

The complaint

Mr S complains that Lloyds Bank PLC ("Lloyds") won't refund him for money he's lost to an investment which he believes was a scam.

What happened

The full details of this complaint are well known to both parties, so I won't repeat them here. Instead, I'll recap the key points, and focus on giving reasons for my decision:

In August 2018, Mr S received information or advice from an investment management company to invest money into a bond - with an organisation I will refer to as W. He made two transfers (£5,050 and £10,000) from his Lloyds account to M (a regulated e-money institution) and then on from there into his investment with W.

Our investigator did not uphold the complaint. Although he felt this was likely a scam, he didn't think the transactions were unusual compared to the historical activity on Mr S's account but, in any event, he didn't think any intervention by the bank would have made a difference in this case as W looked to be a genuine company at the time.

Mr S did not accept the investigator's conclusions, so the case has been passed to me for a 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 have carefully noted the representations made by all the parties, but I won't be addressing every single point that's been raised. No disrespect is intended, and it doesn't follow that the points haven't been considered, simply that I don't need to particularise every point in reaching an outcome I consider to be fair and reasonable in all the circumstances. I've instead concentrated on the issues I think are central to the outcome of this complaint.

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 terms and conditions of the customer's account. So, although it wasn't his intention to pay money to the scammer, under the Payment Services Regulations 2017 (PSRs) and the terms of his account, Mr S is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for a bank to take additional steps or make additional checks before processing a payment in order to help protect customers from the possibility of financial harm from fraud.

Lloyds says this is a civil dispute. I note W has gone into liquidation and there is an ongoing police investigation into the matter. So the outcome on this is not currently known. But I don't need to make a finding on this to reach an overall outcome that I consider to be fair and

reasonable in this particular case.

The investigator said the transactions weren't unusual based on the account activity and I don't think that's an unreasonable conclusion to draw in this case. The money was going to an existing payee and there had been similar sized transactions in the past – so I don't think that would have looked obviously suspicious.

That said – even if Lloyds had intervened on either payment, I don't think it would have made a difference in this case broadly for the reasons the investigator previously outlined – which I have expanded on below.

Causation is a critical determination factor in every fraud case. I need to be satisfied that suitable intervention would have made a difference to Mr S decision making or that Lloyds could have reasonably prevented the loss. In doing so I reach my decision on the balance of probabilities – so what I consider more likely than not based on the evidence and wider circumstances of the case.

If questions had been asked about the nature and purpose of the payment Mr S was proposing to make, I think it's more likely than not that Mr S would have explained he was transferring the money to M - an existing payee on the account. I don't think this would have been particularly concerning to Lloyds. But if it had probed further it might have established that from there, Mr S was investing in W - itself a UK registered company and administered by another genuine UK registered company.

Whilst I appreciate Mr S might have researched things more – I don't think the 'investment' would have been cause for concern at the point of transfer or the events that have now transpired with W foreseeable. Mr S was paying an existing payee for an investment with an organisation (W) which appeared – through its registration with Companies House - to be legitimate. Records held with Companies House indicate W was a genuine limited company that was incorporated in September 2015 and was actively trading (with no suggestion of liquidation) at the time Mr S sent his money to it. So, the payment didn't look like fraud or a scam and it would have needed a considerable amount of investigation to unearth the facts about W that have now come to light (and which even now seem inconclusive after a considerable amount of time). So, I don't think Lloyds ought reasonably to have cause for concern.

I'm sorry Mr S has lost a considerable amount of money and I can understand why he would like to be compensated for his losses. But I'm only considering whether the bank should be held responsible for what happened.

My final decision

My final decision is I don't uphold the complaint.

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

Kathryn Milne
Ombudsman