

## **The complaint**

Mr and Mrs B complain that Lloyds Bank PLC (Lloyds) won't refund the money they lost when they fell victim to a scam.

## **What happened**

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

In early 2021, Mr B purchased £200 worth of cryptocurrency. He did so via a legitimate cryptocurrency merchant I'll refer to as J. He was then contacted by another company, 'R', who I understand claimed to be a subsidiary of J.

R told Mr B they would help set him up with an exchange and platform, and encouraged him to invest with them. I understand R used remote access software to access Mr B's device and help him set up an exchange wallet with 'B' – who are also a legitimate cryptocurrency merchant. He sent funds to B from his joint Lloyds account, then purchased cryptocurrency to send on to R's platform.

At first, Mr B says the cryptocurrency appeared to grow. But then it crashed. R told him he was liable for a loss exceeding £30,000. Following this, he sent a series of further payments from the joint account he and Mrs B held with Lloyds, to (re)cover the loss.

Mr B says he repeatedly asked to withdraw funds but was told he couldn't until all his trades/stocks were positive. On R's suggestion, Mr B took out a loan to fund further payments, as well as using money from an equity release. Ultimately, R stopped responding. Mr B then realised R were operating a scam, and so logged a fraud dispute with Lloyds.

Lloyds didn't agree to refund Mr and Mrs B, following their fraud claim and subsequent complaint. It said the loss had only occurred when the funds were sent on from B. Unhappy with Lloyds' response, Mr and Mrs B referred the matter to our service. Our investigator reviewed things, but ultimately didn't think Lloyds was liable for their loss.

The case was then allocated to me as Mr and Mrs B appealed the investigator's outcome. In brief summary, they raised the following points:

- They dispute the investigator's view that these were me-to-me payments, and that the Lending Standards Board's Contingent Reimbursement Model (CRM) code therefore doesn't apply. They say B was only an "in and out" exchange, and the only destination was R – as Lloyds knew, because Mr B told it during a call when processing one of the payments. So they think the code applies.
- As Lloyds previously said there was negative information available online about R since December 2020, it should have been aware R were illicit. Although Lloyds has since said it can't find any reference to this, Mr and Mrs B doesn't think it can backtrack. And it should therefore have stopped the payments, regardless of their insistence to continue – which was due to their fear of R's legal threats.

I issued my provisional decision in October 2023, explaining I was minded to uphold the complaint and direct Lloyds to refund some, but not all, of Mr and Mrs B's loss. Both parties have responded to accept my proposal, although Mr and Mrs B have queried what the exact award will be when interest is applied. As both sides have responded, I can now proceed to issue my 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.

As I've not received any new points or evidence in response to my provisional findings, I see no reason to depart from them. I uphold this complaint, and I give directions below for what Lloyds needs to do to put things right for Mr and Mrs B.

Before setting out my reasons for this decision, I'll comment on Mr and Mrs B's query about the award. As I have told them directly, it will be for Lloyds to complete the final calculation in line with the directions I give in my decision. I'm satisfied those directions make it clear how it should do this. But it will be Lloyds, rather than our service, who is responsible for completing the calculations – bearing in mind that interest will accumulate up until the award is paid.

With that said, I'll now give my reasons for upholding this complaint.

### The transactions I'm considering

I want to clarify the transactions I'm considering. Of most significance, compared to what has already been set out in the investigator's view, is that Mr B has told us he received credits in via a different cryptocurrency wallet (so not with B or J) – which came from the scam platform.

As these credits were paid into the Lloyds account, they are relevant for establishing the outstanding loss being sought from Lloyds. Particularly bearing in mind that Mr and Mrs B have already recovered losses from the other banks used to send payments to the scam.

Outward payments lost to the scam (via B):

Requested date	Amount	Payment type
26/03/2021	£1,000.00	Debit card
26/03/2021	£1,000.00	Debit card
26/03/2021	£1,000.00	Debit card
27/03/2021	£1,000.00	Debit card
30/03/2021	£10.00	Transfer
30/03/2021	£22,000.00	Transfer
31/03/2021	£10,000.00	Transfer
31/03/2021	£1,000.00	Debit card
31/03/2021	£2,000.00	Debit card
31/03/2021	£2,200.00	Debit card
04/04/2021	£20.00	Debit card
07/04/2021	£1,000.00	Transfer
07/04/2021	£19,000.00	Transfer
09/04/2021	£500.00	Debit card

10/04/2021	£330.00	Debit card
13/04/2021	£9,000.00	Transfer
14/04/2021	£1,000.00	Transfer
14/04/2021	£25.00	Debit card
18/04/2021	£50.00	Debit card
30/04/2021	£500.00	Transfer
10/05/2021	£1,001.00	Transfer
11/05/2021	£1,000.00	Transfer
15/06/2021	£10,000.00	Transfer
16/06/2021	£10,000.00	Transfer
16/06/2021	£15,000.00	Transfer
17/06/2021	£10,000.00	Transfer
21/06/2021	£25,000.00	Transfer
22/06/2021	£14,000.00	Transfer
22/06/2021	£5,000.00	Transfer
<b>TOTAL</b>	<b>£163,636.00</b>	

Credits from the scam:

Date received	Amount	Description
26/03/2021	£83.44	Credit from B
26/03/2021	£4.13	Credit from other crypto wallet, 'C'
26/03/2021	£2,118.91	Credit from C
27/03/2021	£1,981.19	Credit from C
<b>TOTAL</b>	<b>£4,187.67</b>	

By my calculations, that means the loss relevant to this complaint is £159,488.33.

#### Authorisation

It's accepted that the disputed payments were authorised by Mr B, even though he was tricked by the scammer. In line with the Payment Services Regulations 2017 (PSRs), the broad position is that a customer would generally be liable for an authorised payment – but their bank would be liable for an unauthorised payment.

That said, there are situations where it might be fair to hold a bank liable for an authorised transaction. Such as if the payment was a result of a scam, and the scam risk was (or ought to have been) apparent to the bank, and appropriate intervention in response to that – as part of bank's duties to help protect customers from financial harm from fraud – would have affected the customer's decision making and preventing them from incurring the fraudulent loss.

Furthermore, Lloyds has signed up to the CRM code. If the code applies, there are additional considerations for whether it should be held liable for losses incurred from an authorised push payment (APP) scam. So I'll address that first.

### The CRM code

This code only covers authorised push payments (which includes bank transfers, but not card payments) made between two accounts held in the UK. Both accounts must be denominated in pounds sterling (GBP). And the payments must go to another person.

As a number of these payments were made by card, they don't fall within the scope of the code for that reason alone. But I also don't think the transfers are covered by the code.

While Mr and Mrs B refer to B, the payment destination shown on their statements, as purely an in-and-out exchange, I don't agree with that characterisation. As Mr B explained to Lloyds during a call at the time of making one of the payments, he had to set up a wallet with B in his name. He would send a payment to B, exchange it into cryptocurrency, then sent it on to R. It didn't automatically transfer through to an external account without Mr B completing an additional payment. Without further action, the funds would simply have stayed in Mr B's wallet with B.

So although the end destination was a scam, under the confines of the code, the payments to B were correctly deemed me-to-me payments.

I'd also highlight that, even if I were to take another view and treat R as the destination (which, to be clear, I don't think would be right), the payments still wouldn't be covered by the code. That's because it only covers payments between UK-based GBP accounts. First of all, it's not clear to me that the destination account was in the UK, given that R were operating from abroad. And the onward payment was made in cryptocurrency – and so wasn't between GBP accounts.

So, I'm satisfied the code isn't relevant here. But, in line with the principles I've set out above, I've considered whether Lloyds is liable in line with its wider fraud-prevention duties.

### Fraud risk

I'm not persuaded Lloyds initially had cause to be concerned that Mr B was at risk from fraud. The payments were going to B, which is a legitimate company. Companies can, and do, offer genuine cryptocurrency services by way of wallets, exchanges, and trading. So that alone wouldn't reasonably have caused concern. Nor do I think the value of the first few payments was uncharacteristically high or otherwise concerning.

However, Lloyds did identify a fraud risk when Mr B made the fourth payment. While I don't think the size or destination (as apparent to Lloyds from the payment request alone) appeared particularly concerning in isolation, I can see why it was identified as risky. It followed three payments the previous day to a new cryptocurrency payee. So it could be seen as suspicious that Mr B would then go on to make a further payment for the same amount – totalling £4,000 in two days, over four payments – to a new payee.

### Did Lloyds do enough in response to the fraud risk identified?

In response to the risk identified, Lloyds required Mr B to call it to discuss the payment. So I've considered whether it asked enough, and whether it was reasonable, in line with Mr B's responses, that it was sufficiently reassured and therefore processed the payment. To that end, I've listened to the call.

I've considered this carefully. I'm mindful that, in hindsight, knowing the funds were lost to a scam, the risks may seem more apparent than they were at the time. I'd also emphasise there are no set questions banks have to ask. Nor would I consider it reasonable (as has been suggested) that Lloyds should refuse an instruction, regardless of the insistence or responses of the customer, due to any level of risk indicator. That would be contrary to Lloyds' regulatory duty to execute authorised payment instructions without undue delay.

But I would expect banks to question with genuine curiosity, to understand the full circumstances of the payment. And to help educate customers on the scam risks they are aware of associated with the type of transaction being made. As banks will generally have more knowledge of this than their customers.

In the call, Mr B gave the impression of being confident in what he was doing, and of having satisfied himself R were legitimate. He hadn't yet run into the difficulties with R that emerged shortly after. And the staff member Mr B spoke to did ask some sensible questions and highlight some relevant points. Such as emphasising the need to be sure of how the withdrawal process worked (which Mr B said he could do via his wallet with B).

However, I also think there were some concerning points mentioned during the call that weren't appropriately questioned or challenged. While Mr B was advised to check how to withdraw, the staff member at Lloyds said he didn't need to actually do it as he would want to keep his money on R's platform in order to make more money. This sounded more like a reassurance than a warning. And Lloyds didn't explain that scammers often allow low-level withdrawals initially, to appear legitimate and thereby persuade customers to pay more.

Additionally, Mr B told Lloyds he would be sending the funds on to R. So Lloyds knew the payment wasn't staying with B. Already, the involvement of a third-party ought to have rung alarm bells, in the context of Mr B making cryptocurrency-related payments. Dating back to mid-2018, the UK financial regulator (the FCA) and Action Fraud had warned about the features of such cryptocurrency scams, whereby customers are tricked into sending cryptocurrency, via legitimate wallets or exchanges, on to professional-looking fake trading platforms. So this is something Lloyds should have been aware of, and taken into account, when questioning Mr B.

No questions were asked about how Mr B came to deal with R. He seems to have been quite open at this stage about what he was doing. So if asked, I think he would have explained the circumstances of how R contacted him following him setting up an account with J, due to them being a subsidiary. I think the manner of this contact ought to have sounded suspicious to Lloyds, in light of its experience of cryptocurrency scams. But as this wasn't explored, no warnings were given to Mr B about this.

Furthermore, Mr B wasn't asked about R's role in him setting up the cryptocurrency wallets. He's told us that remote access software was used by R to help him set up the account with B. Again, I would have expected Lloyds to have realised this fit a known pattern of these types of cryptocurrency scams. Which is something I don't think Mr B, as a layperson, appreciated the risk of to the same extent.

Additionally, the way Mr B described his dealings with R sounded like it went beyond providing a cryptocurrency platform/exchange. I think it gave the impression that R were giving him investment advice, and that advice went beyond cryptocurrency and into other forms of investment – as mentioned in the call.

That would be an indication that R should be regulated, in order to be providing such services in the UK. That wasn't explored further. And while the FCA didn't issue a warning about R until after all these payments were made, Lloyds could have guided Mr B on how to check the FCA register – which R were not listed on as an authorised firm.

While I wouldn't expect Lloyds to go so far as to provide Mr B with investment advice, I don't consider it unreasonable to expect, in response to what it was told, that it could have warned Mr B about checking the FCA register, and why R not being regulated in the UK could be an indicator they were operating dishonestly – in light of the services they seemed to be offering.

The tone of this intervention call overall was broadly reassuring. I appreciate the staff member seemed interested in, and knowledgeable about, cryptocurrency. But I think there wasn't enough done to fully assess the risks. The circumstances weren't explored enough, particularly in response to some points mentioned which I think should have rung alarm bells with Lloyds.

Mr B has explained he wasn't an experienced investor and wasn't well-versed in how cryptocurrency scams work. I think he was therefore open to further explanation and warnings from Lloyds about the risks this was a scam. So I do think there was a missed opportunity by Lloyds to stop the loss incurred from that point. And I therefore consider it reasonable to expect it to bear some liability for that loss.

#### Should Mr and Mrs B also share liability for their loss?

Even though I've found that Lloyds has some liability for what happened, I must also consider whether there was contributory negligence by Mr B. If he showed an unreasonable lack of care, which contributed to the loss, then I'd consider it fair to expect him and Mrs B to share liability alongside Lloyds.

In making this assessment, I am conscious there was a sophisticated scam occurring. But in all the circumstances, I do consider it fair to hold Mr B partly to blame for the loss incurred, for the following reasons:

- It's unclear to me how much research Mr B did into R before investing. Although he has made reference to looking up R, at points he describes this as happening after he had started investing, when he was struggling with making a withdrawal. And when he did look them up, he says he found both good and bad information.

While I've not been able to find much from the relevant time about R, I accept Mr B's testimony that he did find reviews as accurate. It's not usual for reviews – both good and bad – to be removed or deleted in subsequent years. And if Mr B had found those mixed reviews prior to getting to the point when he felt trapped by the situation, as I consider it would be reasonable to expect him to, before making a substantial investment, he may not have chosen to trade with R.

I'd also point out that, while there may have been adverse information online about R, I've seen no indication this is something Lloyds ought to have been aware of. We wouldn't expect it to complete research on behalf of its customers. While we expect banks to employ watchlists of merchants who may be a scam, that would normally be in response to strong evidence such as a regulatory warning. As set out above, the FCA warning wasn't live at the time. And nor would Lloyds have identified R immediately from its watchlist even if it had been, given that the payments were going to B.

- The call I've outlined above wasn't the only point at which Lloyds intervened with the payments. Mr B says the larger payments on 31 March 2021 were him sending funds to try to recover his loss. And these payments were also blocked pending a conversation with him. I also note there is reference to a further payment being blocked right at the end of the scam, although Lloyds hasn't provided much detail about this.

Having listened to the second call, again I'm not persuaded Lloyds' questioning went far enough. But equally, Mr B said he was "99.9%" sure R were a genuine investment. Whereas he has subsequently told us he felt pressured by R, and that he didn't think he was investing at this point – rather, he was chasing his loss. Had he positioned this situation in that way during his call, that would have made it easier for Lloyds to identify, and warn Mr B, that it sounded like a scam. The way he responded therefore likely contributed to his loss.

For example, in this call, Mr B asked whether he had given remote access to his device and said he hadn't. Whereas he has told us he did give remote access to R when setting up his cryptocurrency wallet(s). I'm mindful the question sounded more as though Lloyds were concerned about access to his Lloyds' account, not the onward destination. But if Mr B had answered more carefully, again it would have improved Lloyds' chances of uncovering the scam.

Lloyds also warned Mr B that these scams often involve customers being told to lie to their banks about what they are doing. It's not particularly clear to me whether that was happening here. But given Mr B's subsequent comments about his fear about R's threat of legal action, and his understanding he was no longer investing, his responses to Lloyds do suggest he wasn't being completely forthcoming. As highlighted above, I do think that, in not answering these questions openly and carefully, as I would expect, it may have hindered Lloyds' further chance to help prevent some of the loss.

- Mr B has also took out a loan to fund some of the payments he made to R. As well as using funds from an equity loan (although I haven't seen any suggestion that was taken out during the scam or at R's prompting). I think Mr B should have realised it wasn't appropriate to borrow for this purpose. As he said himself during a call with Lloyds, he understood (even when thinking R were legitimate) that there was a risk he would lose all his funds.

I therefore think he should have realised this posed a repayment risk. It's therefore unlikely he gave investments as the purpose of the loan – as if he had done so, it's unlikely the lending would have been agreed. And if he hadn't taken out this loan, it would have reduced the amount of money he had available to send on the scam. So again, I do think Mr B showed a lack of care which contributed to his loss.

Overall, I'm minded to conclude it would be fair to expect Mr B (and Mrs B, as the joint account holder) to share liability with Lloyds for the fraudulent loss incurred from payment four onwards. I'm therefore proposing that Lloyds should refund 50% of this loss.

### Recovery

For the first three payments which I've concluded Lloyds isn't at fault for not preventing, I've considered whether it missed a chance to recover the loss.

However, I don't think Lloyds ought to have done more which would have succeeded in recovering the loss. As the payments were sent by card, the chargeback scheme applies. This is a voluntary scheme to help resolve payment disputes between consumers and merchants. Banks aren't obliged to raise claims, but we'd consider it good practice to do so if the claim was likely to succeed. That would generally require specific evidence, as set out in the scheme rules, that there was an issue with the merchant's service.

The scheme only covers disputes with the merchant paid directly. As set out above, that was B. They were the merchant who Lloyds would have received the payment requests from. And there is no allegation they were involved in the scam, or otherwise didn't provide the expected level of service. They loaded the funds in line with the payment request. And so I don't think there were grounds, under the scheme rules, for successful chargeback claims.

### **My final decision**

For the reasons given above, my final decision is that I uphold this complaint. Lloyds Bank PLC must refund half of Mr and Mrs B's loss incurred, via their Lloyds account (taking into accounts the credits received), from the fourth scam payment onwards.

Lloyds Bank PLC should pay 8% simple interest per year on this amount, running from the dates of payment to the date of settlement, less any tax lawfully deductible. This is to compensate Mr and Mrs B for the loss of use of the funds.

Lloyds Bank PLC must pay the compensation within 28 days of the date on which we tell it Mr and Mrs B accept my final decision

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 30 November 2023.

Rachel Loughlin  
**Ombudsman**