

The complaint

Mr W complains that Lloyds Bank PLC didn't do enough to protect him from the financial harm caused by an investment scam, or to help him recover the money once he'd reported the scam to it.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In January 2023, Mr W saw an advert on social media for an investment company which I'll refer to as "C". He noted the company was endorsed by a well-known celebrity and completed an online contact form.

On 13 January 2023, he made an initial deposit of £218.06 to open an account on the trading platform and was then contacted by someone who I'll refer to as "the scammer" who claimed to be a financial advisor. The scammer told Mr W the more money he invested, the more profit he would make and instructed him to download AnyDesk remote access software to his device.

Mr W checked C's website and was satisfied that it appeared genuine and there were no major scam warnings. The scammer gave Mr W an address which he could visit if he wanted to, and he was given his own log-in for the platform where he'd be able to see his profits.

The scammer told Mr W that he would make trades on his behalf in gold and silver. As Mr W had previously traded in cryptocurrency, he already had an account with a cryptocurrency exchange company which I'll refer to as "B", and the scammer told him to create an account with an electronic money institution ("EMI") which I'll refer to as "W". He told Mr W to make payments from his Lloyds account to W, and from there he would buy cryptocurrency, which would then be loaded onto an online wallet.

Between 17 January 2023 and 24 January 2023, Mr W made six payments to W totalling £18,355.01 using his Lloyds debit card. He was able to log into his trading account and see the profits, which reassured him the investment was genuine and that his investment was making a good profit. On 23 January 2023, the scammer helped him to apply for a loan for £18,000 telling him he had a guaranteed buyer for £25,000 of 'VIP Signals', which he'd be able to pay back within two to three days.

The scammer later told Mr W he'd made £38,000 profit, but when he tried to make a withdrawal, he was told his account had been blocked and he'd have to pay £14,000 to be able to withdraw his funds, at which point he realised he'd been scammed.

Mr W complained to Lloyds, but it refused to refund the money he'd lost. It said the payments weren't covered under the Contingent Reimbursement Model ("CRM") code because Mr W had paid an account in his own name, and they were made by debit card. It said it didn't consider the payments from Lloyds were scam payments, but he could raise a dispute under Visa's chargeback scheme.

Mr W wasn't satisfied and so he complained to this service with the assistance of a representative. He said Lloyds failed to ask probing questions or provide an effective warning which would have affected his decision-making. He argued the payments were unusual and indicated a change in operation of the account which is a known-fraud indicator. He said he wanted Lloyds to refund the money he'd lost and pay him £500 compensation and legal costs.

Mr W's representative said Lloyds should have intervened due to the size of the transactions relative to Mr W's typical transaction history, arguing that he had made low value payments in the months leading up to the scam. They said Lloyds should have asked Mr W why he was making the payments, who he was trading with, how he found out about the company, whether he'd done any research, whether he'd checked the Financial Conduct Authority ("FCA") website, whether he'd been predicted unrealistic returns and whether he'd received any withdrawals, and as Mr W hadn't been coached to lie, the scam would have been detected.

Lloyds argued that Mr W had provided contradicting information regarding the level of access the scammer had to his accounts and how the loan was applied, and it wasn't reasonable for him to have accepted that a genuine broker would encourage an investor to take out a loan for investment purposes. Further, he had previous experience investing in cryptocurrency, so he should have had some understanding about the risks involved, yet he accepted the scammer's promises of guaranteed returns.

It argued that the screenshots Mr W provided show he was told he'd need to move funds from his bank account to B, but there was no indication that he'd been told he'd need to pay money to release his profits. It also said it wasn't unusual for him to make multiple payments to the same beneficiary on the same day and there was nothing in the velocity of the payments which would have caused concern.

Our investigator recommended the complaint should be upheld. She said a chargeback claim wouldn't have been successful because Mr W made payments to his own accounts. But she felt the third payment for £5,015.05 should have raised concerns because it was significantly higher than the normal payment activity on Mr W's account, thirty minutes before he'd received a personal loan from Bank H for £18,000, and within 14 minutes he sent three payments totalling £9,929.81, which was significantly more than previous multiple payments.

She said if Lloyds had contacted Mr W and asked probing questions, he'd have explained he had a financial advisor who had access to his device and who had told him to take out the loan to fund the investment. And, while the FCA warning wasn't issued until 2 February 2023, Lloyds would have had enough information to suggest that Mr W was probably being scammed.

She accepted he'd told Bank H the loan was for 'home improvements' but she was satisfied he'd been guided by the scammer on AnyDesk, and she felt that if Lloyds had contacted him by phone, he'd have answered the questions honestly because he wouldn't have been guided by the scammer. Because of this she recommended that it should refund the money he'd lost from the third payment onwards.

However, she noted Mr W had lied on the loan application and even though this was done on the scammer's instructions, she felt it ought to have raised concerns about the legitimacy of the investment. She also commented that he ought to have realised that making £18,000 profit in three days to pay off the loan was unrealistic. So, she thought the settlement should be reduced by 50% for contributory negligence.

Lloyds has asked for the complaint to be reviewed by an Ombudsman arguing the payments didn't indicate Mr W was at risk of financial harm. It accepts the third payment was higher than previous payments from Mr W's account, but it's argued it's not unusual for customers to make large payments after taking out a loan, there would be no valid reason for a customer to take out a loan if there were no plans to utilise those funds, and it would be reasonable to expect loan funds to exit a customer's account shortly after receipt. Further, the funds were being sent to an account in Mr W's own name and validation checks were completed on each of the payments, so there was no valid reason for concerns because he remained in control of the funds after they left Lloyds and he didn't suffer any financial loss at the point the funds left Lloyds.

It has further argued that it wasn't unusual for Mr W to make multiple transactions on the same day, and he had previously made payments to and received credits from the payee. And it couldn't reasonably foresee he would suffer financial loss as a result of subsequently moving funds away from W.

It has also argued that scammers usually coach victims on how to respond to questions and as Mr W had already misled Bank H when applying for the loan, it's likely he'd have been coached to maintain the story. Further, by instructing Mr W to move funds to W before sending them to B, the scammer had already put arrangements in place to disguise the fact he was ultimately making payments to B. So, it's likely he'd have been instructed to provide a cover story.

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.

Having done so, I've reached the same conclusion as our investigator. And for largely the same reasons.

The Contingent Reimbursement Model ("CRM") Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Mr W says he's fallen victim to, in all but a limited number of circumstances. Lloyds has said the CRM code didn't apply in this case because the code doesn't apply to debit card payments and Mr W was paying an account in his own name, and I'm satisfied that's fair.

I've thought about whether Lloyds could have done more to recover Mr W's payments when he reported the scam to it. Chargeback is a voluntary scheme run by Visa whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed. Our role in such cases is not to second-guess Visa's arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. Lloyds) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder (Mr W).

It's only possible to make a chargeback claim to the merchant that received the disputed payments. It's most likely that W would have been able to evidence they'd done what was asked of them. So, any chargeback was destined to fail, therefore I'm satisfied that Lloyds' decision not to raise a chargeback request against either of the cryptocurrency exchange companies was fair.

I'm also satisfied Mr W 'authorised' the payments for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although he didn't

intend the money to go to scammers, under the Regulations, and under the terms and conditions of his bank account, Mr W is presumed liable for the loss in the first instance.

There's no dispute that this was a scam, but although Mr W didn't intend his money to go to scammers, he did authorise the disputed payments. Lloyds is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

Prevention

I've thought about whether Lloyds could have done more to prevent the scam from occurring altogether. Lloyds ought to fairly and reasonably be alert to fraud and scams and these payments were part of a wider scam, so I need to consider whether it ought to have intervened to warn Mr W when he tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect Lloyds to intervene with a view to protecting Mr W from financial harm due to fraud.

The payments didn't flag as suspicious on Lloyds's systems. I've considered the nature of the payments in the context of whether they were unusual or uncharacteristic of how Mr W normally ran his account and I think they were. The first two payments were low value and so there would have been no reason for Lloyds to intervene. But when Mr W made the third payment of £5015.05, he had received an £18,000 into his account earlier that day and so based on the fact he was sending funds to a payee which he'd paid for the first time three days before, the amount was high when compared to the usual spending on the account and he'd received a loan payment into the account less than half an hour before, I think Lloyds ought to have contacted him to make some enquiries about the payment.

Lloyds has argued that it's not unusual for people to make payments immediately after having received funds from a loan, but this isn't the only reason I think the payment ought to have triggered an intervention and when considered along with the amount of the payment when compared with the usual spending on the account and the fact this was only the second time he'd paid W, I think there were enough factors present to have raised reasonable concerns.

Lloyds should have contacted Mr W to ask him why he was making the payment, whether there was a third party involved, and if so, how he met them, whether he'd been promised unrealistic returns, whether he'd made any withdrawals, whether he'd been told to download remote access software and whether he planned to make an onwards payment from the recipient account. It should also have asked him some questions about the loan.

Lloyds has also argued the fact Mr W lied on the loan application means that even if it had contacted him to ask probing questions, it's unlikely he'd have answered honestly. I've carefully considered these points and I disagree. Mr W has described that he applied for the loan under the guidance of the scammer, and he was following this instruction in real time. It's unlikely he'd have been on the phone with the scammer if Lloyds had called him, so he wouldn't have had similar guidance on how to answer the questions. Further, while I accept scammers do often coach victims to lie, there's no evidence that Mr W was coached and without this evidence I can't fairly assume this would have been the case. And I note Lloyds has pointed out what it says are inconsistencies in Mr W's account, but I don't think they are due to dishonesty. So, while I understand Lloyds' concerns on this point, I don't think, on balance, there's enough evidence to say that Mr W wouldn't have been open in his responses to questions had it intervened as I think it should have done.

I'm satisfied that Mr W would likely have told Lloyds that he planned to invest in cryptocurrency and that he was being advised by a broker who had advised him to download AnyDesk and to take out a loan to fund the investment. I also think with probing questions he'd have disclosed that he'd found C online via a celebrity endorsed advert.

There wasn't a warning about C on the Financial Conduct Authority ("FCA") until February 2023, but I think there were enough red flags present for Lloyds to have identified that Mr W was being scammed. It could then have given him a tailored warning and provided advice on additional due diligence. And as I haven't seen any evidence that Mr W had been coached to lie, I think he'd have listened to some robust advice and ultimately decided not to make any further payments to the scam. Consequently, I think Lloyds' failure to intervene when Mr W made the third payment represented a missed opportunity to have prevented his loss and so it should refund the money from that point onwards.

Contributory negligence

There's a general principle that consumers must take responsibility for their decisions and conduct suitable due diligence, and, in the circumstances, I don't think Mr W took reasonable care to prevent his own loss.

In recent years instances of individuals making large amounts of money by trading in cryptocurrency have been highly publicised to the extent that I don't think it was unreasonable for Mr W to have believed what he was told by the broker in terms of the returns he was told were possible, notwithstanding the fact it was highly implausible. And he wouldn't necessarily have known that a celebrity endorsement and the use of remote access software are both strong indicators for fraud.

But Mr W had invested in cryptocurrency before and so I think he should reasonably have been concerned when he was told he'd make enough profit to pay the loan off in three days. Further, I'm satisfied he did what he thought was reasonable due diligence, but I think he ought to have questioned why the broker was encouraging him to use loan monies for the investment and why he was being told to lie on the loan application, and in failing to do so I think he failed to take reasonable care. Because of this I think the settlement should be reduced by 50% for contributory negligence.

Compensation

Mr W isn't entitled to any compensation or legal costs.

Recovery

Mr W has described that he paid an account in his own name and from there the funds were moved to B, so I'm satisfied there was no prospect of a successful recovery.

My final decision

My final decision is that Lloyds Bank PLC should:

- refund the money Mr W lost from the third payment onwards.
- this settlement should be reduced by 50% to reflect contributory negligence.
- pay 8% simple interest*, per year, from the respective dates of loss to the date of settlement.

*If Lloyds Bank PLC deducts tax in relation to the interest element of this award it should provide Mr W with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 2 July 2024.

Carolyn Bonnell
Ombudsman