

## The complaint

Mr M complains Lloyds Bank PLC won't reimburse money he lost when he fell victim to a scam.

## What happened

Mr M opened a trading account with 'Wisebanc' after seeing an advert online. He was attracted to the guaranteed returns offered of £1,000 a day. He was persuaded to invest more to take advantage of more offers.

Mr M said he made repeated requests to withdraw money, but instead he was pressured to make further deposits and was told withdrawals couldn't be made until certain milestones were met. When he raised his inability to make withdrawals, his account was drained of funds and he could no longer contact Wisebanc.

The transactions in dispute are set out in the table below and were paid by debit card.

Date	Merchant	Amount
6 November 2018	Insightstrader	£250
7 November 2018	Insightstrader	£1,000
7 November 2018	Insightstrader	£1,250
12 November 2018	Trions Holding KFT	£1,000
14 November 2108	Insightstrader	£1,000
29 November 2018	Insightstrader	£500
29 November 2018	Insightstrader	£1,000
24 December 2018	FX24	£500
24 December 2018	FX24	£1,000
27 December 2018	Wisebanc	£500
27 December 2018	FX24	£1,000
11 February 2019	Tradeltd-Option.RU	£507.63
12 March 2019	Benveto.com	£503.58
Total		£10,011.21

Mr M also received £1,000 from Insightstrader on 23 November 2018, so his total loss is £9,011.21.

Mr M raised a chargeback with Lloyds who said he was too late to do so. Our investigator upheld the complaint. Although she agreed Lloyds was right not to attempt a chargeback, she was satisfied it ought to have intervened at the point Mr M paid Wisebanc – as the FCA had published a warning about this business on its website. She concluded that had Lloyds intervened the scam would have unravelled, and it would have been able to guide Mr M through the chargeback process to get his earlier investment back. So she said it should refund the transactions in full.

Although Lloyds has asked for several extensions, we still haven't received a response to the investigator's view. So it was appropriate we moved to the ombudsman stage.

I issued my provisional decision on 17 February 2022 explaining why I was minded to uphold this complaint – but only in part. I gave the parties until 3 March 2022 to provide further submissions. In the intervening period, we contacted both parties to check the provisional decision had been received and with a reminder of the date by which to provide any further evidence or arguments. We haven't heard from either party, but it's now appropriate to move to the final stage of our process.

As I haven't heard from either party, despite giving them an opportunity to provide further submissions, I progress this decision on the basis they had nothing further to add. I therefore see no reason to alter my provisional findings and so make them final, as set out below.

### **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.

The chargeback scheme is a voluntary scheme run by card issuers – in this case Visa – whereby Visa will ultimately arbitrate on a dispute between a merchant and a customer if it cannot be resolved between them. There are rules to the scheme – set by Visa – which means there are only limited grounds and forms of evidence that will be accepted for a chargeback to be considered valid. And there are strict time limits which apply. Our role isn't to second-guess Visa's decisions or rules, but to determine whether Lloyds, as the card issuer, acted fairly and reasonably when presenting, or not, a chargeback on behalf of its cardholder.

There is a time limit of 120 days from the date of the transaction, or the date when goods or services weren't received to raise a chargeback. Mr M's last disputed transaction place 12 March 2019 but he didn't raise the chargeback until December 2019, well outside of the 120-day time limit. Mr M says he raised it earlier in October 2019, but there is no record of the bank receiving that.

But even if Mr M had met the time limits, Visa will only accept evidence in the form of a dated available withdrawal balance, and a same dated withdrawal request for it to be considered a valid chargeback. I'm not aware that Mr M had this information and so I don't find Lloyds was acting unfairly or unreasonably when not raising a chargeback that had little prospect of success.

I turn now to whether Lloyds ought to have done more in relation to the payments being made.

There is no dispute that Mr M authorised the transactions in question; he made the payment using his legitimate security credentials. Whilst Mr M didn't intend for his money to go to fraudsters, he 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 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 Wisebank published on the FCA website on 14 October 2018. That was two months before Mr M made a payment to that particular business – although earlier payments were made as part of this scam, they weren't made to Wisebank and so are not caught by the warning. Given the timing of the alert and when the 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 Mr M before processing that transaction.

Had Lloyds carried out its due diligence and duties and asked Mr M about the payment, I've no reason to doubt that he would have explained what he was doing. Whilst I accept Lloyds had no duty to protect him 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 – such as checking the payee was authorised with the FCA. And it 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 and the potential for fraud and provided Mr M with a potential scam warning.

There isn't any evidence that Lloyds intervened. Had it done so, I'm satisfied Mr M would have looked further into the opportunity, about the investment type in general, whether the trader was regulated here or abroad and noted the various warnings about trading scams. It's also likely he would have come across the FCA warning for himself. It follows, that a warning from Lloyds would likely have exposed the scam, and caused Mr M to stop trading, thereby preventing any losses from that point.

I have also considered the payments before that, and whether or not Lloyds ought to have intervened. However, I find nothing about the payments themselves that was so unusual or so uncharacteristic that the bank ought to have suspected he might be falling victim to fraud.

The investigator concluded that had Lloyds intervened during the payment to Wisebank, the bank could have guided Mr M through the evidence needed for a chargeback. But the most that could have been achieved if that had happened would be the value of the withdrawal request – the chargeback doesn't entitle the cardholder to a refund of all of the payments made to date. And it's far from certain that Mr M would have had a balance that was available for withdrawal either on 27 December 2018 – when the bank ought to have intervened – or in the few days following that.

I am aware that during the course of this complaint, Mr M has provided some screen shots of his trading account. But those have had the date handwritten on, which I don't believe would meet Visa's strict requirements. There is a screen shot from 25 December 2018, which does suggest there is a positive balance, but it's not clear that would have been available for withdrawal. And I am aware that in the following two weeks the balance dropped substantially. In the absence of any documentation (such as a dated screen shot) showing that Mr M had an available balance for withdrawal between 27 and, say, 30 December 2018, then I don't find Lloyds should reimburse those transactions that took place between 6 November and 24 December 2018 or any other amount in relation to those.

### **My final decision**

For the reasons given, my final decision is that I uphold this complaint. I require Lloyds Bank PLC to:

- Reimburse to Mr M the disputed transactions from 27 December 2018 onwards, totalling £2,511.21; and
- Add 8% simple interest per year to that sum from the date of the transactions to the date of settlement, less any lawfully deductible tax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 April 2022.

Claire Hopkins  
**Ombudsman**