

The complaint

Mr S complains about Lloyds Bank PLC.

He says that Lloyds should refund him £220 he lost as a result of a scam he fell victim to.

What happened

In January 2023, Mr S came across a website advert for cryptocurrency supposedly endorsed by a well-known public figure (it should be noted that such an advert is almost certainly a fake endorsement).

He made contact with the supposed company and was persuaded to make an initial payment of £220. He then received a phone call who said the payment had not gone through as it was a 'pending payment' and that he would have to repeat the process and the initial transaction would then be returned to his bank.

Mr S then felt that something wasn't quite right – and contacted Lloyds to ask it to get back the payments he had made as he had been the victim of a scam.

Lloyds refunded Mr S one of the £220 payments as a gesture of goodwill but declined to refund him the rest of the money as it says Mr S didn't provide it with the correct information to process a chargeback.

Unhappy, he brought his complaint to this Service. Our Investigator looked into things but didn't think that Lloyds had done anything wrong.

Mr S asked for an Ombudsman to make a decision, so the complaint has been passed to me.

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 decided not to uphold this complaint for broadly the same reasons as our investigator. I know this will be disappointing for Mr S, so I'll explain why.

It isn't in dispute here that Mr S has been the victim of a scam and has lost money as a result. However, even when it is clear that a scam has taken place, and an individual has been tricked out of their money, it doesn't necessarily follow that a business will need to

refund the money that has been lost.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider having been good industry practice at the time.

In broad terms, the starting position at law is that a banks, electronic money institutions (EMI's) and other payment service providers (PSP's) are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (PSRs) and the terms and conditions of the customer's account.

Mr S authorised the payments in question here – so even though he was tricked into doing so and didn't intend for his money to end up in the hands of a scammer, he is presumed liable in the first instance. I understand that Mr S says that the second payment was taken without his permission – but I think that he gave permission mistakenly having been persuaded that the first payment was not successful as it was 'pending'.

But this isn't the end of the story. As a matter of good industry practice, Lloyds should also have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction

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

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

In this case, I need to decide whether Lloyds acted fairly and reasonably in its dealings with Mr S when he authorised payments from his account or whether it could and should have done more before processing the payments.

Having considered the payments Mr S made, I'm satisfied that they were not of sufficiently unusual or suspicious for Lloyds to have had any concerns that he was being scammed. Businesses can't be involved in every transaction – and I don't think that Lloyds could have been expected to intervene here.

Recovery of the payments Mr S made

One of Mr S's main complaint points is that Lloyds has not processed a chargeback – he also says that as the payments were 'pending' from his Lloyds account when he reported the issue to Lloyds that it should have been able to stop the payments.

But I'm afraid this isn't the case. Although the payments may have shown as 'pending' on Mr S's bank statement, the purchase of the crypto would already have been completed, so there would be no way to stop the payment at this point.

The only way Lloyds could have potentially retrieved Mr S's money would have been by instigating a chargeback to the merchant. Chargeback is a process by which disputes are resolved between card issuers (in this instance Lloyds) and the merchants. Chargeback isn't a right, but this service does consider it good practice to raise a chargeback, if within the time limits and if there is a reasonable prospect of success.

Lloyds says that Mr S didn't provide the correct information in time for it to process the chargeback request. Mr S says that Lloyds was obstructive in him trying to provide the evidence needed – and that he tried to provide what Lloyds asked of him.

I can understand why Mr S is so frustrated – I understand that he thinks that he would have been able to get his money back if Lloyds had accepted his remedy and information.

But even if Lloyds had raised the chargeback in time, I am sorry to say that I do not believe that it would have had any reasonable prospect of success. As I have explained above, a chargeback isn't a right - and it can be contested by the merchant, so it is not a guarantee of a refund.

In this instance, Mr S was purchasing cryptocurrency – so the service he wanted had already been provided by the merchant. The subsequent transfer of the Cryptocurrency to a different wallet (which is where the loss and scam took place) is therefore a separate matter. And so, this avenue would never have resulted in Mr S getting back his funds.

I am very sorry for the situation Mr S finds himself in as he has lost money here – but this is the fault of the scammers and not Lloyds, so I can't say that it should be obliged to refund him on this occasion, and while I know that it did decide to refund Mr S for one of the payments, I can't compel it to do so for the other payment when I don't think it did anything wrong.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 8 May 2024.

Claire Pugh
Ombudsman