

The complaint

Mr O has complained that Lloyds Bank PLC won't refund the money he lost after falling victim to a scam.

What happened

In 2022, Mr O was looking into investing in precious metals. He found an advert for an investment firm, and gave them his contact details to find out more. The firm was actually run by scammers. They called him and over time he spoke to multiple people posing as investment analysts, who he said came across as knowledgeable and professional, and they built a rapport with him.

Mr O was set up with his own account on their secure website, which showed live trading data and charts. He found independent articles talking about the firm's successes, and they sent him a newsletter as well as information about precious metals investing. They set out that he could earn exceptional returns.

The scammers persuaded Mr O to invest £5,000. He did this by taking out a £5,000 loan with Lloyds then forwarding the money on by an international payment from his Lloyds current account. He later sent the scammers approximately £6,700 for a further investment.

Mr O realised he'd been scammed when he was unable to access the money he'd invested and the website was taken down. He reported the matter to Lloyds.

Lloyds refunded the second payment – of around £6,700 – as it accepted Mr O was more susceptible to the scam owing to a vulnerability, that he did some checks and received professional-looking documentation, and because he sought advice from a family member and an acquaintance who deals in investments first. However, it didn't think it was liable for the initial £5,000 payment, as it felt Mr O had been negligent. It tried to recover the money from the receiving bank, but the receiving account had been closed some months before.

Our investigator looked into things independently and upheld the complaint. Lloyds didn't agree, so the complaint's 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.

There's no dispute that Mr O authorised the payments involved, even if he didn't intend for the funds to go to scammers. So, under the Payment Services Regulations and the terms of his account, Mr O is liable for the loss in the first instance. But the matter doesn't end there.

Taking into account the law, regulator's rules and guidance, relevant codes of practice, and what I consider to have been good industry practice at the time, I consider that Lloyds should have fairly and reasonably:

- Monitored accounts and payments to counter risks such as fraud and scams;
- Had systems in place to look out for particularly unusual transactions or other signs its customers were at risk of fraud;
- In some circumstances, taken further steps or made further checks before a payment went out, or even blocked it, to help protect customers – irrespective of the type of payment involved.

I've reviewed Mr O's account activity in the months leading up to the scam, and I can't see any comparable activity. Lloyds pointed out that it's not unexpected for customers to spend loan money all at once, as loans are generally taken out to be spent on something. And I do understand its point. But here, Mr O took out the loan for "miscellaneous" purposes – i.e. a purpose unknown to Lloyds – then forwarded the money to a new payee in a foreign country with no confirmation of payee. That should have been cause for concern. And the £5,000 payment was not just large in and of itself, but was far larger than Mr O's prior spending. It was simply out of character for him.

I think the £5,000 payment stood out as being remarkable, so I think it should have prompted Lloyds to intervene.

Had Lloyds intervened and made reasonable enquiries with Mr O, I think it would have most likely been able to stop the scam. I've seen nothing to suggest Mr O would not have been honest about why he was spending this money – he'd not been given a cover story to tell, and as far as he knew this was a legitimate investment. Investment scams are relatively prominent, and I think Lloyds would've been able to identify what was happening, not least given the unrealistic returns promised and the lack of proper documentation. I've seen no reason why Mr O would not have listened to Lloyds – it is a well-known name in banking, and he accepted he was not an experienced investor. And when Mr O did speak to Lloyds, he was engaged and willing to learn about what he should've done.

I've also thought carefully about Mr O's role in what happened. I understand Lloyds' point that Mr O was not given proper documentation and that the proposed returns were not realistic. But he was given a personal account on a professional-looking website, guides setting out the benefits and risks with professional-sounding advice, a newsletter, an invoice, and a share certificate. For an inexperienced person, I can see how this would have been reasonably convincing. Mr O also looked up the scammers' firm online and found articles on independent websites – some of which I can see are still up – which portrayed the firm as legitimate and successful. The only negative reviews I've found were from after Mr O's £5,000 payment. So I can't see that Mr O had any warnings about the firm. He also sought advice from people he trusted – including someone who dealt in investments – and they had no significant concerns.

Lloyds said Mr O should've been concerned that this came from a cold call. But he'd given his contact details over first in order to learn more, so this was not a cold call. Lloyds felt Mr O should have been suspicious at being asked to pay a subsidiary in another country. But the scammers' firm was purportedly a foreign multinational company. And it wouldn't have made a difference in this case whether Mr O paid the main company or a subsidiary given they were part of the same scam.

Lloyds already accepted that Mr O was not liable on any negligence basis for the second payment, so I'm unsure why it has not applied the same logic to the first. As it found itself, this was a complex and sophisticated scam, Mr O did take measures to try to verify what he was being told, and he was in a vulnerable position. I understand that Mr O was facing a significant mental health issue with very poor sleep and was under medication, which affected his judgement and decision-making.

In the circumstances, I can understand why Mr O made the £5,000 payment. I do not think he was sufficiently negligent that I would hold him partly or wholly liable for the matter.

Lloyds pointed out that its loans were not supposed to be taken out for investments. But while I do appreciate that, that's not a sufficient basis on which to hold Mr O liable for the scam or for Lloyds' own failure to intervene.

Mr O's representatives asked for further compensation for non-financial losses. However, it's the scammers who primarily caused Mr O's trouble and upset here, rather than Lloyds, and I've not found that Lloyds did anything which significantly added to the stresses the scammers caused. Mr O also asked for his legal fees to be paid, and I understand why. However, we're a free service which resolves complaints informally in plain English – so there was no need to hire legal representatives to use us, that was Mr O's choice to do so. So I can't fairly tell Lloyds to refund those fees.

Overall, while I am glad to see that Lloyds refunded the second payment, I don't think it acted fairly by declining to refund the first £5,000 payment. So it should settle the complaint in the way I've outlined below.

Putting things right

Lloyds Bank PLC should:

- Remove any interest and fees from the £5,000 loan it granted;
- Refund the £5,000 payment, set off against any outstanding debt on the loan;
- Pay Mr O 8% simple interest per year on the loan repayments he made, payable from the date of each repayment until the date of settlement;
- Mark Mr O's loan as satisfied from the date he made the £5,000 international payment, and remove any adverse information about the loan from Mr O's credit file.

If Lloyds considers that it's required by HM Revenue & Customs (HMRC) to deduct tax from the simple interest, it should tell Mr O how much tax it's taken off. It should also give Mr O a tax deduction certificate if he asks for one. Mr O may be able to reclaim the tax from HMRC if he doesn't normally pay tax.

My final decision

For the reasons I've explained, I uphold Mr O's complaint, and direct Lloyds Bank PLC to put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 4 October 2023.

Adam Charles
Ombudsman