

The complaint

Mr S complains that Lloyds Bank PLC will not reimburse financial losses he suffered when falling victim to an investment scam.

What happened

In October 2017, Mr S decided to begin trading digital assets online with a company called Trades Prime ("TP"). He proceeded to make a series of payments from different accounts in his name, including a credit card he held with Lloyds. The payments were not made directly to TP, but various payees that Mr S was told were part of the investment deal.

However, after a year or so of investing with TP, Mr S began to doubt its legitimacy. He believed that TP was actually operating a scam. After experiencing some difficulty withdrawing money from the scheme, Mr S instructed what he thought was a genuine recovery service to claim back the funds held with TP. Unfortunately, after making payments to this recovery firm in 2019, Mr S realised that this business was also fraudulent – and had taken payments without ever attempting to reclaim what he had paid to TP.

Mr S raised a complaint with Lloyds, concerning the payments from his credit card that were part of the investment with TP. Lloyds didn't uphold the complaint, citing that it had followed due process when the payments were instructed. The bank also said there were no prospects of recovering the payments.

Unhappy with this, Mr S referred the dispute to our service. One of our investigators advised him that, as things stood, this office could only consider the credit card payments made to TP within this complaint (and not the recovery service), because this was all that Lloyds had investigated and responded to. And that any further complaint, about other accounts and different scam outfits, needed to be first raised with Lloyds as their own respective complaint before our service could consider what happened on that side of things.

Having considered this complaint, our investigator didn't uphold it – which Mr S disagrees with. He maintains that Lloyds ought to have done more to protect him when these credit card payments were made. Because Mr S is not in agreement, the matter has been escalated to me to decide.

Provisional decision

I issued a provisional decision on this case on 22 February 2023. I have copied the findings section of my decision below:

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

I appreciate that I have briefly summarised what happened in what is quite a complex course of events. This is not a discourtesy to Mr S or Lloyds; it simply reflects the informal nature of our service and the decision I'm minded to reach."

It's common ground between the parties that Mr S has been scammed, which is reinforced by the warnings about TP that were published in the months following these transactions. So, I have reached my provisional findings on the basis that Mr S was the victim of a fraudulent scheme and that all of the payments were sent to TP (albeit indirectly).

The relevant legislation, plus various principles of good practice, make it clear that banks do have a duty to protect consumers from the risk of financial harm – including fraud and scams. Also, as a firm regulated by the Financial Conduct Authority (FCA), Lloyds has a regulatory obligation to counter the risk that its accounts might be used to further financial crime.

Still, this must be balanced with Lloyds' other duties. There's a provision that delaying a payment instruction could lead to a breach of the Payment Services Regulations (PSRs), which set requirements for the timing of payments such as the ones that Mr S made here. What's more, while the FCA has confirmed that a fraud warning would not necessarily constitute unauthorised investment advice, in circumstances such as these, there is a general prohibition that Lloyds should not be providing investment advice pertaining to where a consumer should choose to invest (or not invest) their money.

In other words, it's possible that Lloyds could have warned Mr S about the dangers of falling victim to investment fraudsters, without providing him investment advice. But these obligations should only reasonably have been engaged under the PSRs if there were sufficient grounds for suspecting the payments were the result of fraud or some other illicit activity; meaning that Lloyds could have delayed the payments while concerns were discussed with Mr S.

Hence, why I've considered what Lloyds could reasonably have identified about the businesses Mr S was paying, along with weighing up whether the bank had any other reason to be alarmed about this spending. For example, because the payments were very unusual compared to Mr S's typical expenditure on the credit card.

I appreciate that Mr S has lost more than £2,000 through this account which is not an insignificant amount of money. Even so, this wasn't paid in one single large or 'out of character' transaction. It was spread over separate smaller increments which, in my judgment, would not have appeared particularly unusual or uncharacteristic when compared with Mr S's spending history. I do not deem the payment values ought to have been regarded as overly suspicious or a strong indication that he might have been at risk of falling victim to a scam.

The account had only been opened for around six months when Mr S made these so-called investments. For most people, the fundamental purpose of a credit card is to facilitate purchases. The point being, a fairly new account making sporadic payments to new beneficiaries (or 'payees') would arguably be in keeping with typical consumer behaviour – resulting in identifying out of character payments not being straightforward for Lloyds.

What's more, the first payment as part of the TP arrangement had a payment value of less than half of a recent undisputed transaction that Mr S had made before. To that end, I'm not currently convinced that these particular account movements represented a sudden increase in spending or change in the way Mr S normally used the account.

Mr S's money was not sent directly to TP, meaning that Lloyds would not have known this was his intended beneficiary based on the payment instructions alone. Card payments such as these can be referred to as 'pull' payments, in the sense that the payee pulls the money from the debit or credit card.

Consequently, the bank is presented with information about the planned destination of the funds, alongside being able to use this data in its payment screening and transaction monitoring technology. Put simply, the bank acquires information about the intended recipient of the payment which can help it detect a potential scam.

The FCA and other powers regard the use of industry intelligence as critical to detecting and preventing investment fraud. Accordingly, I've paid particular attention to the official organisations that publish warnings about merchants that operate in the UK and abroad. I've depended on the Investor Alerts Portal of the International Organization of Securities Commissions ("IOSCO"), the international body that brings together the world's securities regulators. And I've relied on the FCA's own warning list, which is in place to share alerts and insight about merchants that have been identified as potentially being fraudulent.

Whilst the regulator didn't give any indication of when these watchlists ought to be updated, I find it's not unreasonable to expect an international bank, like Lloyds, to update the lists, and communicate with staff, within a month of a warning being published by the FCA or IOSCO. Such an alert should automatically trigger its fraud prevention systems and lead to payments being paused, pending further intervention – such as making enquiries of the customer about the payment or giving a scam warning.

As far as I am reasonably aware, the FCA or IOSCO did not regard the payees Mr S was sending money to as potentially fraudulent at the material time – with the exception of the second payment. All of the payments Mr S has reported as being given to TP, other than this second payment, do not match an alert with these watchlists or other reputable sources. Which is why I would not have expected Lloyds to have taken steps to find out more about the proposed payments apart from the transaction that went to 'International Securities Ltd'.

I say so because there was a warning about this firm published on the FCA website in April 2018, some six months prior to Mr S making a card payment directly towards it. Whilst the warning did not specifically refer to digital assets or the securities Mr S thought he was involved with, it did spell out that International Securities Ltd was offering services in the UK without being authorised.

I consider any watchlist should reasonably include parties who are carrying out regulated activities without the authorisation to do so. Given the timing of this FCA warning and when the highlighted payment was made, Lloyds ought to have automatically blocked it. I find that the bank had been allowed ample time to update and communicate its payment screening measures. It follows that it should have asked Mr S appropriate probing questions before allowing the payment to be let go.

Having concluded that Lloyds ought to have intervened with this payment, next I need to determine what difference (if any) such an intervention would've made. This is otherwise known as 'causation'.

Causation

To require Lloyds to refund the disputed payment (or the transactions that ensued) on the grounds of causation, it's not enough to simply say that it failed to act; I would need to be satisfied that the bank stepping in would've prevented the loss here and that loss was reasonably foreseeable.

Although I believe there were grounds for Lloyds to pause things and ask Mr S for additional information, whether or not this would have made a difference is very much dependant on how the corresponding conversation would likely have played out.

What I find important here is how Mr S came about entering into an agreement with TP. There is an array of investment scams which it's fair to say typically involve a consumer unwittingly falling for prosperous gains having received contact, unsolicited or not, from a third party. This is a hallmark of a scam that I would expect a bank to be on the look for, as it may present a risk that a consumer is being targeted by a fraudulent outfit.

This was not the case with Mr S. On the contrary, he has told our service that he decided to venture into investing with TP upon a recommendation by a broker and was aware all along that he was not going to make payments directly to the firm. The broker he mentions is authorised to bring about investment deals according to the FCA's register and is an established financial services provider in this particular industry. Suffice to say, regulated firms are obliged to follow principles of good practice when carrying out activities, which Lloyds is aware of and could rely on when considering the risk posed to its consumers.

I find it probable that Lloyds would have been made aware of this introduction, i.e. that Mr S was following advice to deposit funds with an advocated investment venture. I consider the level and depth of questioning ought to be proportionate to the situation and that there is a balance to strike – Lloyds could not have subjected Mr S to an interrogation. With that in mind, if a conversation with Mr S had established he was making payments to an investment, it seems appropriate for questions to then be posed about how this had come about, and whether he was acting on advice and was confident in what he was doing.

As things stand, I see no compelling reason why Mr S would not have informed Lloyds of the recommendation he had received – and it was this endorsement that had led to the payment. By his own admission, Mr S only began trading with TP as a result of this direction. So, even if Lloyds had probed further, I find the chances are it would only have identified that the firm giving advice was regulated. In which case, Lloyds would have probably stopped the conversation there, having received assurances that its consumer was seemingly acting on authorised investment advice. As I've explained, in such a scenario, Lloyds would be mindful of potentially giving unauthorised advice by telling a consumer to refrain from going ahead.

Moreover, Mr S's state of affairs at the point of making this payment has causative relevance. Mr S has prior trading experience; it's evident that he had invested online in digital assets with genuine merchants many times before and, therefore, would be somewhat aware of what it entailed and what it looked like to trade.

Based on Mr S's submissions to this service, it would appear that the trading applications or websites TP was telling him to use were extremely complex. The intricacy of what he was seeing, together with the sophistication of the software and trading techniques being used, is something that Mr S has said he found challenging to see anything untoward with. Besides that, it's logical that he would have taken some confidence from his prior experience and familiarity with digital assets into any conversation with his bank regarding whether he was sure of the legitimacy of what he was paying into.

I must bear in mind that, at the point of going to make this second payment on his Lloyds credit card, Mr S had already invested heavily into TP across other accounts with separate banks and credit providers. He's made our service aware of the considerable deposits he made overall to TP (amounting to in excess of £100,000), and that he did so because he was completely under the spell of who he was speaking with. It's fair to say Mr S regarded the advice he was getting as trustworthy and was heavily invested in the scheme.

I make my decision based on the balance of probabilities. While I appreciate Mr S may disagree, I do find it more likely than not that he would not have been swayed from his plans to invest even if Lloyds had provided insight about International Securities Ltd and the risk of falling victim to scams. Taking everything into consideration, I do not find that Lloyds' failure to intervene can reasonably be considered as the proximate cause of Mr S's loss in these circumstances, as it seems likely he would have proceeded to make these transactions irrespective of a reasonable intervention by the bank.

Recovery

Finally, I've also thought about whether Lloyds could have done more to recover the funds after Mr S raised the matter with the bank, as in some circumstances money spent on a credit card can be recovered via the bank raising what's known as a chargeback dispute, and/or a claim under Section 75 of The Consumer Credit Act 1974 (CCA).

It's accepted by the parties that chargeback was not a viable option of recovery, given the length of time that had passed between the date of the payments and when Mr S reported the dispute with Lloyds. I therefore see no need to comment any further on this.

In terms of Section 75, the CCA stipulates that certain conditions need to be met in order for a claim to be valid. All of the requirements must be present for Section 75 to apply; if any are not met the claim would fail.

We know Mr S made payments to multiple payees which correspond with the names on his account statements. However, crucially, these are not the same entities as the business that Mr S says he contracted with, which was TP. As there is insufficient evidence (e.g. in the form of representation documents or declarations of deposits) to show that the disputed payments were paid to TP, I have to conclude that it was not linked to the payment, which means the requisite criteria of a Section 75 claim has not been fulfilled.

Because of this, I'm not satisfied Section 75 applies to any of the transactions Mr S is contending. It follows that, in the absence of evidence that changes my mind, at present I do not judge that Lloyds should be required to reimburse Mr S pursuant to Section 75 or otherwise.

My provisional decision

For the reasons given above, I'm minded not to uphold this complaint."

Responses to my provisional decision

Lloyds did not reply to my provisional findings. Mr S confirmed receipt but provided no submissions in response.

Because no further representations have been made, it follows that there is no new evidence or arguments for me to consider. Accordingly, the case has been passed back to me for review.

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.

Given that neither Mr S nor Lloyds accepted or disputed my provisional findings by the deadline given, and no new information has been presented for me to consider, I see no reason to depart from my intended decision. To that end, the way in which I was minded to decide the complaint remains the same.

My final decision

For the reasons given above and before, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 5 April 2023.

Matthew Belcher
Ombudsman