

The complaint

Mr A complains that Lloyds Bank PLC hasn't refunded him after he fell victim to an investment scam.

What happened

The facts of this complaint are well known to all parties and so I won't go into extensive detail about what happened here, especially considering how matters have progressed over time.

Mr A unknowingly became involved in a cryptocurrency scam. He sent money from his Lloyds account to his existing cryptocurrency wallet. And from there he sent funds on to a scammer.

Mr A had taken a £25,000 loan with Lloyds around a week before he sent the money to the scammer. The money he sent came from this loan, sending £20,000 of the borrowed funds.

Once Mr A realised he'd been scammed he reported the matter to Lloyds. But it said it wouldn't refund him, so he brought his complaint to our service.

One of our investigators recommended the complaint be upheld and said Mr A should receive a full refund of the £20,000. She also said the bank should pay interest on the refund at the same rate as the loan.

Mr A accepted but Lloyds did not. Instead, it made a counter-offer. Lloyds said it would instead restructure Mr A's loan to account for the loss to the scam. In doing so it noted:

- not all the loan funds had been lost to the scam with £5,000 remaining in Mr A's account, being spent over time;
- Mr A had made nine payments of £469.41 toward the loan before it was defaulted and sent to recoveries.

Lloyds said, with these factors in mind, it would restructure his loan as if he had only borrowed £5,000. That meant applying the same rate of interest and crediting all payments made to the existing loan. So Mr A would be left with a total of £978.56 to repay. Lloyds also said that, once the balance was paid, it would remove all adverse information recorded against Mr A, including the default.

Mr A didn't want to accept that offer and so the case has been 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 further dispute for me to make findings on in terms of the scam itself and whether

Lloyds ought to have done more at the time Mr A made the £20,000 payment. Lloyds has accepted responsibility and has agreed to refund the money. What's left in dispute is the form that refund ought to take.

I'm persuaded Lloyds' counter-offer is fair and reasonable in the circumstances. I appreciate the complaint here isn't really about Lloyds' decision to lend, instead being about the failure to intervene when the payment was made. And so arguably the restructuring of the loan isn't tied to potential redress. But there are some important considerations to make here.

Mr A is responsible for the loan and associated interest. That would be the case whether Lloyds were found to be at fault or not in respect of the scam payment. He would always need to repay the debt, having entered into the loan agreement.

The loan has fallen into delinquency and has defaulted. Mr A hasn't met the contractual repayments he would always have had to make. This means that Lloyds arguably has a claim to any funds in the current account to settle the outstanding debt, through its right to set-off. So even if Mr A were refunded the £20,000 directly, Lloyds might well claim it from his current account.

Mr A has said he took the loan for the purpose of home improvements. Indeed, that's what was stated at application stage. But I'm not persuaded that was the case; I believe it's more likely than not he took the loan with the intention of investing the funds in the way that he did. I say as much because the loan was taken just one week before the money was sent to his cryptocurrency wallet. And Mr A has said he was monitoring the investment and connected social media groups for months before deciding to go ahead. The timing then persuades me Mr A more likely than not deliberately misstated the purpose of the lending. Had he told the bank he planned to invest the money, it's unlikely the lending would have been agreed.

The proposition by Lloyds doesn't leave Mr A in a worse position financially. It will mean his loss to the scam is nullified and he doesn't have to repay that money – or associated interest – to Lloyds. If he were to have the money refunded directly then all the original terms of the agreement would still be in place, he'd have a large debt that still needed to be settled, and he'd have a default against his name. Instead, Mr A will be left with a relatively small sum to repay, representing funds he has borrowed and used for non-scam purposes. Interest will be appropriately and fairly calculated. And he'll then be completely free of the lending and some otherwise very negative implications, once the revised balance is repaid.

I wouldn't describe the alternative option – to refund Mr A the £20,000 directly – to be unfair to any party per se. But, given all the circumstances of the case, I consider the loan restructuring to be the most suitable resolution to the complaint.

Putting things right

If this final decision is accepted by Mr A Lloyds should restructure the loan in the way it has proposed. It will then be for Mr A and Lloyds to discuss the repayment of the revised outstanding balance.

My final decision

I uphold this complaint against Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 27 October 2023.

Ben Murray
Ombudsman