

The complaint

Mr S and Ms W complain that Lloyds Bank PLC won't refund in full money they lost as a result of a scam.

What happened

On 15 February 2023, I issued my provisional decision on this complaint. I wanted to give both sides the chance to submit any further evidence and arguments before I issued my final decision. That provisional decision forms part of this final decision and is copied below.

What happened

Though the payments which are the subject of this complaint came from a joint account held by Mr Sand Ms W, it was Mr S that interacted with the fraudsters and made the payments, so I've generally referred to him throughout this provisional decision.

Mr S became involved in an investment scam. He was initially persuaded to make a relatively small card payment towards the scheme, but after his investment appeared to be doing well, he was persuaded to invest increasing amounts.

In order to fund the investment, the fraudsters opened an account with a legitimate cryptocurrency provider for Mr S. He sent funds to that account, which were converted into cryptocurrency and sent to cryptocurrency addresses presumably controlled by the fraudsters.

I count a total of ten payments made from Mr S' Lloyds bank account (one payment of £20 on 21 May 2020 does not appear to have been noted by Mr S' representatives, but it credits the same cryptocurrency account that Mr S made the other payments to). In addition I understand Mr S made an initial payment of £207 using a credit card. I have not been provided with any evidence about which card this payment was made on but, for reasons I'll go onto explain, I don't need to consider it further.

Mr S eventually ran out of money, but he was persuaded to continue investing by taking out loans and borrowing money.

On 20 August 2020, having already sent a significant sum to the fraudsters, Mr S applied for, and was granted, a loan of £10,000. After the loan was credited to his account, he attempted to send a payment to the cryptocurrency provider, but the payment was stopped for security checks. Mr S had five separate telephone calls with the bank before this payment was released. The first call was cut off after some discussions about the payment. After the

second and third he was referred to the branch to make the payment. A fourth call took place from the branch to the bank's fraud team and the final call, during which the payment was released, took place after Mr Shad left the branch. During those calls Lloyds questioned Mr S about the payment and clearly had concerns about some of the responses he provided.

I've briefly summarised the contents of those calls:

- *Mr S said he was putting a deposit down for the purchase of an expensive vintage car.*
- *He'd test driven the car.*
- *He was unable or unwilling to provide the registration of the vehicle.*
- *He was initially unable or unwilling to say where he was purchasing the vehicle from, but later provided the name of a car dealership.*
- *He claimed to have won the lottery and said that the account the money was being sent to had been set up for him as a result of his lottery win in order to manage his money, which explained why he was reluctant to provide information about it.*
- *He was in the business of buying and selling cars.*
- *He was paying his own account, rather than paying the dealership directly, but couldn't explain why.*
- *He explained that he'd made payments previously to the same account for some time without issue.*
- *Mr S mistakenly identified the account as belonging to a particular bank. He confirmed that he had not been asked to mislead the bank.*
- *If the bank was unwilling to let the payment go through, Mr S said that he'd make the payment in another way.*

When Mr S asked to withdraw his money from the investment he was told that he couldn't do this unless he paid various fees. Eventually the fraudsters stopped corresponding with Mr S and he reported the matter to his bank through a representative.

Lloyds contacted Mr S directly to discuss the matter, but he was unhappy with the way in which the conversation was conducted, leaving him feeling bullied and intimidated. He was further unhappy that, after raising a complaint about the conversation, it was investigated by the same person he'd originally spoken to.

Lloyds responded to, and declined, the complaint about its service but didn't address whether it was liable for Mr S' losses.

Mr S referred the matter to our service. Lloyds said that it didn't have enough information in order to assess Mr S' claim because he had declined to provide information to it.

One of our investigators looked into the complaint. They thought that the bank should have intervened to question the activity at an earlier point - when the third payment was being attempted. They thought that, had this happened, Mr S wouldn't have carried on with the payments and any further loss would have been prevented.

Lloyds agreed it should have intervened at an earlier point but thought that Mr S should take some responsibility for what happened, particularly as it felt he had misled its staff during the phone calls it had with him. So, it offered to refund 50% of payments three to nine, as well as

8% simple interest per annum on that amount from the date of the payments to the date of settlement.

Our investigator, on reflection, agreed that this was a fair outcome. They pointed to the fact Mr S had made it very difficult for Lloyds to warn him about this particular type of scam because he hadn't been open about the reason for the payment. They also noted his determination to continue with the payments and that he suggested he would simply use another bank to make the payment if Lloyds refused to make it. The investigator didn't think that the call between Lloyds and Mr S had been handled poorly and didn't make any award of compensation. Mr S' representatives didn't agree. In summary, they argued:

- Mr S was under the control of sophisticated fraudsters and had been told what to say during the calls. It wasn't fair to blame him as the victim.
- It was irrelevant that Mr S had told the bank that he would make the payment using another bank if Lloyds declined it. Lloyds still had an obligation to protect him from fraud.
- Lloyds failed to contact Mr S about any of the other payments which were sent from his account to the fraudster.
- By the time the £10,203 payment was made, Mr S was already desperate to recover the funds he'd sent. If the intervention had taken place earlier, Mr S would have behaved differently.
- Authority given as a consequence of criminal deception is not true authority.
- The investigator's description of the later call between Mr S and Lloyds' claim handler is unfair and Mr S should be compensated for this incident.

As no agreement could be reached, the case was passed to me for a final 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.

There's no dispute that Mr S carried out the transactions in dispute, albeit under deception. Under the relevant regulations - the Payment Services Regulations 2017 ("PSR 2017") - Mr S is responsible for transactions he's authorised. It's important to note that the PSR 2017 governs the relationship between the customer and payment service provider, not the contractual relations between the customer and the payee. While deception might invalidate the latter, it does not invalidate authority under the PSR 2017.

I've also considered whether the payments could be considered under the Lending Standards Board Contingent Reimbursement Model "CRM Code". That doesn't appear to be the view of the investigator, bank or Mr S and his representatives. Under the provisions of the CRM Code, only payments made to 'another person' are potentially eligible for reimbursement.

In this case, it isn't disputed (and evidence has been obtained to show) that the payments Mr S made from his Lloyds account went to a cryptocurrency account held in his own name. Mr S says the fraudster told him that they would set up this account for him using, he presumes,

identity documents he provided. He also said that he recalls the fraudster having control of the cursor on his computer and making the payments on the screen in front of him.

Overall, though the fraudster clearly had a significant role in setting up and using the account, I think I can fairly say that it was set up on Mr S' behalf, with his consent and that he appears to have had some access to it. So, I think it would be reasonable to say that the payments from his Lloyds account initially did not go to another person and therefore are not covered under the CRM Code.

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 payment service providers are generally more familiar with than the average customer.*
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.*

Lloyds have agreed to refund 50% of the payments after and including payment three (excluding the small £20 payment I mentioned earlier). For the avoidance of doubt, I don't think that Lloyds ought to have intervened any earlier than it did, as up to that point the transactions were not particularly out of the ordinary.

Mr S' representatives point to the other payments that he made that did not prompt the bank to intervene. I can't agree there would be any expectation on the bank to intervene on each and every payment. Instead, it should have intervened when the payments became so unusual and out of character that there were reasonable grounds to suspect Mr S might be at risk of financial harm from fraud.

So, the question is not how many times the bank intervened, but rather whether it intervened when it should have done and whether such an intervention would have made a difference to Mr S' decision to go ahead with the payments.

Had the bank intervened at the point identified by the investigator, I'm not convinced that conversation would have been radically different to the conversations which did take place when the bank did intervene. As Mr S' representative points out, he was under the influence of sophisticated fraudsters, he had been told what to say and 'believed it was common practice for banks to behave in this way when making transfers and that he needed to be persistent if he wanted the benefits of the investment he was being offered'.

It's evident that Mr S was prepared to follow the fraudster's instructions to mislead the bank and believed this was entirely normal. I don't know exactly what he was told to say to the bank, but I get the impression he was able to be quite creative in the face of questioning (for

example by claiming to have won the lottery). I also have to note that even at that earlier point, Mr S believed that he was engaged with a lucrative investment and, I think, would have been reluctant to give up such an opportunity.

That's not to say the bank wouldn't have had any concerns about what Mr S was doing. It's likely that - just as with the later calls - he would have given some information that was inconsistent or worrying. For example, in the later calls he said he was using the money to buy a car, but he didn't know what the registration was of the car and wouldn't reveal the name of the dealership he was buying it from. He was also mistaken about where the payment was going and the name of the bank it was going to. But, as happened later, I think all the bank could reasonably do was to refer the payment for further checks. Ultimately, the only significant evidence I have of how Mr S reacted to being questioned about the payments shows that he was insistent that they were for a legitimate purpose. It also demonstrates that he was prepared to provide further information to the bank in order to give credibility to his claims about what the payments were for (for example, by later introducing the name of the car dealership).

That evidence shows that even after five conversations with the bank, Mr S was still unwilling to divulge the true reasons for the payments. I'm conscious that even if the bank had stopped Mr S making the payments altogether, it could not have held onto his money indefinitely (and, in any case, I'm not persuaded there would have been sufficient grounds for it to do this when payment three took place). And, while I accept that Mr S saying that he'd make the payments using another bank doesn't absolve Lloyds from its obligations, it's relevant when considering whether the bank's actions could have prevented Mr S' loss. I think Mr S' determination to go ahead means he likely would have used another bank to make the payments had Lloyds refused.

Though I understand that Mr S was keen to reap the profits from the investment, I'm not sure why he would have been desperate at that stage - there was no indication (as far as I'm aware) that he'd been told he couldn't withdraw his profits (as he was later). So, I'm not persuaded Mr S would have been any more open about the reasons for the payments had an earlier intervention taken place.

It's also important to bear in mind that at the point the third payment was made, there was arguably less reason for the bank to be concerned. That payment was for a smaller value and wasn't the proceeds of a loan.

Throughout the calls there was also absolutely no suggestion from Mr S that he was involved in an investment of any kind, so it would have been very difficult for the bank to give a warning about investment scams and it could have only done so based on the fact that he was paying a cryptocurrency provider.

I know this will be disappointing for Mr S, but I'm afraid that there's no general obligation on Lloyds to refund here and such a finding is dependent on whether it could have reasonably stopped the scam. I don't think it could, so I think Lloyds' offer, although it may not completely reflect 50% of his losses after and including payment 3, puts him in a significantly better position than I intend to recommend.

In relation to the recovery of Mr S' funds, I can see that Mr S' money was converted into cryptocurrency and sent from a cryptocurrency platform to the fraudsters. I'm afraid that, given the nature of this kind of transaction, the prospect of any recovery was always going to be remote.

Finally, in relation to the telephone call which Mr S had with the bank after the scam took place, I'm surprised by its tone. It was quite clearly stated that it was very likely Mr S' claim

would be declined unless he agreed to talk over the phone. As far as I'm concerned, Mr S was entitled to request contact through his representative and it was wrong for the bank to suggest that this was necessarily to his detriment. The bank's advisor ought to have accepted Mr S' request and, in my view, his tone was unnecessarily argumentative. I can understand why this caused Mr S more distress in a very difficult set of circumstances.

So, in relation to the main matter of this complaint, the liability for the loss, I don't think Lloyds is responsible. I will consider any further submissions before a final decision, but if Mr

S and Ms W wish to accept the offer Lloyds have made, they should let our investigator know or contact Lloyds directly.

However, I do find that the administration of the claim was poor and I think that warrants £250 in compensation.

My provisional decision

I intend to instruct Lloyds Bank PLC to pay Mr S and Ms W £250 in compensation.

Lloyds didn't provide any further submissions. Mr S didn't agree with my provisional decision. Through his representatives, in summary he argued that:

- It was unfair and inaccurate to suggest that he had misled the bank. It was true that he had won the lottery in 2011 (a fact he did not wish to disclose to our service) and he could provide evidence of this. The impression that he has misled the bank seems to have unfairly influenced the decision reached.
- My analysis of the transactions was inaccurate, and I seem to be under the mistaken impression that the bank contacted him about more than one of the payments.
- It was wrong to suggest that the fact money had come from a loan represented a heightened risk of fraud.
- It was also wrong to say that the third payment was of smaller value than the first two.
- The bank failed to contact him about any of the other payments, which were, despite my finding otherwise, very out of character.
- Had the bank offered to help, rather than suggested he was being dishonest, he would have acted differently and his loss would have been prevented.

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.

In my provisional decision I explained that I thought that, had the bank intervened at the earlier point suggested by the investigator (payment 3), the conversation wouldn't have been significantly different from the conversation which took place when it did intervene and that Mr S would not have been dissuaded from going ahead with the payments.

I understand the bank only intervened in relation to one payment (though there were several interventions in relation to that one payment). I was also not suggesting that payment 3 was smaller than payments 1 or 2, but rather it was smaller than payment 9 and was not the

proceeds of a loan. And, I do think that a payment made with the proceeds of a loan could represent a heightened risk of fraud. That's because it is a known feature of investment scams that victims are encouraged to take out (or use the proceeds of) loans to fund an investment.

In my provisional decision I ought to have said that I don't think Lloyds should have intervened any earlier than payment 3 (rather than saying it shouldn't have intervened any earlier than it did, which I accept was too late). I apologise for the confusion caused by this. However, as already set out, the question I considered was what might have happened had the bank intervened on payment 3. It's also arguable whether the bank should have intervened on more than one occasion – perhaps payment 3 and then again on payment 9 (though I certainly don't agree that it should have done so on every payment – that would be an onerous obligation). But, for the reasons I've already set out and those below, I don't think any intervention would have made a difference to Mr S' decision to go ahead or prevented his loss.

I'm sorry that Mr S is upset by the suggestion that he misled the bank or had not been entirely honest with it. Following his recent submissions, I don't doubt that he did win the lottery and I've never suggested that he didn't have the broad intention to purchase a car.

But the bank was asking about what the payment he was making was for. It was not being paid to the account that had been set up to manage his lottery winnings and it was not being paid to a car dealership. I'm afraid that it is evident that Mr S did not disclose the true circumstances around the payment when he was being asked to do so. I'm not persuaded that Mr S could have reasonably interpreted the bank's questions as being about his ultimate intended use of the funds or his original intention for the loan. Instead, it was clear that the concern was about the immediate destination of the funds. The admission that Mr S did win the lottery and can prove it, only demonstrates to me that he drew on real life events in order to add credibility to the actions he was taking and, if asked, would have been able to provide evidence of his claims.

I do not agree that the nature of the bank's questioning was inappropriate or hostile when it intervened. It's apparent that the purpose of the calls was to try and protect Mr S from scams. While the bank did press Mr S, this was only after it had reason to be concerned about the answers (or lack of answers) he gave. I do not wish to blame Mr S – it's clear that he was under the influence of the fraudsters, but I think it was their influence, rather than the approach of the bank, which led him to conceal the true destination of the payment.

For the reasons I've explained, and because no further submissions have been made about the compensation I suggested, my final decision remains unchanged from my provisional decision set out above.

My final decision

I instruct Lloyds Bank PLC to pay Mr S and Ms W £250 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Ms W to accept or reject my decision before 14 April 2023.

Rich Drury
Ombudsman