should add interest to that sum 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 Mrs B to accept or reject my decision before 13 April 2022.

Jack Ferris
Ombudsman