

## **The complaint**

Mr R, on behalf of G, is unhappy that Lloyds Bank PLC will not refund the money he lost as the result of an authorised push payment (APP) scam.

Mr R has used a representative to bring this complaint to this service. For ease, I will refer solely to Mr R in this decision.

## **What happened**

As both parties are familiar with the details of the scam I will not repeat them in full here. In summary, Mr R responded to an advert he saw on social media and decided to invest in cryptocurrency. On 16 November 2022 he sent three payments of £5,000, £10,000 and £5,000 to a new account in his name that the scammer had helped him open at an e-money institution, using remote access software. When he was later asked for £7,500 to cover fees and taxes - before he could access his investment - he realised he had been scammed and reported this to Lloyds.

Lloyds said as the payments were made to an account in Mr R's own name it could not raise this as a CRM (Contingent Reimbursement Model) claim. It said he should contact the e-money institution to see if it can recover any funds. It said Mr R should have done more to check if the investment was legitimate, and the payments were from a business account so large transactions are often to be expected.

Our investigator upheld Mr R's complaint in part. She said Lloyds ought to have intervened at the time of the second payment as it was out of character for the account. And it had done so effectively it could have prevented the losses from that point onwards.

Mr R accepted this assessment. Lloyds disagreed and asked for an ombudsman's review. It said it cannot be held liable for authorised payments Mr R was aware of and had intended to make to his own account. There was nothing suspicious about the activity that ought to have triggered the bank's intervention.

## **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 R made and authorised the payments. Mr R knew why he was making the payments. At the stage he was making these payments, he believed he was transferring money to a new account he had set up and from there he would be able to invest via a cryptocurrency trading platform. I don't dispute Mr R was scammed and he wasn't making the payments for the reason he thought he was, but I remain satisfied the transactions were authorised under the Payment Services Regulations 2017.

It's also accepted that Lloyds has an obligation to follow Mr R's instructions. So in the first instance Mr R is presumed liable for her loss. But there are other factors that must be taken into account.

To reach my decision I have considered the law, regulator's rules and guidance, relevant codes of practice and what was good industry practice at the time. To note, as the payments were not made to an account held by another person the principles of the Contingent Reimbursement Model (CRM) code do not apply in this case.

This means I think that Lloyds should have:

- been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.
- had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which financial institutions are generally more familiar with than the average customer.
- in some circumstances, irrespective of the payment channel used, taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.

In this case I think Lloyds ought to be held liable in part for the transactions. I'll explain why.

When Mr R made the second payment of £10,000 I think Lloyds ought to have intervened. There were no payments close to that value from the account in the last 12 months, and it meant the total he was transferring to a new payee in one day was £15,000.

Lloyds argues that it had no reason to intervene as the payments were made to an account in Mr R's name. But I'm not persuaded that the fact the payment was going to Mr R'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 an 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.

Lloyds also said as it was a business account higher value debits were not unusual – but we would expect it to consider the actual account history of G, rather than business accounts in general. And in that context I am satisfied the second payment was out of character.

I've then thought about what would have happened if Lloyds had intervened and asked proportionate questions when Mr R made the £10,000 payment request. I see no reason why Mr R wouldn't have told the truth. I think Lloyds should have asked Mr R questions to understand the basic context of the payment, such as how he found out about the investment; what he understood about the investment and the expected return; why and how he had opened the new e-money account he was moving money to; and whether or not the investment firm was regulated. And I think Lloyds would have warned Mr R about the risks involved in trading in cryptocurrency and the prevalence of scams in this area.

If Lloyds had done this I think it's more likely than not G's losses from the second and third payments would have been avoided. From an effective intervention it would have learnt Mr R was responding to an advert on social media; he had downloaded software to allow the scammer to 'assist' him; he had not completed much due diligence bar asking a friend who was a financial adviser for his opinion (they had said they could not advise him, they looked through the website together and he flagged it was not a UK regulated firm); and he would have been unable to talk with any specificity about the returns he expected. So there were a

number of red flags for Lloyds given the depth of knowledge it had about such scams, compared to Mr R.

Lloyds argues that there were negative reviews online at the time which ought to have stopped Mr R, but there were also positive reviews. And the company was not added to the FCA (Financial Conduct Authority) warning list until January 2023 – so after Mr R made his decision to invest.

Overall, I think an effective intervention from Lloyds would have broken the spell of the scam and prevented Mr R from suffering £15,000 of financial harm.

*Should Mr R bear some responsibility for his loss?*

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

- Mr R was an inexperienced investor and didn't know what kind of checks he needed to complete to protect himself from cruel scammers.
- He was only able to open a crypto account and start trading once he had supplied proof of identification. This made Mr R believe the opportunity was genuine as he thought only a legitimate financial institution would do such checks. I appreciate that asking for proof of identification is a trick played by scammers to make a scam appear legitimate and to entice a victim to part with funds, but Mr R wasn't aware of this.
- Mr R 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 R think he was dealing with a genuine company. The documentation, such as the trading terms and conditions, he received was also convincing to a lay person and new investor.

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

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

In this case Mr R's funds went to his account at a legitimate e-money institution and were then moved out of this account with the scammer's assistance. In the circumstances, I don't consider there was any prospect of Lloyds recovering Mr R'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 £15,000 of Mr R's losses.

### **Putting things right**

Lloyds must therefore refund £15,000 and pay interest on the amount at the rate of 8% simple per year from the date of the second and third transactions to the date of settlement (less tax if properly deductible).

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R, on behalf of G, to accept or reject my decision before 26 December 2023.

Rebecca Connelley  
**Ombudsman**