

The complaint

Mr B complains that Lloyds Bank PLC (Lloyds) wouldn't refund money he lost in a scam.

What happened

What Mr B says:

In October 2019, Mr B received a cold call from a Japanese number. The caller was said to be representing a firm who were dealing with the reissue of shares in an old company Mr B previously held shares in – which I will refer to as company 'A'.

Mr B recalled he had owned shares in A previously, and the scammer sent him a copy of a share certificate. Mr B was asked to send £6,362.09 to enable the reissue of shares and was told the money would be returned within days. No funds were returned.

He was then contacted by a solicitor from another firm – who said there were warrants attached to the shares (enabling more shares to be bought) and if he wanted to take advantage of those, he should pay more money – so Mr B made the second payment of £20,548.91.

Mr B was then told that another investor couldn't afford to buy their warrants and Mr B agreed to buy those – sending another £43,789.89.

Mr B was then told he needed to pay £30,522.20 to get the shares released – which he did.

No funds or shares were received and Mr B lost touch with the scammers. He then realised he had been scammed. He called Lloyds on 5 December 2019 to ask that the second payment should be recalled. He contacted Lloyds again on 13 January 2020 to say he had been the victim of a scam. **(continued)**

The payments made by Mr B were:

Date	Payment	Beneficiary	Amount

18 October 2019	Online international payment - euros	1	£6,362.09
29 October 2019	Online international payment - euros	1	£20,548.91
7 November 2019	Online international payment - euros	2	£43,789.89
26 November 2019	Online international payment - euros	2	£30,522.20
Total loss			£101,223.09

Mr B says he feels shame and embarrassment because of what happened. He has young children who depend on him. He has had to seek financial help from his family, which was embarrassing for him. He has had to re-mortgage two houses to raise money to live. He's been depressed and experienced sleepless nights.

Mr B says the payments were high value, to a new payee, and in foreign currency. This was unusual, and so Lloyds should've intervened. If they had done so, the scam would've been uncovered and stopped. Mr B said Lloyds should refund the money he paid, plus compensation of £500.

What Lloyds said:

Lloyds said they could've done more to protect Mr B. They refunded 50% of the third and fourth payment, plus 8% per annum simple interest (£7,453.20). They paid compensation of £150.

Our investigation so far:

Mr B said that wasn't enough and brought his complaint to us. Our investigator agreed with what Lloyds did to resolve Mr B's complaint. But he also said Lloyds should've intervened in the second payment.

But - he also said Mr B could've done more to protect himself – he had some investment experience; and he could've done more research into company A. If he had, that would've shown that A had gone into liquidation, and there had been publicity about scammers targeting previous investors in A. So – he said Mr B should bear 50% of the losses of the second, third and fourth payment.

Lloyds agreed with this, but Mr B didn't. He said he couldn't have contacted company A - as they had gone into liquidation. And as he was dealing with what he thought was a known intermediary, he shouldn't be expected to have done further due diligence. And so Mr B's complaint has come to me to make 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.

I'm sorry to hear that Mr B has lost money in a cruel scam. It's not in question that he authorised and consented to the payments in this case. So although Mr B didn't intend for the money to go to a scammer, he is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. 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 Santander 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 banks 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 declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) doesn't apply in this case. That is because it applies to online payments made to a UK beneficiary – and in this case, the payments were made an overseas account.

I need to decide whether Lloyds acted fairly and reasonably in its dealings with Mr B when he made the payment, or whether they should have done more than they did. I have considered the position carefully.

Lloyds have told us that none of the payments in question were 'triggered' for further investigation when they were made. So – I need to consider if that was reasonable, or not.

I looked at Mr B's account, and I think it's fair to say he made a number of fairly high value payments from time to time as follows:

- January 2019: £2,135
- February 2019: £1,250
- March 2019: £5,170
- June 2019: £1,703
- July 2019: £2,000
- September 2019: £4,635

So, I can see why the first payment wasn't identified and held by Lloyds for further inquiries – it wasn't sufficiently out of character with how Mr B used his account.

And - there's a balance to be struck: Lloyds has obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. In this case, I think Lloyds acted reasonably in processing the first payment.

I then looked at the next three payments – and clearly, they are of a much higher value than was normal for Mr B; and were international currency payments. So – I agree that Lloyds

should've looked more closely at them, withheld the payments, contacted Mr B, and asked him questions about them. But they didn't.

So here, I agree that on balance, Lloyds should be liable in the first instance for the value of those three payments – totalling £94,861.0.

But – that's not the end of the story. I must consider if Mr B could also have better protected himself, and whether it's reasonable that he should bear some of the loss, and I think he should. I say that as:

- He had some experience in investing: as he held shares in A already and told Lloyds he had invested in other shares from time to time.
- He was initially asked to pay £6,362.09 which was to be repaid to him within a few days. It wasn't – but Mr B still went ahead with the other payments. I don't think that was a reasonable thing for Mr B to do.
- The expected returns aren't completely clear in what Mr B has told us and Lloyds. But it appears that he was told he had £16,000 worth of shares which would be worth £48,000 at the time of the first payment. This, to me, seemed too good to be true.
- It appears Mr B paid out more than £100,000 without taking any third party, independent advice about the expected returns he could make, or the status of company A. I think it's reasonable to expect him to have done so. This would've uncovered the history of company A and the incidence of scammers associated with it.
- As our investigator said, a simple online search on company A would've revealed that it was liquidated in 2008 and had been the subject of many scams – whereby investors in it were contacted by scammers in the same way as Mr B was. But I didn't see evidence that Mr B investigated A sufficiently – and I think it's reasonable to expect him to have done so, given the amount of money involved.
- He was contacted by two different persons from two different firms about company A and its shares – which should've sounded suspicious to Mr B.
- The payments were to two different payees – which should've sounded suspicious to Mr B, when they were for the same purpose – to release and deal in shares in company A.

Therefore, I think it's fair to ask Mr B to share 50% of his losses with Lloyds. Lloyds have already refunded the amount of the third and fourth payment, plus interest at 8% per annum simple, plus compensation of £150. I agree with that.

This decision is that Lloyds should also refund 50% of the second payment of £20,548.91, i.e. £10,274.45, plus interest at 8% per annum simple from the date of payment to the date of settlement.

Recovery

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether Lloyds took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost funds. I can see that they initiated contact with the overseas bank on 5 December 2019 for the second payment (Mr B asked Lloyds to recall this payment then), and on 13 January 2020 for the other payments - which is when Mr B advised Lloyds of the scam. So – Lloyds did what they should have. But they were advised there were no funds left to return to Mr B. I note that it's the case that where an overseas bank is involved, the chances of recovery are lower than for a UK bank.

Mr B has argued that when he contacted Lloyds on 5 December 2019 to request a recall of the second payment, Lloyds should then have started a scam investigation. I listened to the call. In it, Mr B asked for a recall – and said it had been agreed with the recipient that it was to be returned. He didn't state it was a scam – and therefore I don't think it's reasonable to expect Lloyds to have done anything until January 2020.

My final decision

I uphold this complaint. Lloyds Bank PLC must:

- Refund 50% of the second payment of £20,548.91, i.e. £10,274.45, plus interest at 8% per annum simple from the date of payment to the date of settlement.

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

Martin Lord
Ombudsman