DRN-4018290

The complaint

Mr B complains that Lloyds Bank PLC (Lloyds) is refusing to refund him the amount he lost as the result of a scam

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary Mr B received a call from a business called Options XO (X). Mr B had been searching for investment options at the time and X outlined an opportunity to him. X explained Mr B could start by investing a small amount of money.

X continued to communicate with Mr B persuading his to make more and more payments into the investment.

The balance of Mr B's trading account soon fell to zero and X tried to persuade Mr B to make further payments which he refused to make.

Mr B made the following payments to X using his debit card:

Date	Amount	Payment method
22 April 2016	£720	Debit card
27 April 2016	£300	Debit card
15 July 2016	£2,000	Debit card
28 July 2016	£500	Debit card
29 July 2016	£1,007	Debit card
8 August 2016	£500	Debit card

Mr B has been unable to recover any of the payments he sent to X.

Our Investigator upheld Mr B's complaint he said Lloyds should have stepped in when Mr B made the first payment into the scam, and it's likely it would have been able to prevent Mr B's loss.

Lloyds didn't agree so this complaint has now been passed to me to decide.

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.

The circumstances of this complaint are not in dispute and the evidence provided by both Mr B and Lloyds set out what happened well. What is in dispute is whether Lloyds should refund any of the money Mr B has lost because of this scam.

Recovery of the payments

Lloyds was unable to process a chargeback for the payments Mr B made in relation to this scam to X via debit card.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. Time limits also apply.

Mr B made payments into the scam between April and August 2016 and although he tells us he brought details of the scam to Lloyds at the time I haven't seen enough evidence to support this. The information provided by both sides suggests Mr B made his complaint to Lloyds outside of the timescales allowed to apply for a chargeback of the payments he had made.

Should Lloyds have prevented the payments in the first place?

Mr B has accepted he authorised the payments he made to X, so the starting point here is that Mr B is responsible. However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether Lloyds should have stepped in when Mr B was attempting to make the payments, and if it had, would it have been able to prevent the scam taking place.

When considering this for Mr B's case, I've paid particular attention to the official organisations that publish warnings about merchants that operate in the UK and abroad. I've searched the Investor Alerts Portal of the International Organization of Securities Commissions ("IOSCO"), the international body that brings together the world's securities regulators. And the FCA (as the UK regulator) also has its own warning list, which is in place to share alerts and insight about merchants that have been identified as potentially being fraudulent.

Lloyds has argued that it should not reasonably have been required to update its systems to include the warnings set out by the IOSCO as a trigger in its fraud prevention methods.

I disagree. As long ago as June 2012, the then regulator, indicated – in its consultation paper Banks' Defence Against Investment Fraud; detecting perpetrators and protecting victims – that it was good industry practice for firms to put together an updated watch-list of types of scams and potential scammers; and to regularly share "timely and detailed intelligence" with other banks, UK and overseas regulators, the police etc. While the regulator didn't give any indication of when those watchlists ought to be updated, it's not unreasonable to expect an international bank, like Lloyds, to update those lists, and communicate with staff, within a month of an alert being published by the Financial Conduct Authority ("FCA") or IOSCO.

Such alerts should automatically trigger the bank's 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. Here, there were IOSCO alerts about X published by: the Ontario Securities Commission on 25 November 2014; the Financial Services and Markets Authority in Belgium on 19 December 2014; and the Financial Market Authority on 11 February 2015. These alerts were published more than a month before Mr B made his first payment to X.

Given the timing of these and when Mr B made his first payment, Lloyds ought to have automatically blocked it pending further checks – in my view it had sufficient time to update its watch-list. The bank had constructive if not actual notice that the payee might not be a legitimate merchant. It would have also been reasonable for Lloyds to have asked Mr B appropriate probing questions before releasing the payment.

Had Lloyds stepped in when Mr B made the first payment to X I see no reason why Mr B would not have been honest about the reasons he was making the payment, and had Lloyds asked further question I think it's likely Lloyds would have uncovered the scam Mr B was falling victim to and prevented any loss.

Did Mr B contribute to his loss?

I think this was a sophisticated scam and Mr B couldn't have reasonably foreseen that he was dealing with a scammer. X built confidence with Mr B over several weeks and Mr B had not made this type of investment before. X came across very professional and did not cause Mr B to have any suspicions that the investment was not genuine.

Overall, I don't think Mr M contributed to his losses, so I don't suggest the overall settlement be reduced.

Putting things right

Lloyds Bank PLC should refund all the payments Mr B made in relation to the scam. To compensate Mr B for having been deprived of this money, Lloyds Bank PLC should also pay Mr B interest on the loss at 8% simple per year, calculated from the date of loss to the date of settlement.

My final decision

I uphold this complaint and require Lloyds Bank PLC to put things right by doing what I've outlined above

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 6 July 2023.

Terry Woodham
Ombudsman