DRN-4594909

The complaint

Mrs B and Mr B complain that Lloyds Bank PLC won't refund the money they lost to an investment scam.

As Mr B had most of the dealings with Lloyds, for ease of reading, I'll refer to him alone in this decision.

What happened

The background to this complaint is well known to both parties, so I'll only summarise key events here.

Mr B says he had no prior experience of online investing and had no knowledge or experience of cryptocurrency. He saw an advert on social media saying that a well-known celebrity had made a huge profit on cryptocurrency. He received multiple calls from people wanting to help him trade and he decided to trade with a company I'll call 'C' after seeing lots of positive reviews about them online.

C instructed Mr B to purchase crypto from legitimate exchanges and would load his purchased crypto onto his C trading account. Mr B said all trades were organised via WhatsApp and remote access.

From 26 October 2022 to 28 December 2022, Mr B made 14 bank transfers totalling £155,900 from his Lloyds current account to his crypto exchange accounts. From there, Mr B thought he was sending his crypto to his C trading account. Mr B was able to make small withdrawals from his C trading account to his crypto exchange account.

Mr B realised C were scammers when they ceased all communication with him and he could no longer access their website. He contacted Lloyds for advice and subsequently complained.

Lloyds issued its final response explaining it wouldn't be refunding Mr B's payments. It said it stopped payments on multiple occasions, provided robust advice regarding crypto trading, along with warnings and clarified whether Mr B was investing with anyone's help – to which he replied no.

Unhappy with Lloyds' response, Mr B referred his complaint to this service.

One of our Investigators looked into things and felt that Lloyds sufficiently questioned Mr B at the time of his payments and provided warnings. He didn't think Lloyds should have reasonably done anymore than it did.

Mr B didn't agree and asked for an Ombudsman to review his complaint, he didn't think Lloyds' intervention went far enough.

The complaint has therefore been passed to me for determination.

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 don't uphold this complaint and I'll explain why.

Banks and other Payment Services Providers ("PSPs") have reasonable expectations to protect customers against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering (see below). But when simply executing authorised payments, they do not have to protect customers against the risk of bad bargains or give investment advice — and the FCA has confirmed that a fraud warning would not constitute unauthorised investment advice.

Neither party disputes that Mr B was the victim of a scam. From Mr B's explanation of his dealings with C, it would appear he fell victim to an investment scam. I've also found negative reviews online about C indicating that they are scammers. So on balance, I think it's most likely that this was a scam rather than just a genuine investment that went wrong. I must now go on to consider three more issues in order to determine the outcome of the complaint:

1. Should Lloyds have fairly and reasonably made further enquiries before it processed Mr B's payments?
2. If so, would Lloyds's further enquiries have made a difference and prevented or reduced the loss?
3. And if so, should Mr B bear some responsibility for the loss such that it would be fair and reasonable to reduce compensation proportionately.

Should Lloyds have fairly and reasonably have made further enquiries before it processed Mr B's payments?

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mr B's account is that he is responsible for the payments he authorised himself.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider to have 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 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 banks are generally more familiar with than the average customer; and
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made 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.
- Have been mindful of – among other things – common scam scenarios, the evolving fraud landscape (including for example the use of multi-stage fraud by scammers).

I've noted Lloyds' fraud detection systems highlighted multiple payments made by Mr B and spoke with him. Out of the fourteen disputed payments made, Lloyds spoke with Mr B on nine occasions through the payment journey and from Mr B's very first payment.

It's therefore unnecessary for me to consider whether I think Lloyds ought to have intervened as it's clear it had concerns at a much earlier point than I would have considered it should have reasonably intervened. It also intervened on more occasions than I think it needed to. I'll therefore consider whether I think Lloyds's intervention went far enough.

Would Lloyds's further enquiries have made a difference and prevented or reduced the loss?

I've listened to each of the intervention calls between Mr B and Lloyds and during the calls, Mr B was asked multiple times whether; anyone was helping him and whether he'd been asked to download remote software and he answered no (this wasn't true). Lloyds advised Mr B multiple times of the risks involved with cryptocurrency, including the FCA's advice on it and that customers should be prepared to lose all their money.

Although Mr B said he was managing his crypto all on his own, Lloyds warned him very early on that if he's ever approached by a broker offering to trade on his behalf or suggesting they could make him rich, it would be a scam.

On 5 December 2022 when Mr B made a payment of £20,000 (which was the largest disputed payment he'd made up until that point), Lloyds stopped the payment and had a conversation with Mr B. During the call, Lloyds explained to Mr B that it sees a lot of crypto fraud with its customers. It explained how investment scams work and said in summary; people are interested in making money and see adverts on social media, you're contacted by a broker from a company or specialist company, and they persuade you to open your own digital wallet so you feel very secure with it because you've done it with your passport. You send your money from your bank account to your wallet, and this is where they do the scam. They get you to send it from your wallet to their bank account or to their wallet and they'll begin to trade for you to maximise capital gain. And you'll never see your money again. Lloyds explained that banks can't trace the crypto from the digital wallet. Following this warning, Mr B was asked whether there was a third party or anyone involved in his trading, he said 'no', 'no there isn't'. In my judgement, the warning by Lloyds was very relevant to the scam Mr B had fallen victim to, he unfortunately chose not to disclose that he was working with a third party he'd found through social media. Mr B proceeded with the payment and sent another substantial payment of £23,000 the following day (where Lloyds also intervened). It's clear to me that Mr B was so bought into the scam that despite a very pointed warning from Lloyds, he was still willing to proceed.

I note Mr B feels Lloyds should have taken its interventions further for example, asking him to attend a branch and potentially contacting the police. I don't agree. Mr B explained to Lloyds that he'd been involved in crypto a few years ago (despite stating in his complaint that he's never dealt in crypto before) and decided to come back into it as it was making him money. There wasn't any hesitation in his responses to Lloyds' questions and he was clear on each occasion that he was doing this on his own. In my judgement, based on Mr B's responses, I don't think Lloyds would have had any reasonable indication that he could have been falling victim to a scam such that it would require him to attend a branch to ask him more questions.

I think it would have been reasonable for Lloyds to conclude that Mr B was making a high-risk investment but he wasn't being assisted by anyone, was in control of his account and was willing to lose money if things went wrong.

Because I don't think Lloyds could have done anymore than it did to prevent Mr B's losses, it is unnecessary for me to go on to consider whether Mr B himself was partly to blame for what happened (contributory negligence). Indeed, I have already concluded that he was responsible for his own investment decisions, and that such choices were the proximate cause of his losses.

I do appreciate this decision will be disappointing for Mr B, particularly as he's lost a substantial sum of money to scammers. But for the reasons I've explained, I can't reasonably hold Lloyds' responsible for his loss.

My final decision

My final decision is, despite my natural sympathies for Mr B's losses, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 27 April 2024.

Dolores Njemanze
Ombudsman