DRN-3688081

The complaint

Mr R complains he was the victim of an investment scam and that Barclays Bank UK PLC didn't do enough to prevent his loss or to recover his money.

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.

Mr R complains that Lloyds Bank PLC won't refund thirteen payments he made between 16 September and 3 November 2020 in respect of a scam carried out by a company I'll refer to as "T". He lost £28,900.14 in total, which included money he borrowed with a loan from Lloyds for £25,000.

Mr R responded to an advert on social media and was contacted by someone claiming to work for T. The man said he was an experienced investment broker and advised Mr R to invest in cryptocurrency, explaining T would take a percentage of his profits as commission. He told Mr R to make debit card payments to two cryptocurrency exchange companies, advising him he'd need to lie to Lloyds about the purpose of the payments, or it would try to stop him from investing the money. Mr R was advised to make payments to the cryptocurrency exchange company before sending the money to the broker to be invested.

In October 2020, Mr R took out a loan and made further payments (both online transfers and debit card payments), as per the broker's instructions. The broker showed Mr R how to withdraw money from the accounts he held at the crypto exchanges, but on 29 October 2020, he was told he'd have to invest more funds, or risk losing money. He also was told he'd be given a £5,000 bonus. At this point Mr R tried to withdraw some money and realised he'd been the victim of a scam when he wasn't able to do so.

Mr R approached Lloyds for help, but it said it was unable to raise a chargeback request because the cryptocurrency exchange companies had provided the service they were required to provide. It also said the debit card payments weren't covered by the CRM code.

It said the crypto exchanges were authorised in the UK at the time the scam took place and so there was no reason not to allow the transactions. It said it had tried to block a number of the payments and warned him about the potential risks on multiple occasions. It also said it had asked robust questions in response to which Mr R had failed to mention he was being assisted by an investment 'broker', instead stating his brother-in-law had said he should invest in Bitcoin. Mr R had also confirmed nobody had asked him to download any software and that the payments were going to his own personal accounts with cryptocurrency exchange companies.

Lloyds said Mr R's representative had confirmed the broker had been advising Mr R in the background and using remote access to help him, therefore the information he'd given it was incorrect. It didn't think it could have stopped Mr R from making the payments as he was adamant he knew what he was doing, and would probably have ignored further warnings.

It also said it offered the loan based on the information Mr R had shared and that when he was asked about it by the fraud team he'd said the money was for a car, so his dishonesty had prevented it from advising him properly about the risk of fraud.

Mr R complained to this service explaining the investment seemed low-risk and the broker appeared friendly, professional and experienced. He said that when he tried to make the first payment of £250, Lloyds declined the transaction and asked him to call it to discuss the payment. At this point the broker told him to say he was paying for goods because if he said he was investing, Lloyds would try to keep the business for itself.

He explained he could see his account was making a profit and so he decided to make more payments to generate more profit. The broker would access his computer using remote access software to show him how to make further deposits to the platform. He was then told to take out a loan so that he could invest more and when he asked the scammer about how he could withdraw money, he was able to transfer £74 and £230, which convinced him the platform was legitimate, hence his decision to make further deposits. He argued he was inexperienced in investing and Lloyds shouldn't have given him the loan.

Our investigator didn't think the complaint should be upheld. He explained the starting point is that Mr R is liable for any payments he authorised and that the CRM code isn't applicable to any of the payments because both accounts were in Mr R's name. He also said that after reviewing the warnings Lloyds gave to Mr R, he was satisfied it had done everything it could reasonably have been expected to have done to try and warn him about the possible risks.

Mr R's representative asked for consideration to be given to a liability split. They argued Lloyds knew this could have been a scam as it had stopped multiple payments, yet it still allowed Mr R to take out a loan. They said that although Mr R misled Lloyds, it was clear the loan was for a cryptocurrency investment and, given he'd made multiple payments to B and Lloyds knew scammers often tell their victims to lie, it should have recognised Mr R wasn't being truthful.

Our investigator said that as Mr R had given false and misleading information when he took out the loan, he didn't think it was reasonable for Lloyds to link the loan application with the disputed payments. And he commented that Lloyds had applied blocks to the payments, Mr R had ignored the warnings and he didn't think Lloyds would've been able to do anything more to stop Mr R from going ahead with the payments. He also said that Lloyds had told Mr R to undertake some research and had he done so, he'd have discovered T had an active warning placed against them by the FCA.

He was satisfied Mr R had told Lloyds he knew all the risks he was taking; he'd been into branch three times and when questioned, he said the payments were his choice, they were going to his own account and no one had told him to lie.

Mr R's representative has confirmed he wants the complaint to be reviewed by an ombudsman, arguing Lloyds knew he had a gambling habit and couldn't pay his bills and it shouldn't have agreed to lend him £25,000.

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 Loan

Lloyds agreed to lend Mr R £25,000 based on the information he gave to it as part of an online application. I'm satisfied from the evidence I've seen that Mr R gave false information about the purpose of the loan as part of that application and, consequently, he can't now argue the lending was irresponsible or that Lloyds should have somehow second-guessed the information it was given. Lloyds' systems concluded Mr R was eligible for the loan and I haven't seen anything to suggest that was either unfair or unreasonable.

Further, Lloyds' concerns regarding the disputed payments were based around the fact Mr R could have potentially been the victim of a scam, not that he was buying cryptocurrency. So, once Mr R had reassured it that he was aware of the risks involved, it wouldn't have made any difference that the loan was being used to fund an investment.

CRM

Mr R made the disputed transactions as part of an Authorised Push Payment (APP) Fraud, but the payments aren't covered by the Contingent Reimbursement Model (CRM). This is because, although Lloyds is signed up to the code, the payments were all made to accounts that Mr R held in his name.

Chargeback

Chargeback is a voluntary scheme run by Visa whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed. Our role in such cases is not to second-guess Visa's arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. Lloyds) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder (Mr R).

Lloyds has said the chargeback was unsuccessful because the cryptocurrency exchange companies fulfilled their obligations to convert the money into crypto and send it on as requested, and I'm satisfied that's fair.

Should Lloyds refund any money?

Although Mr R didn't intend his money to go to scammers, he did authorise the disputed payments. Lloyds is expected to process payments and withdrawals that a customer authorises it to make. But, where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

Buying cryptocurrency is a legitimate activity and from the evidence I've seen, the payments went to genuine cryptocurrency exchange companies. However, Lloyds has an obligation to intervene where there is a fraud or scam and these payments were part of a wider scam. In these circumstances, what we would expect Lloyds to have done to protect Mr R is restricted to 'triggers', meaning I need to consider whether the transactions were so unusual that Lloyds ought to have intervened to warn Mr R when he tried to make the payments.

Even though the highest payment was for £4950, Lloyds has confirmed the payments did flag as suspicious on its system and that it made several attempts to block the payments and warn Mr R about the risk of fraud. Lloyds asked Mr R what the payments were for and he said they were for goods, not investments. On other occasions, Mr R was warned by Lloyds to do further research and to visit his branch to discuss what was happening. When he did visit the branch, Mr R said his brother-in-law had also invested in Bitcoin, but he didn't mention there was a third-party broker involved.

Having considered the chronology of events and the fact Mr R didn't give the full story, I'm satisfied that Lloyds did everything it could reasonably have done in the circumstances to warn Mr R about the possible risks associated with the payments he was trying to make. The payments were being made to genuine cryptocurrency exchange companies and Mr R wasn't truthful with Lloyds about the involvement of T, so there was nothing Lloyds could have done to alert him that there were warnings about T.

Notwithstanding the lack of information, I'm satisfied Lloyds did everything it could to warn Mr R about investments involving cryptocurrency exchange companies in general, including advising him to undertake his own internet research. Lloyds even told Mr R about the practice of scammers telling their victims to lie to their bank to avoid the payments being blocked and I'm satisfied that this, along with the fact Mr R was made to visit the branch to discuss the payments, was enough to warn him about the risks associated with the payments he was trying to make.

Overall, I'm satisfied Lloyds took the correct steps prior to the funds being released, it did have concerns at different points and after speaking to Mr R, he reassured them that he knew what he was doing and I don't think Lloyds ought to have reasonably suspected he was falling victim to a fraud or scam after these conversations. I'm also satisfied Lloyds took the appropriate action after being notified of the potential fraud. I'm sorry to hear Mr R lost such a significant amount of money. But for the reasons I've explained, I don't think Lloyds is to blame for this and so I can't fairly tell it to do anything further to resolve this complaint.

My final decision

For the reasons I've outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 15 December 2022.

Carolyn Bonnell
Ombudsman