DRN-4569131

The complaint

Mr and Mrs P are unhappy Lloyds Bank PLC won't reimburse them for the money they lost when Mr P fell victim to a scam.

What happened

Mr and Mrs P are partners in a business, for which they hold a business account with Lloyds. Mr P saw an investment opportunity online, relating to cryptocurrency. Mr P was encouraged to download remote access software, and to use an account he already held with a cryptocurrency platform (which I'll call 'C') to make his payments through. Unfortunately, and unknown to Mr P at the time, he was dealing with a scammer.

Mr P made a small initial investment using the card for the Lloyds account, then went on to transfer over £50,000 to his account with C, which was then passed on to the scammers. However, when he tried to withdraw his funds from the investment scheme, he was told he'd need to pay further fees before he could make any withdrawal. When he was then still unable to access his 'profits' Mr P realised he had been the victim of a scam.

Mr P contacted Lloyds to tell it what had happened. But ultimately Lloyds told him it would not be able to refund the money he and Mrs P had lost. It said the loss had been from Mr P's account with C and that he should contact them to see if they could help.

Mr and Mrs P were unhappy with Lloyds's response and so referred their complaint to our service. One of our Investigators looked into what had happened, and ultimately they felt that Lloyds should have stepped in to question Mr P about the sixth payment he made – which was for £12,700. They felt that, if Lloyds had done so, then the scam would have been uncovered and at least some of Mr and Mrs P's loss could have been prevented. However, the Investigator also felt that Mr P should bear some responsibility for what had happened. They did not consider he had done enough to ensure the firm he was dealing with was legitimate, and felt there were some red flags which should have indicated to him that something may be amiss.

So our Investigator recommended that Lloyds refund 50% of the payments made from the sixth payment onwards, plus some interest.

Mr and Mrs P accepted the Investigator's findings, Lloyds did not. It maintains that the payments were not unusual given the account history, and so does not agree that the payments should have been flagged. In any case, it does not feel that any intervention would have stopped Mr P from making the payments, and reiterates that the loss was from Mr P's account with C, not from Mr and Mrs P's Lloyds account.

As no agreement could be reached, this case has been passed to me for a 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.

Having done so I've reached the same conclusion as our Investigator, and for the same reasons.

It's not disputed that Mr P authorised the payments that are the subject of this complaint. So as per the Payment Service Regulations 2017 (which are the relevant regulations in place here) that means Mr and Mrs P – as the account holders – are responsible for them. That remains the case even though Mr P was the unfortunate victim of a scam.

Because of this, Mr and Mrs P are not automatically entitled to a refund. But the regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams.

Taking the above into consideration, I need to decide whether Lloyds acted fairly and reasonably in its dealings with Mr and Mrs P, or whether it should have done more than it did.

Mr and Mrs P's Lloyds account was one they used regularly for day-to-day business expenses, so there was a significant transaction history for Lloyds to compare any new payments to. And Mr and Mrs P did regularly make high value payments and transfers from their account. I also acknowledge that the payments in dispute here were made to an account with C in Mr P's own name, and so would have appeared less risky overall to Lloyds. However, just because a payment is to an account in the consumer's own name that does not mean it bears no risk at all, and I would still expect Lloyds to keep an eye out for particularly high payments or those that bore other hallmarks of potential fraud, even if those payments were made to another account belonging to their customer.

I say this because this kind of payment journey – where payments are made from an account with one bank, to accounts in the same consumer's name at other banks, e-money providers, or cryptocurrency platforms – is increasingly a feature of this kind of investment scam. And I would expect Lloyds to have an awareness of how these scams operate and be aware of what it should be looking out for to help protect its customers.

The first few payments made by Mr P were for relatively low amounts, given how the Lloyds account usually operated, and were made over an extended period of time with a few days between each payment, so I don't think there was enough to have suggested to Lloyds that these payments were potentially putting Mr and Mrs P at risk of financial harm at that stage. But I agree with our Investigator that the sixth payment, which was for £12,700, should have flagged as potentially suspicious to Lloyds, despite the fact that it was a payment to an existing payee, and the account it was being paid into was in Mr P's name.

I say this because by this time I think a pattern was beginning to emerge that had some of the hallmarks of an investment scam. Specifically, payments were being made to a cryptocurrency account for increasing amounts and at an increasing pace – the £12,700 payment was only a day after the previous payment. I acknowledge that, on value alone, this payment may not have been out of the ordinary, but it was still for a fairly significant amount, and bearing in mind the other features of the payment I think Lloyds should have contacted Mr and Mrs P directly to ask them some questions before allowing this payment to go through.

Had Lloyds done this, then I think it is more likely than not that the scam would have been uncovered. Mr P doesn't appear to have been given a cover story to use by the scammer, so I think that if Lloyds had asked what the payments were for then he would have been open and honest. And what Mr P would likely have told Lloyds about what he was doing should have rung alarm bells for Lloyds, given that these types of investment scam are becoming increasingly common. Lloyds could then have explained the risks Mr P was exposing himself to, or provided a tailored warning about investment scams so that Mr P could consider the risks of his situation himself. And, had it done so, I consider it likely that the spell of the scam would have been broken and Mr P wouldn't have proceeded with the payments. So I think Lloyds could have prevented the losses Mr and Mrs P incurred from the sixth payment onwards.

I do, however, agree with our Investigator's finding that Mr P ought to have thought twice before investing such large sums of money. Mr P found the investment opportunity on social media – which is not how one would usually look for financial advice – and it doesn't appear that he carried out any independent research to ensure the people he was dealing with were legitimate. There were also issues with the way the scammers were operating that I think should have indicated to Mr P that he might not be dealing with a legitimate investment firm. In particular that he says he lost access to his account with C at some point during the scam but still continued to make payments to it. So with this in mind, I think it's fair and reasonable for Mr and Mrs P to bear responsibility for 50% of the loss.

I've also thought about whether Lloyds could have done more to recover the funds after Mr P reported the fraud. I'm satisfied that Lloyds could not have done more here. Mr P had transferred money to his own account with C before the funds were subsequently transferred on to the scammer. And C was a cryptocurrency platform, so the funds would then have not been retrievable.

So, in summary, I consider it fair and reasonable for Lloyds to refund 50% of the payments made from the sixth payment onwards, along with interest at our standard compensatory rate of 8%.

Putting things right

To resolve this complaint Lloyds should:

- Refund 50% of payments six to nine;

- Pay 8% simple interest per annum on this amount, calculated from the date of each payment until this complaint is settled.

My final decision

I uphold this complaint. Lloyds Bank PLC should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 14 March 2024.

Sophie Mitchell
Ombudsman