The complaint

Miss Y is unhappy that Lloyds Bank PLC won't refund all the money she's lost to a fraudster.

What's happened?

Miss Y has fallen victim to a cryptocurrency investment scam. She reacted to an advert on a popular social media platform showing television presenters from a well-known programme saying that it was simple to make money by investing in bitcoin. Shortly afterwards, she was contacted by an 'investment broker' ('the broker') from a company I'll refer to as 'B'. The broker helped her open a legitimate cryptocurrency exchange account ('the exchange account'). She transferred £92,500 from her Lloyds account to the exchange account over 12 transactions between 3 March and 9 April 2020. Then, using remote access technology to connect to her computer, the broker moved Miss Y's money from the exchange account to an account he said she held with B.

Miss Y had access to an online portal through which she could see that her investment with B was performing well, and she'd made a lot of money. The broker told her that, in order to release the profit, she would need to pay a tax bill. She used her Lloyds credit card to pay £4,169.32 (plus £303.79 in associated fees) on 9 April 2020. But she never received any money from B, and she has not heard from the broker since.

Miss Y realised she'd been the victim of a scam and raised a fraud claim with Lloyds. She's said:

- She is an inexperienced investor.
- The broker was charming, convincing and knowledgeable. He assured her that, if she invested with him, he could make her enough profit to be financially secure. She believed that he was genuine. He promised her the world and she was really taken in by him. She was physically and mentally unwell at the time, and desperate to be able to afford her own place. It never occurred to her that she was being scammed.
- She saw that B had a professional looking webpage, and she had access to an online account with B.
- The broker warned her that Lloyds would make it difficult for her to move money to the exchange account because banks don't want people to take money out of their bank account to invest in cryptocurrency. He told her what to say should she need to speak to Lloyds about what she was doing.

Lloyds declined to reimburse Miss Y. It said:

- The first scam payment from Miss Y's Lloyds account to the exchange account triggered its fraud detection systems and a member of staff spoke to her over the telephone. They warned her about fraud and told her that the bank probably wouldn't be able to recover her money if she was being defrauded. She confirmed that she had set the exchange account up and wasn't instructed to do so by anyone else. She also said that she was the only one with access to the exchange account. Based on the information Miss Y gave the bank, there was no need to provide any further warnings and the exchange account became a trusted beneficiary.

- The credit card department ran a security check on the credit payments Miss Y made as part of this scam. Miss Y advised the bank that she was paying a tax bill on money she had made and her financial advisor, who she trusted and had been dealing with for about a year, had told her to make the payments.

- Miss Y didn't take sufficient steps to ensure she was dealing with a genuine investment firm. The first result on an internet search for B shows that it is operating a scam.

What did our investigator say?

Our investigator thought that Lloyds provided sufficient fraud warnings and did enough to satisfy itself that Miss Y wasn't at risk of financial harm when it spoke to her after the first scam payment from her Lloyds account to the exchange account was instructed. So, she didn't think it would be fair or reasonable to require the bank to reimburse any scam payments transferred out of the bank account. But she didn't think the bank did enough when it spoke to Miss Y about the credit card payments she was making. So, she recommended that Lloyds:

- Refund all the losses on Miss Y's credit card account.

- Re-work the credit card account to remove all interest and charges applied as a result of the scam payments.

- Pay 8% simple interest on any payments Miss Y has made towards the scam payments and/or associated interest and charges.

Lloyds accepted our investigator's recommendations, but Miss Y did not. So, the complaint was passed to me to decide.

My provisional decision

I issued my provisional decision on 10 September 2022. I'll set out my findings below.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulator's rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

It's common ground that the payments from Miss Y's Lloyds account to the exchange account were 'authorised' – either by her or the broker acting on her behalf – under the Payment Services Regulations. Lloyds had an obligation to follow Miss Y's payment instructions, and Miss Y is presumed liable for her loss in the first instance. But that's not the end of the story. There are circumstances in which a bank should make additional checks before processing a payment, or in some cases, decline to make a payment altogether, to help protect its customers from the possibility of financial harm. I consider that Lloyds should:

- Have been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering and the financing of terrorism.

- Have had systems in place to look out for unusual transactions or other signs that might indicate that 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.

- In some circumstances, irrespective of the payment channel used, have taken additional steps or made additional checks before making a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.

Cryptocurrency scams often involve money passing through more than one account and they were not uncommon at the time. I think Lloyds would've been aware of this. The Financial Conduct Authority and Action Fraud published warnings about cryptocurrency scams in mid-2018. By March/April 2020 when the scam payments were made, I think Lloyds ought to have had time to digest these warnings and put mechanisms in place to detect and prevent this type of fraud. So, although Miss Y's losses may not have predominantly arisen from the initial transfers, I'm satisfied they ought to have been within the contemplation of, and foreseeable to, Lloyds. And I'm satisfied that Lloyds can be held responsible for the loss if it could have prevented the scam.

The first scam payment from Miss Y's Lloyds account to the exchange account triggered the bank's fraud detection systems, and Lloyds contacted Miss Y in order to satisfy itself that she wasn't at risk of financial harm.

By March/April 2020, I think Lloyds ought to have had a good enough understanding of how cryptocurrency scams work – including that the customer often moves money to an account in their own name before it is moved on to a fraudster – to have been able to identify the risk of harm from fraud. With its industry knowledge, I think Lloyds ought to have asked Miss Y some probing questions and given her information regarding the prevalence and typical features of cryptocurrency scams before processing the £5,000 payment.

I've listened to a recording of the telephone conversation between Miss Y and Lloyds. Below is a summary of what was said:

- Lloyds informed Miss Y that it probably wouldn't be able to recover any money lost to a scam once it had left her account. It told her that fraudsters are contacting its customers with convincing stories, that they are very believable and that they often tell customers not to discuss what's happening with the bank. It told her about safe account scams, and Miss Y confirmed that wasn't the situation here.

- The bank asked Miss Y where she got the sort code and account number of the receiving account from. Miss Y answered that it is her cryptocurrency exchange account and she volunteered the information that no one had helped her open the exchange account and she had done it completely on her own.

- Lloyds asked Miss Y if anyone had asked her to make the payment. She said no. It then asked if this was the only telephone call she was currently on. She answered yes and then volunteered the information that no one had access to her phone or PC.

- The bank asked Miss Y to confirm that she had not been told to lie to it, and she did.

I acknowledge that Miss Y was coached by the broker, and the answers she gave to the bank's questions weren't true. But it's not unusual for fraudsters to coach their victims and I think the bank would've been aware of this – so I consider that it should've been on the lookout for 'red flags' in the answers she gave, and it should have asked probing questions to get into the details of the payment rather than taking Miss Y's answers at face value.

On two occasions, Miss Y volunteered information that I think ought to have raised the bank's suspicions that she'd been given a cover story. Without being asked questions that would lead to these responses, she told the bank that she had opened the exchange account without any help and that no one had access to her phone or PC. I think that's strange information for a customer who has not been coached to volunteer.

The bank asked Miss Y some basic fraud questions (mostly related to irrelevant safe account scams) but I don't think the conversation should've stopped there. Lloyds could've asked more questions in order to determine whether the typical features of cryptocurrency scams were present here. But it didn't even ask Miss Y what the payment was for. If Lloyds had got into the detail of the payment, how Miss Y came across the broker and so on, then I think it's likely it would've become apparent that a scam was underway, and Miss Y wouldn't have made the payment, or any subsequent scam payments and/or Lloyds could've declined to make the payment or any other payments to the same destination.

Of course, if Lloyds had uncovered that Miss Y was investing in cryptocurrency, it could also have imparted information during its telephone call about the risks of financial harm. For example, it could have given Miss Y relevant information about cryptocurrency investment scams – including that scam investment companies often contact their victims after they've reacted to an advert involving celebrities on social media platforms, help them set-up genuine third-party accounts for payments to pass through and request remote access to their computers. If it had done so, even though Miss Y was being coached and told to lie to the bank, I think it's likely she would've realised something was amiss, and the scammer's spell would've been broken.

I acknowledge that the main perpetrator here is the fraudster. But overall, I don't think the bank did enough to protect Miss Y from financial harm. I think it should've asked more relevant and probing questions during its telephone call with her, particularly in light of the somewhat strange information she volunteered. And it should've asked what the payment was for then imparted relevant information about cryptocurrency scams. If this had happened, I don't think it's likely that Miss Y would have wanted to proceed with the payment and, if she did, Lloyds could have declined to make the payment. Either way, I think the scam would've been prevented and Miss Y wouldn't have lost any money. So, I'm satisfied that it's fair for Lloyds to reimburse her full financial loss.

I've considered whether Miss Y should bear some responsibility for her loss by way of contributory negligence but, overall, I don't think there was any contributory negligence on this occasion. Of course, there is more Miss Y could've done with the benefit of hindsight to protect herself, and some of the things the broker did were questionable (such as asking for remote access to Miss Y's computer). But I'm satisfied that the broker's demeanour and knowledge, the professional website Miss Y says she saw and her access to an online account with B showing investment growth was enough to satisfy a reasonable person – especially one that was feeling vulnerable at the time, had no prior investment experience and had not been educated about the relevant fraud by their bank.

For the reasons I've explained, I've provisionally decided that Lloyds should:

- Reimburse the £92,500 transferred from Miss Y's Lloyds account to the exchange account and pay interest at the originating account rate/s from the date of loss to the date of settlement.

- Refund the payments made to the scam from Miss Y's credit card account, and the associated fees.

- Re-work Miss Y's credit card account so that all interest and charges caused by the scam payments and associated fees are refunded.

- Pay 8% simple interest per annum on any payments Miss Y has made towards the credit card account balance arising from the scam payments and associated fees from the date of each payment to the date of settlement.

Responses to my provisional decision

Miss Y didn't respond to my provisional decision. Lloyds offered to reimburse 50% of the money transferred from Miss Y's Lloyds account to the exchange account (totalling £46,250), as well as comply with all of the other redress instructions I set out in my provisional decision. In summary, the bank said:

- Miss Y failed to carry out sufficient due diligence to verify she was dealing with a legitimate person or company.

- Miss Y hasn't provided any evidence in support of her belief that B was a professional organisation – such as emails or screenshots – and B no longer has an online presence so it is impossible to ascertain what Miss Y would've seen at the time.

- Miss Y didn't receive any investment documents, and this should've been a red flag.

- Miss Y allowed the broker remote access to her computer, which is questionable.

- Miss Y allowed the broker access to her financial accounts. A professional would never request this and it should've given Miss Y reasonable cause for concern.

- Miss Y should've been concerned that she was being coached on what to say to the bank by the broker.

- Unless Miss Y told the bank that she was buying cryptocurrency, there was no reason for it to provide warnings about cryptocurrency scams.

- It accepts that it could've asked Miss Y more probing questions when it spoke to her about the first payment instructed from her Lloyds account to the exchange account, and this is why it's offered to reimburse 50% of the money she transferred between the accounts.

- During its telephone conversation with Miss Y, the bank explained that fraudsters may provide convincing stories and tell customers to not to discuss matters with their bank. It also asked her if anyone had told her not to tell the bank she was making the payment. She said no. Lloyds asked Miss Y to confirm that she hadn't been told to lie to the bank or move the money, and she did. Lloyds believes that the warnings it provided were relevant to cryptocurrency scams and our investigator agreed.

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.

Lloyds has agreed with the redress instructions I set out in my provisional decision in relation to Miss Y's credit card account, so I see no reason to comment further in this respect.

Lloyds has offered to accept partial responsibility for the payments Miss Y made from her

Lloyds account to the exchange account ('the faster payments') on the basis that it could've done more to protect her from financial harm when it spoke to her on the telephone after the first payment was instructed. As the bank's already agreed to bear some liability for Miss Y's loss because it didn't do enough to prevent the scam, I won't explore the arguments it's made in responding to my provisional decision about the conversation that took place between Miss Y and Lloyds. I can see Lloyds feels that there was contributory negligence on Miss Y's part, so she should be held equally responsible for the loss of the faster payments, and I will concentrate my findings on this.

I note that Lloyds hasn't provided any new evidence or information for me to consider. I thought about all of the points Lloyds has raised when reaching my provisional conclusion that there was no contributory negligence on this occasion. I accept that:

- There's more Miss Y could've done to protect herself with the benefit of hindsight – for example, she could've asked for investment documentation.

- Miss Y hasn't provided any visual evidence of what she saw about B when she researched it prior to deciding to 'invest' – but this isn't unusual. Victims of investment scams don't often have screenshots of their research (probably because they aren't aware they're falling victim to a scam and they'll need to have such evidence to provide in any future fraud claim). Scam investment companies often do have a seemingly professional online presence and Miss Y has been consistent throughout her testimony, so I have no reason to doubt what she's said.

- Some of the things the broker did were questionable – such as coaching Miss Y on what to say to Lloyds if it asked what she was doing, requesting remote access to her computer and making transactions on her financial accounts for her. But I can see that Miss Y was provided with plausible explanations for these things.

But Miss Y has said that:

- She has no prior investment experience.

- She was really taken in by the fraudster, who was charming, convincing and knowledgeable, and promised her the world when she was in a vulnerable state.

- B had a professional website.

- She had access to an online account showing investment growth – I find this to be plausible as victims of cryptocurrency investment scams often have access to this type of fake account showing investment performance and, again, Miss Y's testimony has been consistent and persuasive throughout.

And I can't ignore that Lloyds did not properly educate Miss Y about the relevant fraud either and, if it had have done so, she would most likely have been in a position to better protect herself from financial harm.

Overall, although I acknowledge that there were some 'red flags' Miss Y could've spotted if she was a more experienced investor and/or had better knowledge about cryptocurrency investment scams, and there was more she might've done to protect herself, I'm still satisfied that there wasn't any contributory negligence on this occasion. Considering everything, I'm persuaded that the broker's demeanour and knowledge, B's seemingly professional website and, perhaps most convincingly, Miss Y's access to an online account showing investment growth was enough to satisfy a reasonable person that all was as it seemed.

My final decision

For the reasons I've explained, I've decided to uphold this complaint and instruct Lloyds Bank PLC to:

- Reimburse the £92,500 transferred from Miss Y's Lloyds account to the exchange account and pay interest at the originating account rate/s from the date of loss to the date of settlement.

- Refund the payments made to the scam from Miss Y's credit card account, and the associated fees.

- Re-work Miss Y's credit card account so that all interest and charges caused by the scam payments and associated fees are refunded.

- Pay 8% simple interest per annum on any payments Miss Y has made towards the credit card account balance arising from the scam payments and associated fees from the date of each payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss Y to accept or reject my decision before 1 December 2022.

Kyley Hanson
Ombudsman