

The complaint

Mr C complains that Lloyds Bank PLC won't refund money he lost as a result of a scam.

What happened

Mr C became involved in an investment scam. Between late May and late July 2021, he sent a series of faster payments to his own account at a cryptocurrency exchange (that I'll call D). Using his account with D, he converted his money into cryptocurrency and sent it to the fraudsters.

When the value of Mr C's apparent investment suddenly dropped, he asked to withdraw his money. The fraudster said this wouldn't be possible without making further payments and Mr C realised he'd been scammed.

Mr C reported the matter to Lloyds. It said that the payments weren't covered by the Lending Standards Board Contingent Reimbursement Model "CRM Code" that might otherwise have required it to refund Mr C, because they weren't made to 'another person'. It also argued that the payments were fairly typical for Mr C – so they had no reason to question them before they were processed.

The matter was referred to our service and our Investigator upheld the complaint in part. They thought that Lloyds should have found the payment of £7,000 which took place on 11 June 2021 to be suspicious and, had it intervened at that point, Mr C's loss would have been prevented. And, as our Investigator didn't think that Mr C had acted carelessly, they recommended that he be refunded in full.

Lloyds continued to disagree. In summary it argued:

- The £7,000 payment made on the 11 June 2021 was not, contrary to the investigator's view, out of character. Mr C had a history of making faster payments, including some larger ones. The payment was also made from a trusted device and went to an existing payee.
- Neither was the pattern of payments unusual – they weren't rapid and Mr C often made several faster payments in a relatively short space of time.
- It thought that, if it had intervened, Mr C would have likely carried on making payments regardless. It suggested that Mr C would have been directed by the fraudster to mislead the bank and would have been reluctant to give up the significant returns he believed he'd accrued.
- It also said that its advisors would not have been able to uncover the scam as there was no warning about the firm on the Financial Conduct Authority ("FCA") website. There's no evidence to confirm this wasn't simply a high-risk investment
- Mr C failed to carry out sufficient due diligence and his claims to have checked a well-known review website couldn't be shown to be true – as there were no positive reviews of the investment firm at that time.
- Mr C had some recent experience of investing in cryptocurrency and had taken part in an online course to teach him how to do this. So, he wasn't a complete novice.

- Mr C had apparently made a significant amount of money from the investment in a short space of time and this was too good to be true.
- There was no evidence that the fraudster had allowed Mr C to make a withdrawal to gain his trust, as Mr C had claimed.
- It questioned the overall loss figure that the Investigator had recommended.
- Mr C's account at D shows that he was receiving funds from an external source – indicating that he was able to withdraw funds from the fraudulent investment.

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

In advance of my final decision I contacted both parties, principally to try and establish the amount of Mr C's loss. I provided them with my calculations and explained that there were several ways of deciding the loss. After further submissions from both Lloyds and Mr C, I explained that I'd decided, subject to any further submissions, that Mr C's loss should be calculated by adding up all of the payments from his Lloyds account that went to D and subtracting any credits he received from it. I explained that the calculation had been made more complicated by the fact that Mr C had been carrying out genuine cryptocurrency transactions during the period of the fraud.

Lloyds made no further submissions about the amount of Mr C's loss. Mr C said that two payments which were received into his account at D did not come from the fraudsters and therefore should not be deducted from the amount that he is refunded. I explained to Mr C that I accepted that those payments hadn't come from the fraudsters and I suspected that they came from another cryptocurrency account he held. I explained that I could see that Mr C had made a payment to a different cryptocurrency provider from his Lloyds account of a very similar amount to the credits. I asked Mr C whether he could provide a statement from the other cryptocurrency provider to show that the payment was related to the fraud. He's been unable to do this. It appears that payment was originally included as part of this claim but later removed from it at Mr C's request. If, in fact, the payment is related to the scam, then I think Mr C will need to raise that separately with Lloyds. It will not form part of my calculations.

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.

Under the relevant regulations Mr C is generally responsible for payments he's made himself. But taking into account regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, Lloyds ought, fairly and reasonably, to have been on the lookout for unusual and out of character transactions which might, among other things, indicate its customer was at risk of financial harm from fraud. But it has no obligation to protect its customer from a bad bargain or high-risk investment. So, the first question I've considered is whether there is sufficient evidence that Mr C fell victim to a scam.

I think there's compelling evidence that's the case. There is an FCA warning about the fraudulent investment firm (albeit one that wasn't published until August 2021). While I acknowledge that the FCA warning is about a firm providing financial services without authorisation and does not conclusively state that it is defrauding people, there's also a wealth of other evidence to support this finding.

I've seen correspondence between Mr C and the fraudster. It's over a popular instant messaging service. It does not strike me as consistent with the way an investment professional would correspond. But, more than that, the service being offered to Mr C – that

of an account manager offering to manage his trades is a hallmark of this type of scam and, as far as I'm aware, virtually unheard of in relation to legitimate investments.

Mr C's account of events is consistent with victims of similar scams – a small investment made by plastic card, its apparent success and pressure to make further investments. Most telling of all, perhaps, is the documented claim that Mr C would need to pay Capital Gains Tax in order to release his investment – clearly an illegitimate attempt to extract more money from Mr C. So, I'm satisfied Mr C fell victim to a scam.

I also think that the payment Mr C made on 11 June 2021 of £7,000 ought to have stood out as being unusual, such that Lloyds should have taken steps to warn Mr C about the risk of being defrauded. It was the largest payment that had taken place in the previous six months and went to a payee that had only recently been set up. It also represented a significant increase in the amount being paid to that payee.

Lloyds point to a single larger transaction which took place within a year of the payment as evidence that the activity was typical. They also highlight another payment made more than a year before and a smaller payment, seemingly made to the bank, within six months of the disputed payment.

I don't think I can reasonably take into account what appears to be a loan repayment to Lloyds. Nor would it be reasonable to say that a single instance of a larger payment in the previous year means any similar sized payment represents typical activity. A single instance almost a year before would very much indicate that making payments of that size was atypical for Mr C.

So, I'm satisfied Lloyds ought to have intervened before the payment of £7,000 on 11 June 2021 and I've gone on to consider what might have happened had it done so. While it's possible that Mr C might have ignored any warning given by the bank, there's no evidence to support this view. Neither is there any evidence to suggest that Mr C would have misled the bank. I'm also not persuaded by Lloyds' argument that it wouldn't have been able to uncover the scam – I've already outlined that the key feature – that is, purchasing cryptocurrency from a legitimate exchange before paying it in to a trading account under the guidance of an account manager – was present. And assuming Mr C would have revealed these features (it's speculative to suggest otherwise), it ought to have been apparent to Lloyds staff that Mr C was falling victim to a scam. It follows that it would have been in a position to provide a very strong warning – highlighting the common features of the scam and his complete lack of protection should something go wrong. Given that Mr C had only invested a relatively modest sum at this point, it's hard to see why he wouldn't have been receptive to such a warning.

So, I'm satisfied Lloyds ought to have intervened and, had it done so, the scam would have come to light and the loss would have been prevented. Finally, I need to consider whether Mr C should bear any responsibility for what happened.

I've noted that Mr C appears to have had some understanding of the way cryptocurrency works. He, relatively unusually in my experience, carried out his own cryptocurrency trading while also sending money to the fraudsters. I also note that Mr C seems to have taken part in an online course on trading. But, I'm not persuaded that this meant that he was an experienced investor such that I should put a higher burden of responsibility on him. The interactions he's had with this service do not give the impression that he had anything more than a basic knowledge of investments. In any case, knowledge of how to trade in cryptocurrency, is not the same as being aware of the risk of cryptocurrency related scams. And, as already noted, Lloyds did not provide a warning which highlighted any of those risks.

It's important to note the sophisticated aspects of this scam – the provision of a trading platform apparently showing live trades and the demonstrable success of the account manager in achieving returns – all of which would, I'm sure, have seemed quite compelling to Mr C, as a relative layman.

I've thought about the steps Mr C says he took to research the investment. Given the investment appears to have been in cryptocurrency, it would likely be unregulated. And, as already noted, Mr C wouldn't have found anything concerning about the fraudsters on the FCA website, even if he'd known to check it.

As noted, Mr C says he checked the fraudulent investment platform on a popular review website before making the first 'substantial' payment and saw that most reviews were favourable. I can't see that any reviews would have been present when Mr C made the first payment. But, as far as I can see, it does appear that when Mr C made the £7,000 payment, there was just a single negative and single positive review of the fraudulent investment platform. The negative review did use the word 'scam' to describe the investment company but the reviewer does not appear to have actually lost any money.

It has been suggested by our Investigator that the review website might have deleted some of the positive reviews. I understand Lloyds' argument that the continued existence of fake reviews on the website suggests it has not taken steps to remove any, but I'm aware this does happen and I can't rule it out. It's also possible that Mr C is mistaken and that, in fact, he checked the website at a later date (or not at all). There would have been points in mid-June 2021 where positive reviews out-numbered negative ones and it wasn't until 25 June 2021 that anyone actually reported having lost money. But I don't consider this point to be determinative and I suspect that Mr C was largely taken in by the apparent demonstrable success of his investment.

Lloyds argue that success was unrealistic, but I think it's reasonable to distinguish between promising high returns in advance and, as was the case here, being able to apparently demonstrate previous success. It's also worth noting that, at points, it was claimed that Mr C's investment lost, as well as gained, in value.

I've thought about Mr C's claim that he was able to withdraw money from the investment. While it's true that the larger €500 withdrawal didn't take place until after a significant number of deposits, I can see that he was able to withdraw €20 before making the £7,000 payment. That withdrawal is apparent on both Mr C's account at D and a statement provided by the fraudulent trading platform. While it was a modest withdrawal, the only deposit into his trading account at that point appears to be for less than €300. So, I do think this would have added plausibility to the scam.

Finally, I note that Mr C did come to the realisation that he'd been defrauded when the fraudsters claimed that he'd have to pay taxes in order to release his funds. This indicates to me that he was not oblivious to risk and was critically evaluating statements made by the fraudsters.

Overall, while I accept this is a finely balanced point, I'm not persuaded that it would be fair or reasonable to make a deduction from the amount that Lloyds ought to reimburse Mr C.

Putting things right

As already explained, I've decided that Mr C's loss should be calculated by adding up all the payments he made from his Lloyds account to D after and including 11 June 2021 and subtracting any credits received from it. I accept that not all the payments that Mr C made to D were then sent on to the fraudsters. I'm also aware that by using this method the amount

of Mr C's loss is slightly lower than had I calculated the loss by adding up the total value of the transfers to the fraudster from Mr C's account at D and subtracting any payments he received (whether from the fraudster or not). However, I consider it to be the fairest way to establish his loss. I've decided that Lloyds should have intervened on 11 June 2021 and, had it done so, Mr C's loss would have been prevented. I can imagine that would be a chastening experience that's likely to have left him cautious about continuing to involve himself in cryptocurrency and, on balance, he wouldn't have continued to make payments to his cryptocurrency accounts at all (at least for some time). So, I think this method puts Mr C back in the position he would likely have been in, as far as is reasonably possible.

In addition, due to the way in which Mr C used his account at D, it's very difficult to establish quite how each payment from his Lloyds account was used.

Overall, I consider this method of calculating loss to be fair, reasonable and pragmatic in the circumstances.

My final decision

For the reasons I've explained, I uphold this complaint and instruct Lloyds Bank PLC to pay Mr C:

- The total value of the payments he made to D on and after the 11 June 2021 minus the total value of the credits he received from it, less any amounts already refunded or returned. I calculate this amount to be £27,849
- 8% simple interest per annum on that amount from the date of the payment to the date of settlement, less any tax lawfully deductible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 22 September 2023.

Rich Drury
Ombudsman