

## **The complaint**

Mr H complains that Lloyds Bank PLC ('Lloyds') hasn't refunded the money he lost when he was the victim of two scams.

## **What happened**

Mr H is represented in this case but for ease I'll only refer to Mr H in this decision.

Mr H says that he saw a video on a social messaging site about investing in bitcoin and clicked on a link. He immediately received a call from someone from an investment company I'll refer to in this decision as M. Mr H wasn't given a rate of return or timeframe but was told that he was guaranteed not to lose money as bitcoin would never drop below a certain level. The representative of M advised Mr H that he could show him how to trade and used a remote access application to demonstrate this.

Mr H looked up M on a social networking site and saw mainly positive reviews so decided to go ahead. He initially made a card payment of £261.48 to a cryptocurrency provider (rather than M) on 26 November 2020. He then called Lloyds to ask it to stop the payment as he said it related to fraud. Mr H was advised the payment was pending and that he should follow his terms and conditions in relation to withdrawals. Mr H says that after the call he felt reassured that M was a legitimate company.

After Mr H had made the payment, he was able to see his profits grow on a trading platform via M's website and this persuaded Mr H to invest more funds. The representative of M told Mr H to set up accounts with cryptocurrency exchanges but as Mr H's passport was out of date, he was unable to do so. Mr H's brother agreed to set up accounts for Mr H to use and Mr H transferred funds from his business account to his personal account and then on to his brother (J). J then sent the funds to cryptocurrency exchanges and on to the scammer. Mr H was with J when the transfers were made to the cryptocurrency companies and the scammers had remote access to help with this.

Mr H was able to see on M's portal that he had £50,000 profit and told M he wished to withdraw it. M told him that because of money laundering rules he needed to pay more before he could withdraw his profit, so Mr H made further payments. M later agreed Mr H could withdraw his funds but after he provided his bank account details M stopped all contact with Mr H.

Mr H called Lloyds on 28 December 2020 to report the scam. In that call he said that he followed the advice of the Lloyds advisor in his call on 26 November 2020 to pay the fees M requested and that was why he lost further funds in the scam. Mr H was advised that Lloyds was unable to raise a claim as the lost funds initially went to his brother.

Mr H then researched recovery companies to try to get his money back from M and found a company I'll refer to as R. R described itself as a law firm. Mr H says R had good reviews, a professional looking website and provided Mr H with a contract. R told Mr H it had traced his funds and could recover them, but as bitcoin had increased in value Mr H needed to pay more to balance the account. But Mr H was assured he'd still make a profit. Mr H then sent further funds to his brother which were moved to different bitcoin wallets. R continued to ask for additional funds as bitcoin kept going up and then stopped communicating with Mr H.

From 5 February 2021 onwards, most of the funds Mr H sent in respect of the second scam came from a bounce back loan.

I have set out below relevant transactions. The ones shown in bold are scam payments - those listed in November and December relate to the original investment scam and the payments from January onwards relate to the recovery scam.

Date	Transaction	Amount
<b>30 Nov 2020</b>	<b>Transfer to J</b>	<b>£1,000</b>
<b>4 Dec 2020</b>	<b>Transfer to J</b>	<b>£2,145</b>
<b>10 Dec 2020</b>	<b>Transfer to J</b>	<b>£2,145</b>
<b>10 Dec 2020</b>	<b>Transfer to J</b>	<b>£1,608.75</b>
<b>10 Dec 2020</b>	<b>Transfer to J</b>	<b>£1,072.50</b>
<b>10 Dec 2020</b>	<b>Transfer to J</b>	<b>£2,000</b>
10 Dec 2020	Credit from business account	£1,300
16 Dec 2020	Credit from business account	£7,000
<b>16 Dec 2020</b>	<b>Transfer to J</b>	<b>£7,000</b>
16 Dec 2020	Credit from business account	£500
<b>16 Dec 2020</b>	<b>Transfer to J</b>	<b>£390</b>
18 Dec 2020	Credit from business account	£6,500
<b>18 Dec 2020</b>	<b>Transfer to J</b>	<b>£6,500</b>
24 Dec 2020	Credit from business account	£5,000
<b>24 Dec 2020</b>	<b>Transfer to J</b>	<b>£5,000</b>
24 Dec 2020	Credit from business account	£6,435
<b>24 Dec 2020</b>	<b>Transfer to J</b>	<b>£6,435</b>
29 Dec 2020	Credit from business account	£1,000
14 Jan 2021	Credit from business account	£19,000
<b>14 Jan 2021</b>	<b>Transfer to J</b>	<b>£1,180</b>
<b>14 Jan 2021</b>	<b>Transfer to J</b>	<b>£8,900</b>
14 Jan 2021	Credit from business account	£9,000
18 Jan 2021	Credit from business account	£9,303
<b>18 Jan 2021</b>	<b>Transfer to J</b>	<b>£9,303</b>
<b>19 Jan 2021</b>	<b>Transfer to J</b>	<b>£700</b>
20 Jan 2021	Credit from business account	£5,000
<b>20 Jan 2021</b>	<b>Transfer to J</b>	<b>£5,000</b>
3 Feb 2021	Credit from business account	£7,000
<b>3 Feb 2021</b>	<b>Transfer to J</b>	<b>£7,000</b>
5 Feb 2021	Credit from business account	£9,000
<b>5 Feb 2021</b>	<b>Transfer to J</b>	<b>£8,000</b>
8 Feb 2021	Credit from business account	£11,000
<b>8 Feb 2021</b>	<b>Transfer to J</b>	<b>£2,000</b>
<b>8 Feb 2021</b>	<b>Transfer to J</b>	<b>£9,000</b>
<b>8 Feb 2021</b>	<b>Transfer to J</b>	<b>£12</b>
8 Feb 2021	Credit from business account	£6,000
<b>8 Feb 2021</b>	<b>Transfer to J</b>	<b>£6,000</b>
9 Feb 2021	Credit from business account	£9,000
<b>9 Feb 2021</b>	<b>Transfer to J</b>	<b>£9,000</b>
10 Feb 2021	Credit from business account	£1,000
10 Feb 2021	Credit from another account	£3,000
<b>10 Feb 2021</b>	<b>Transfer to J</b>	<b>£4,000</b> of which <b>£1,000</b> from BBL
		Total loss: <b>£105,391.25</b>

Mr H has explained that the scam has had a huge impact on him and has made him feel very stressed and depressed. He thinks Lloyds should refund all the funds he lost in both scams.

Lloyds considered Mr H's complaint but didn't agree to refund him. It said that as the scam funds left Mr H's brother's account with another bank it couldn't help. Mr H was unhappy with this response and brought a complaint to this service.

### *Our investigation so far*

The investigator who considered this complaint recommended that it be upheld in part. She said that Lloyds should have intervened when Mr H made the seventh payment of £7,000 in the table above and that had it done so the scam would have been uncovered and future payments wouldn't have been made. But the investigator felt that Mr H should share the responsibility for his loss as there were red flags in respect of each scam.

Some of the funds used in the latter stages of the scam came from a bounce back loan. These payments are shown in italics in the table above. The investigator didn't ask Lloyds to refund these payments.

Mr H accepted the investigator's view, but Lloyds didn't. In summary, it said:

- Mr H's funds went to the person he was expecting to pay – his brother – and from his brother's account to the scammer. The funds left his brother's account and so the claim should be raised with Mr H's brother's bank.
- The risk in this case was reduced as Mr H was paying an existing payee and there was a confirmation of payee match. Mr H also made payments to J that he hasn't disputed on 1 December 2020.
- Lloyds provided Mr H with a warning for every payment over £5,000. These warnings should have prompted Mr H to take further action to check what he'd been told by the scammer.
- A discussion with Mr H wouldn't have made a difference as it was clear from his call to Lloyds on 26 November 2020 in respect of the card payment that he knew he was being scammed. There was no reason why Lloyds would know that Mr H continued to make payments via his brother's account.
- Mr H didn't complete enough checks before making the payments. Lloyds noted that an FCA warning was added in respect of M on 10 November 2020, Mr H had no paperwork to show the terms of his initial investment, a little research would have shown that being required to make a payment to withdraw funds wasn't feasible, the recovery company had two out of five stars on a review site and there were scam warnings online, and Mr H didn't question paying the recovery company upfront when he expected it to take 2.5% of recovered funds.

As the parties haven't reached agreement the complaint has been passed to me to issue a decision.

### **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've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

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.

The Lending Standard Board Contingent Reimbursement Model Code (CRM Code) doesn't apply in this case because the purchase of cryptocurrency and the subsequent sending of

that cryptocurrency to the scammer aren't faster payments between GBP accounts, which is required by the Code.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

However, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Lloyds should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- 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 (among 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 processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

The duty exists whichever party a customer pays. I accept though that a payment to an existing payee with a confirmation of payee match result would be less suspicious than a similar payment to a new payee.

I'm mindful of the fact Mr H spoke to Lloyds on 26 November 2020 in respect of a card payment for cryptocurrency that he thought was fraudulent. Mr H was told that as the payment was pending it couldn't be stopped and was provided with advice about looking at terms and conditions in respect of withdrawals. I don't agree with Mr H that this advice meant Mr H should make multiple payments to receive his profits. Mr H wasn't given any cryptocurrency investment scam advice though – which is something I'd expect in these circumstances – and Lloyds was alerted to the possibility that Mr H might suffer financial harm. A few days later Mr H started to make payments to his brother which ultimately went to scammers.

I've reviewed Mr H's bank statements from October 2019 onwards. On 10 December 2020 Mr H made four payments to his brother totalling nearly £7,000. Prior to this Mr H transferred larger sums between accounts but only made faster payments of up to £2,000. Then on 16 December 2020 Mr H transferred £7,000 to his brother. After transferring nearly £7,000 on 10 December Mr H was requesting a transfer that would take the total paid to the same payee to nearly £14,000 in a week (after paying £3,145 shortly before). The transactions followed the usual cryptocurrency scam payment pattern with a card payment followed by payments increasing over time. And the £7,000 payment request took Mr H's balance to £4,813.26 overdrawn.

Whilst J (Mr H's brother) was an existing payee he had only made a small payment of £30 to him before the scam started (on 25 September 2020). Lloyds has drawn to my attention three further payments of £1,000, £75 and £1,072.50 to J on 1 December 2020 that Mr H hasn't disputed. But I can see from Mr H's statements that the following day Mr H transferred £2,127 to J. So I don't consider these payments to be relevant to this complaint.

Given everything I've said I consider Lloyds ought reasonably to have intervened when Mr H made the £7,000 payment request on 16 December 2020. I've thought carefully about whether the kind of questions I believe ought fairly and reasonably to have been asked by Lloyds would have made a difference in this case. Having done so, it's my belief that had

Lloyds asked proportionate questions and given Mr H a warning about investment scams he wouldn't have made the payments without completing further checks.

Mr H would have explained he was paying his brother in respect of a cryptocurrency investment opportunity, he found out about the investment on a social media platform, was guaranteed he wouldn't lose any money and had no contract or other documentation and hadn't checked the FCA register. So there were some serious red flags that I think would have been disclosed if relevant questions had been asked. There was also an FCA warning about M from November 2020 (before Mr H started making payments to M).

I haven't seen anything to indicate that Mr H was so anxious to proceed that he would have ignored warnings or been unprepared to postpone the payment to reflect on the matter and make further enquiries.

I don't agree with Lloyds' point that intervention wouldn't have made a difference because Mr H already knew he was being scammed (from his call about the card payment). The scammers were able to persuade Mr H that the investment was genuine after this call, as he made further payments after it in the belief the investment was genuine. Mr H was an inexperienced investor and wasn't alive to the warning signs of a scam so I consider that if Lloyds, as the expert here, advised him appropriately he would have taken the advice seriously and wouldn't have proceeded with the payments.

Lloyds has explained that it presented Mr H with an electronic warning each time he made a payment for over £5,000 which said,

*"Don't pay before you check – Are you sure you know where your money is going? Check the payment with someone you know and trust. Make sure you don't fall for a scam. If you do, we may not be able to get your money back. Find out how people can try to scam you – here – do you want to make this payment?"*

I'm not persuaded this very general electronic warning went far enough and can understand why it had no impact on Mr H's decision-making at the time. And Mr H was initially making payments to his brother so knew where his funds were going. Lloyds provided this service with different wording during our investigation that was also very general so the above comments would apply to this warning too.

If Lloyds had intervened and prevented further payments from being made in the investment scam, then Mr H wouldn't have fallen victim to the subsequent recovery scam, so I also think Lloyds is responsible (subject to what I say below) for these payments.

And in any event, I consider Lloyds could have done more when Mr H reported the initial investment scam and when Mr H made further payments to J after he reported the first (investment) scam. The focus of Lloyds' investigation into the initial scam was the advice given to Mr H when he made the card payment at the end of November 2020. Mr H wasn't given scam advice to prevent him falling victim to future scams during his call and the final response letter he received after complaining about the card payment (dated 4 February 2021) gave limited scam advice but nothing that related to a recovery scam. And soon after Mr H fell victim to the first scam, he started to repeat the pattern of payments to J from 14 January 2021 when he made two payments which totalled over £10,000. Lloyds didn't intervene and I consider it should have and that if it had the second scam would have been uncovered.

I've also thought about Lloyds' concern the scam funds were passed through Mr H's brother's account. I'm satisfied Mr H is the one who experienced the loss (because the funds that were ultimately transferred to the fraudster were his and not his brother's). Mr H's brother only created wallets and transferred Mr H's funds on because a valid passport was required to open the crypto wallets and Mr H's was out of date. The funds Mr H's brother

transferred never belonged to J and so J hasn't suffered a loss. And whilst I appreciate Lloyds has no information about where the funds went after they were transferred to J, I confirm I've seen evidence which shows the funds were used in the scam.

The amounts shown in italics in the table above stemmed from a bounce back loan for Mr H's business. Mr H was using the loan for personal reasons in a second scam to try to recover the funds he lost in the first scam (and he was originally investing for personal reasons). So I don't think Mr H should receive a refund of these funds.

*Did Mr H do enough to protect himself?*

I've also thought about whether Mr H did enough to protect himself. On balance, I don't think he did. I've considered each scam separately.

*Investment scam*

- Mr H had fraud concerns before he made any scam transfers, but I can't see that he took additional steps to satisfy himself that M was a legitimate company. I'm aware that Mr H's representative has told this service that Mr H didn't have any concerns about being scammed at the end of November 2020 and just wanted to make sure the investment was right for him. Having listened to the call, I don't agree. Mr H told the first Lloyds advisor that he'd done research and thought it was fraud and then told a fraud advisor that he wanted to stop the payment because of fraud. Given the concerns Mr H had I consider he ought reasonably to have taken action to satisfy himself M was legitimate.
- Mr H found out about the investment after seeing a clip on a social media platform. This is not how genuine investments are arranged.
- Whilst Mr H says he wasn't advised of a rate of return he was told he couldn't make a loss. Investments of this type involve risk, so a guaranteed return ought reasonably to have been a red flag.
- Prior to Mr H making his first transfer there was an FCA warning in respect of M. This warning comes up if you search for M online.
- Mr H wasn't provided with a contract or any terms and conditions as you'd expect with a genuine investment.
- Mr H was asked to open various different cryptocurrency wallets but there doesn't appear to be any plausible explanation for this.

So I'm persuaded Mr H should receive half of the payments I'm asking Lloyds to refund in respect of this scam.

*Recovery scam*

I also think Mr H should share responsibility for his loss in the second scam. I consider that after falling victim to the first scam Mr H ought reasonably to have been particularly cautious about paying any form of advance fee to recover his funds.

The premise of the recovery scam isn't believable in that R told Mr H it had traced his funds and could recover them. I'm uncertain how it would be possible to trace funds sent to cryptocurrency wallets and recover them in this way. And the explanation that the funds had gone up in value, so Mr H had to pay more into cryptocurrency wallets to balance them out isn't credible and ought reasonably to have led Mr H to have serious concerns. Even if it was possible to locate and return funds paid to cryptocurrency wallets, paying more to return funds, and particularly the kind of sums Mr H was asked to pay, doesn't sound logical. So I think Mr H should receive 50% of the amount he lost in the recovery scam (but, as mentioned above, excluding the payments in italics in the table above).

Mr H has said that before sending funds to cryptocurrency wallets he looked at reviews for R on a well-known review site and at R's website. Mr H says R had a 4.7 rating and 112

reviews. Lloyds has referred to R having a much lower rating, but this is because it has looked at the current rating of R. I can only see one positive rating from November 2020 and then negative reviews which start in January 2021. I also note that R described itself as a law firm but was not registered as one.

### *Recovery*

As Mr H's funds went to his brother's account first there was nothing Lloyds could have done to recover them.

### *Interest*

From the point at which I consider Lloyds should have intervened, payments made towards the scams came from Mr H's business account. So I consider that were it not for the scam the funds would have remained in Mr H's business account and been used for normal business expenditure. Given this, I am awarding interest at the rate of 8% simple per year.

### **My final decision**

For the reasons given I require Lloyds Bank PLC to:

- Refund 50% of all scam payments listed in the table above from (and including) the £7,000 payment made on 16 December 2020 but excluding all payments in italics (only £1,000 of the £4,000 payment on 10 February 2021 should be deducted as the £3,000 credit didn't relate to the bounce back loan).
- Pay interest on each payment at the rate of 8% simple per year from the date of each payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 April 2023.

Jay Hadfield  
**Ombudsman**