

The complaint

Mr W complains that Lloyds Bank PLC has refused to refund the money he lost as a result of an authorised push payment (APP) scam.

What happened

Mr W invested £6,878 in a company (G) that he had found via a Facebook advert. He set up an account with a cryptocurrency platform as he was told this was needed to connect with G's Bitcoin trading platform. He transferred the money on 12 April 2021 in two faster payments of £2,124 and £4,754. He had previously sent a \$200 deposit that was then successfully refunded to 'test' the legitimacy of the opportunity. Later, after he was advised to place certain trades, he lost his investment that he believed had grown to \$90,000. In July 2022 when he was told he would need to make further deposits he grew suspicious and contacted Lloyds. Mr W did not respond to its requests for more information about the scam.

Lloyds said it was unable to complete an investigation as a result.

Our investigator did not uphold Mr W's complaint. She said the transactions were not out of character and so the bank was not wrong when it did not intervene.

Mr W disagreed and asked for an ombudsman's review. He said the payments were a significant departure from his payment history and Lloyds should have acted to protect him.

I reached a different conclusion to the investigator so I issued a provisional decision. An extract follows and forms part of this final decision. I asked both parties to send in any comments or new information by 14 November 2023.

Extract from my provisional decision

I don't consider the first payment request was so unusual that Lloyds ought to have had concern. There's a balance that must be struck – banks need to be alert to fraud and scams, but they can't reasonably be involved in every transaction as this would cause huge disruption to legitimate payments. I think it is reasonable for Lloyds to take into account a number of factors, not just the fact it was going to a cryptocurrency platform. It was a legitimate trading platform. So I don't find it acted unfairly by not blocking or intervening in the first payment on solely that basis.

I think the position changed when Mr W made the second transfer for £4,754 though. Mr W had never made multiple transfers of this value to third parties on the same day. Two hours earlier he'd transferred £2,124 to a cryptocurrency exchange and he now was making a further request to transfer over double that value. This meant Mr W was asking to transfer a total of £6,878 to a cryptocurrency exchange. This was out of character and there was a pattern of payments emerging that could be seen as consistent with investment scams of this nature.

In the circumstances, I consider Lloyds ought reasonably to have intervened when the second payment request was made. I'm not persuaded that the fact the payment was going

to Mr W's own account and so appeared to be going somewhere safe and within his control should have satisfied Lloyds that he wasn't at risk of harm. This is because by this time, banks had, or ought to have had, a good enough understanding of how these types of investment scams work – including that a customer often moves money to a crypto account in their own name before moving it on again to the scammer - to have been able to identify the risk of harm from fraud.

I've then thought about what would have happened if Lloyds had intervened and asked proportionate questions when Mr W made the £4,754 payment request. I see no reason why Mr W wouldn't have told the truth. I think Lloyds should have asked Mr W questions around how he found out about the investment, what he understood about the investment and the return, why he was paying a cryptocurrency exchange and what he understood about regulation. And I think Lloyds would have warned Mr W about the risks involved in trading in cryptocurrency and the prevalence of scams in this area.

If Lloyds had done so I think it's more likely than not Mr W's loss would have been avoided. Mr W was responding to an advert on social media, he didn't have a good understanding of the investment he believed he was making. He had no documentation, had done little due diligence, and G was never registered with the FCA. So I think an effective intervention from Lloyds would have broken the spell of the scam and prevented Mr W from suffering financial harm.

Should Mr W bear some responsibility for his loss?

I've thought carefully about whether Mr W should share responsibility for his loss. On balance, I don't think he should. I say this because:

- Mr W was an inexperienced investor and didn't know what kind of checks he needed to complete to protect himself from cruel scammers.
- He completed a 'test' he thought to be appropriate by making a small payment and asking for this to be returned. When this was done seamlessly he was satisfied the opportunity was legitimate. I appreciate allowing a small 'withdrawal' to be made is a cruel trick played by scammers to entice a victim to part with funds, but Mr W wasn't aware of this.
- Mr W has said he was able to log into an online trading platform and could see how his investment was performing. It looked legitimate and made Mr W think he was dealing with a genuine company.

It is important to remember Lloyds is the expert in fraud prevention, and not Mr W.

Did Lloyds do what it could to recover Mr W's funds?

In this case Mr W's funds went to his account at a genuine cryptocurrency exchange and were then moved out of this account. In the circumstances, I don't consider there was any prospect of Lloyds recovering Mr W's funds.

In summary I find the second payment ought to have triggered Lloyds to intervene and had it done so it could have prevented Mr W's loss in part. From the available evidence I have not been able to assess if this intervention would also have prevented the loss of the first transaction.

Lloyds must therefore refund £4,754 and pay interest on the amount at the rate of 8% simple per year from the date of the transaction to the date of settlement (less tax if properly deductible).

Mr W accepted my provisional decision. Lloyds did not respond.

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 taken into account the relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time. The Contingent Reimbursement Model (CRM) Code doesn't apply in this case as the payments were made to an account in Mr W's own name.

As neither party submitted any new information or comments for me to consider, I have no reason to change the findings or outcome I set out in the provisional decision.

It follows I find Lloyds is liable for the second payment for the reasons set out above.

Putting things right

Lloyds must refund £4,754 to Mr W and pay interest on the amount at the rate of 8% simple per year from the date of the transaction to the date of settlement (less tax if properly deductible).

My final decision

I am upholding Mr W's complaint in part. Lloyds Bank PLC must now put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 13 December 2023.

Rebecca Connelley
Ombudsman