

## **The complaint**

Mr R complains that Lloyds Bank PLC has declined to fully refund the losses he incurred when he fell victim to an investment scam in 2020.

## **What happened**

The parties here are aware of the circumstances of the complaint, so I won't recount these in detail here. But in brief, Mr R was tricked into sending two Faster Payments transfers from his Lloyds bank account. He did so in the belief he was investing in a cryptocurrency-based investment scheme, but it later transpired he was dealing with scammers.

In March 2020, at around the time the UK's national lockdown began, Mr R's employer of 20 years shut down, and he became suddenly unemployed. He explains this had a particularly bad effect on him. He was approaching retirement age, had concerns about his pension provision, and had sadly become a widower a few years prior.

Having now unexpectedly lost his main income source, Mr R was looking for alternatives - and potentially somewhere to put his redundancy payment.

He was interested in investing in cryptocurrency and having searched online, he'd entered his contact details on a website to obtain more information. Mr R says he was subsequently called by several companies offering trading and advice. Mr R says they were all pushy and he didn't think all sounded legitimate.

But one company (which I'll refer to as T) was different. It didn't pressure him and seemed to be wholly legitimate, even warning him about the risk of scam firms.

T claimed to be regulated by a body which said it monitored cryptocurrency investment firms. Mr R says he dealt with a number of staff at T by phone, and each sounded professional and helpful. He felt comfortable dealing with T.

Mr R decided to proceed. He sent an initial payment by credit card then, between April and June, three payments from his account held with a building society. He received a payment of £1,594 in July after the third transfer. At the time he believed this was a withdrawal from the profits on the payments he'd made to that point.

In September, Mr R made two payments from his Lloyds account – sums of £10,000 on 16 September, and £16,177.22 on 29 September.

Both of these payments were international transfers to Slovakia. On both instances it appears Lloyds wrote to Mr R saying the payment had been returned unpaid and it would be resubmitting it. Apparently, this was due to the receiving bank only accepting non-urgent SEPA (Single European Payments Area) payments. These letters were dated 22 September and 5 October.

Mr R was given a link by T, which supposedly allowed him to view the progress of his investments. Initially this showed a large balance with significant profits. But not long after

the final payment he'd sent, the balance started to rapidly decrease. Mr R says at that point it had showed a supposed value of around \$225,000 which rapidly reduced to zero without any obvious explanation. Mr R found he could no longer contact T. He realised this had not been genuine and that he'd been the victim of a scam.

Mr R reported the matter to Lloyds. Lloyds attempted to recover his funds, but this was not possible - in part because the payments had been sent internationally. Initially, Lloyds said it wasn't liable to refund Mr R at all. But the bank later reviewed this position and said it would refund the second (and larger payment) but not the first.

Mr R remained significantly out of pocket as a result. He asked this service to impartially review what had happened.

I issued my provisional findings on the merits of Mr R's complaint on 7 December 2022. In my provisional findings, I explained why I intended to uphold Mr R's complaint and offered both sides the opportunity to submit further evidence or arguments in response. An extract of that decision is set out below and forms part of this final decision:

*In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.*

*Under the relevant regulations, and in accordance with general banking terms and conditions, banks have an obligation to execute an authorised payment instruction without undue delay.*

*As a consequence, the starting position is that liability for an authorised payment rests with the payer, even if they made that payment as the consequence of a fraud or scam - for example as part of an investment scam such as this was.*

*However, where the customer made the payments as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though the customer authorised the transactions. I consider that a bank also has a duty to take reasonable steps to protect its customers against the risk of fraud and scams.*

*In particular, I consider that as a matter of good industry practice Lloyds should have been looking out for payments or payment patterns that were significantly out of character or unusual and that might therefore be indicative of the potential for financial detriment to its customer.*

*Here, the initial payment was significantly higher than the typical payments made by Mr R on his account. It was also being sent to a new payee – a recipient he'd not paid before. And the payment was international, again not something typical for Mr R (it doesn't appear he'd previously made an international payment from this account).*

*I think there was enough going on here that Lloyds ought reasonably to have considered this payment was one where there was a higher than usual risk it could lead to financial detriment to Mr R. As such, I think it is reasonable to have expected Lloyds to have intervened at the time to reassure itself that this payment wouldn't lead to financial loss for Mr R.*

*Had it done so and contacted Mr R, I have seen nothing to suggest that Mr R would have done other than truthfully respond to Lloyds' questions about the payment. I think*

*he'd have told Lloyds he believed he was investing in a cryptocurrency-based scheme, and that he was dealing with T. Lloyds at that point could reasonably have asked what checks Mr R had conducted into T (such as checking the FCA website or register). Had such a check been carried out, the live warning about T on the FCA website would have come to light. I think this would likely have prompted Mr R to have second thoughts about proceeding, and ultimately, I think the payment would have been prevented, as would the subsequent payment.*

*Because Lloyds did not prevent this, I find it must share some of the responsibility here.*

*I have considered Lloyds' argument that the payment being made from its account was not the ultimate source of the loss to the fraud. But I am not persuaded that this should alter my view on Lloyds' share of the liability. Mr R has been unable to recover any of the funds that were sent to the cryptocurrency exchanges involved. Here, I find Lloyds ought to have identified that the funds would likely be lost through fraud. Mr R was the bank's customer and was about to suffer financial harm. In the circumstances here, Lloyds ought reasonably to have taken steps to prevent this harm. I consider this reflects what could reasonably have been expected of Lloyds in light of good industry practice and awareness of cryptocurrency-based scams at the time.*

*I have also considered whether Mr R should bear some responsibility by way of contributory negligence. However, it is clear that up to and including the time of authorising these two payments, he was still totally in the dark and simply did not appreciate what he was doing or the consequences of his actions. I am satisfied there was no contributory negligence on this occasion, he was simply the unwitting and blameless victim of a clever scam. The bank was the professional in financial matters; Mr R was a vulnerable layperson.*

### ***Putting things right***

*Given the above, I am currently minded to find it fair and reasonable that Lloyds should:*

- refund the money that Mr R lost as a result of the scam – less any amounts that have already been paid or recovered from the receiving accounts; and,*
- pay Mr R interest on that amount at 8% simple from the date of each payment until the date of settlement - less any tax lawfully deductible.*

In my provisional decision, I asked both sides to provide any further arguments or information by 20 December 2022, after which point, I said I would issue my final decision on the matter.

### **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.

#### ***Responses to my provisional decision***

Mr R responded to my provisional decision saying he had nothing further to add and accepted the proposed outcome.

However, while the deadline for responses has now elapsed, Lloyds has not replied to my provisional conclusions.

In light of this, I see no reason to depart from the findings and the resolution I proposed in

my provisional decision as quoted above, and for the same reasons.

### **My final decision**

For the reasons set out in my provisional decision and above, I uphold Mr R's complaint. I find it fair and reasonable in all the circumstances that Mr R should now be refunded for his losses due to the scam by Lloyds Bank PLC. Lloyds Bank PLC should now:

- refund the remaining money that Mr R lost to the scam from his Lloyds account – less any amounts that have already been paid or recovered from the receiving accounts, within 28 days of receiving confirmation of his acceptance of this decision; and,
- pay Mr R interest on that amount at 8% simple per year from the date of each payment until the date of settlement - less any tax lawfully deductible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 18 January 2023.

Stephen Dickie  
**Ombudsman**