

The complaint

Mrs H and Mr H complain that Lloyds Bank PLC (Lloyds) won't refund money they lost in an investment scam.

What happened

What Mrs H and Mr H say:

Mrs H and Mr H are represented by a firm of solicitors.

Mr H came across an advert on Facebook for an investment firm (which I will call X). He says he trusted X as it was on Facebook, and the advert was apparently endorsed by a well-known TV personality. He clicked on the website link which took him to X's website. Mr H left his details and X's 'financial advisor' called him and said he had years of experience.

Mr H went through various regulatory checks – which he says gave it credibility. Mr H says the adviser got him to open account with a crypto wallet third party; and under his guidance, downloaded screen sharing software into his computer. Mr H says he gave X his bank account and debit card details, and X also had access to the crypto wallet.

Mr H made the following payments and received some credits to his account. He could see his investment apparently growing in value, so he was encouraged to send more money.
(continued)

Date	Payment type	Payee	Amount
28 November 2018	Debit card	Various payees – third party crypto wallet	£250
10 December 2018	Faster payment	Various payees – third party crypto wallet	£3,000

13 December 2018	Credit	Various payees – third party crypto wallet	(£387.33)
7 January 2019	Faster payment	Various payees – third party crypto wallet	£7,000
23 January 2019	Faster payment	Various payees – third party crypto wallet	£1,500
23 January 2019	Credit	Various payees – third party crypto wallet	(£250)
7 February 2019	Credit	Various payees – third party crypto wallet	(£895.08)
12 February 2019	Debit card	Various payees – third party crypto wallet	£4,000
14 February 2019	Debit card	Various payees – third party crypto wallet	£2,500
25 March 2019	Debit card	Various payees – third party crypto wallet	£3,925.64
25 March 2019	Fees	Various payees – third party crypto wallet	£0.50
25 March 2019	Fees	Various payees – third party crypto wallet	£117.37
Total loss			£20,761.10

When he wanted to make a withdrawal, Mr H was asked to send more money. At one stage (March 2019) the value of his investment reduced to zero - and he was told he had to put in more to make it up, which he then did.

He then lost contact with X – as the financial adviser stopped contact with him. He realised he'd been the victim of a scam. In May 2019, he got a call from a 'recovery firm' which said they could get his money back – but Mr H didn't fall victim to this further scam.

Mrs H and Mr H lost a lot of money. They'd banked with Lloyds group since the 1960s. Because of what happened, they've experienced a deterioration in their physical and mental health, shame, anger and embarrassment. They argue that Lloyds didn't give them sufficient protection. They'd not made any crypto investments before, and Lloyds should've seen this and stopped the payments. As it was, Lloyds allowed nine such payments in four months. Mr H was aged 82 at the time and was therefore considered as vulnerable.

Mrs H and Mr H say that Lloyds should refund the money they'd lost, plus interest at 8% per annum, and compensation of £300.

What Lloyds said:

Mrs H and Mr H complained to Lloyds in August 2023. Lloyds said:

- the Contingent Reimbursement Model Code (CRM) didn't apply as it came into being in May 2019, and the payments were made by debit card and /or to an account in Mr H's name.

- In December 2018, they intervened and stopped a debit card payment for £2,700 and blocked the account. Their online banking access was then unblocked.
- After that, Mr H tried to make another payment – and they told him about the risks of investing in crypto, but Mr H insisted it wasn't a scam and wanted to go ahead.
- On 25 February 2019, Lloyds stopped a payment and again explained the risks of what he was doing.
- On recovery, Lloyds contacted the overseas banks concerned but no funds remained. On the debit card payments - these were authorised in accordance with card scheme rules, and so couldn't be claimed back under the chargeback rules.

Our investigation so far:

Mrs H and Mr H brought their complaint to us. Our investigator didn't uphold it and said:

- the Contingent Reimbursement Model Code (CRM) didn't apply as it came into effect in May 2019. And it doesn't apply to debit card payments or international payments.
- Lloyds blocked a payment of £2,700 on 8 December 2018 but didn't provide any scam warnings. The block was removed, and Mr H then made a payment of £3,000 two days later. Ideally, Lloyds should've provided scam warnings then.
- On 11 December 2018, Lloyds stopped another payment and again spoke to Mr H. Our investigator listened to the call and was satisfied that Lloyds couldn't have been any clearer about the risks Mr H was taking in making the payments. The payment wasn't made, and Mr H's debit card was cancelled and reissued.
- Mr H then made a further payment of £7,000 on 7 January 2019. And by that time, there had been other (unrelated) payments of £12,000 and £6,000 on 24 December 2018 – so he didn't think Lloyds needed to intervene in the payment for £7,000. And even if they had, it wouldn't have made a difference, given the previous call.
- Lloyds intervened again on 30 January 2019. They gave Mr H more warnings.
- Lloyds intervened again on 25 February 2019 – when Mr H was attempting another payment. He was satisfied that sufficient warnings were given to Mr H about what he was doing.
- The chargeback process couldn't be used for the debit card payments – as the card transactions had been to a payee which had provided the services requested – to make the transfers.
- Lloyds had tried to recover money from the international banks involved, but without success.

Mrs H and Mr H didn't agree. They said:

- Even though warnings were given, Lloyds should've refused to make the payments.
- Lloyds should've invoked the Banking Protocol, notified a senior member of staff and if necessary, called the police.

- Lloyds should've also taken Mr H's age into consideration.
- Lloyds should be held liable for the payments, at least in part.

As Mrs H and Mr H didn't agree, the complaint has come to me to make a final 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.

I'm sorry to hear that Mrs H and Mr H have lost money in a cruel scam. It's not in question that Mr H authorised and consented to the payments in this case. So although Mrs H and Mr H didn't intend for the money to go to a scammer, they are presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. Taking into account the law, regulators 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 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.

I need to decide whether Lloyds acted fairly and reasonably in its dealings with Mrs H and Mr H when they made the payments, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides for refunds in certain circumstances when a scam takes place. But – it doesn't apply in this case. That is because it came into effect in May 2019 – after the payments in question.

The first consideration here is: if the payments were of a sufficient size and were out of character with how Mrs H and Mr H normally used the account – then we would expect Lloyds to have intervened and spoken to them about them. I looked at Mrs H and Mr H's account, and it's fair to say that the payments were unusual. The account was used to make day to day expenditures of fairly low value. The payments in question were connected to crypto currency investments – and some were international. So – they were sufficiently unusual for Lloyds to be concerned about some of them.

But against that, there's a balance to be made: Lloyds has certain duties to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. In this case, I think Lloyds acted reasonably in processing some of the payments - which were of a low value. By which – I mean the payments for less than £3,000 in this case. So – in this decision, I set these payments aside.

I considered the interventions that Lloyds did make – and in summary, Lloyds did give Mr H several firm warnings about what he was doing.

I listened to the calls.

Call – 8 December 2018: Mr H was trying to make a payment for £2,700. Lloyds blocked it. Mr H said he “was livid...I want to make the transaction...Can't get it again...” By this, I think Mr H meant he may be missing out on the investment opportunity he was presented with by the scammers.

Lloyds' call handler did say “*there's been an upsurge in fraud*” (hence the checks). But the account was then unblocked for Mr H to use again.

Mr H then went ahead and made another payment for £3,000 on 10 December 2018. Lloyds didn't intervene and neither would I have expected them to - given the low amount.

Call – 11 December 2018: Mr H's debit card was blocked after he tried to take money out of an ATM. The call handler immediately referred back to the payment of £3,000 made two days earlier. So it appears that was the reason for Lloyds' intervention – given the pattern of payments they could see.

Lloyds asked him what the payment was for – Mr H said it was for “sending money to another account.”

Lloyds: *was that for crypto currency?* Mr H: yes

Lloyds: *with what company?* Mr H: firm X.

Lloyds: *where are they based?* Mr H: the guy I was speaking to was in London.

Lloyds: *How did you find the company?* Mr H: on the internet.

Lloyds: *Did they call you?* Mr H: yes

Lloyds: *How much did you know about the company?* Mr H: they were recommended by (TV personality)

Lloyds: *Do you have the website address?* Mr H: surely it's up to me where I put my money?

Lloyds: *Of course but how do you know it's not a scam?* Mr H: because it's made me quite a bit of money so far.

Lloyds: *So you've had a return?* Mr H: yes

Lloyds: *Did it come into your account?* Mr H: not yet

Lloyds: *So you've not been able to withdraw it?* Mr H: no not yet.

Lloyds then gave a series of tailored warnings to Mr H:

“from the situation you’re describing Mr H, we’ve heard unfortunately of a lot of scams with this particular issue, you mentioned the company based in London...they’re coming through as based in Cyprus, they’re coming through as a different name as what you’re telling me. So all these would ring some bells that it could possibly be a scam... Have they said they will call you back? When? Mr H: yes, but I don’t know when.

Right so, again can’t say 100% this is a scam and as you said it’s your money and you can do what you want with your money. But in my experience exactly what you’re describing we’ve had customers who’ve fallen victim and it’s turned out to be a scam.

Potentially, they’re coming up as a company based in Cyprus, coming up as a strange name, it’s a large amount – hitting every sort of trigger we have, and they’re telling you they’re in London but they’re not... Mr H: I’m 82 years old.

What you’re describing...this is the exact type of people that they would target people that aren’t totally computer literate....

Even with you saying (TV personality), we know that that’s a big scam, they’ll mention (his name) and they’ll advertise it that he endorses it when he doesn’t...

...look into it a bit further. If you use the internet all you need to do is search (TV personality) scam, you’ll see a lot of stories, if you read the stories, they’ll be exactly describing your situation that you’re telling me...

...Again I can’t be 100% sure here, but my advice would be get on and get out your money as soon as you can...at the moment there is a security check on your card, I’d be reluctant to remove that as this could potentially be a scam...

(TV personality) he put out sort of his own stuff, saying I do not endorse this so they’re obviously using his name and face and he’s had to come out and say he’s not involved with this...a lot of them are scams... best to look into, do your research first...”

Lloyds call handler then looked at the TV personality’s website and said *“I looked at (TV personality) website and it says that I don’t do adverts if you ever see my face or my name it’s usually a scam. That’s on his direct website”.*

Therefore, I’m satisfied that Lloyds gave Mr H considerable warnings about the risks he was taking on and explained why. I don’t think Lloyds could’ve done anymore.

Mr H then made a further payment of £7,000 on 7 January 2019. I’ve considered whether Lloyds should’ve also intervened at those point. Given the amount of the payment, they might reasonably have stopped it and contacted Mr H again.

But even if they had, I’m satisfied Mr H would’ve gone ahead anyway – he had received significant warnings about what he was doing in the earlier call, and I don’t think a further intervention would’ve made any difference – as Mr H had chosen to ignore what Lloyds had told him by making the further payments.

Call – 30 January 2019: A further payment had been blocked and Lloyds spoke to Mr H again. Lloyds said: *“and you’re aware of the risks involved...a lot of them turn out to be scams, are you happy to make these payments?”* Mr H: I’ve paid it before, I’ve done it before...I don’t think the banks like it because I make more money from them than the bank can.

Lloyds: *"and have you received any money as of yet, because that's usually when the difficulty comes through because they don't release the money to you just to make you aware of that....but it's entirely up to yourself, so if you want me to update the card I can do that for you, we have to advise of the situation with these types of companies."*

So here, I'm satisfied that Lloyds gave sufficient warnings to Mr H.

Mr H then made a payment of £4,000 on 12 February 2019 - I've considered whether Lloyds should've also intervened at that point. Given the amount of the payment, they might reasonably have stopped it and contacted Mr H again. But had they done so, I'm satisfied Mr H would've gone ahead – he was making the payments despite the warnings he had been given.

Call – 25 February 2019: Mr H was trying to make a further payment for USD238. It was stopped again by Lloyds. Mr H was again given significant warnings:

Lloyds call handler asked Mr H what he was trying to buy. Mr H said, "do I have to tell you that?"

After Mr H gave some more details, Lloyds gave him some more warnings:

"..but if you're not sure what currency you're paying, the name of the company, flags up a few concerns from this end... this company is based in Nigeria, don't know why they're claiming the funds in American dollars....given the fact that they're saying Lithuania, claiming the currency in USD and information online indicates this place is based in Nigeria, there's a lot of things that don't add up. Even the sum of money isn't quite what you agreed to pay there..."

from the bank's point of view there are two options – 1. Everything fine with the company and remove security check and get card working. 2. to make under the assumption that there may be something more unusual about the company and not being as honest or forthcoming of intentions that he may be thinking" Mr H said: I would assume everything is OK.

Lloyds: *"if that's what you want to do, we can get security checks removed and card working again. But if that's the case and anything goes wrong and if it's a scam and more fraud comes out of the account afterwards then the bank wouldn't be liable and we wouldn't be able to refund any scam or fraud as we're going by your confirmation that the company is fine... one thing about this company is that they aren't registered or working alongside FCA in any way so there is no guarantee or protection with this company in the slightest. Having looked at (firm X)...there's some relatively low reviews from people who've used them before...averaging at about 1 out of 5 stars..."*

Mr H then admitted that he had likely been scammed and had given his card details to the scammers. Lloyds cancelled his debit card and advised him that as he'd authorised the payments, it wasn't a fraud they could refund or get the money back from the payees.

But – I can then see that Mr H made a further payment of £3,925.64 on 25 March 2019, despite these warnings.

So in summary, I'm satisfied that Lloyds gave substantial and tailored warnings to Mr H about what he was doing. And so - I don't hold Lloyds liable to refund the money he paid.

Mrs H and Mr H say Lloyds should've invoked the Banking Protocol (BP), which I've considered. But the BP is designed for calling the police when payments are being made in a branch – and these were online/debit card payments. So the BP isn't relevant here.

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether Lloyds took the necessary steps in contacting the bank that received the funds – in an effort to recover the money. Lloyds told us they contacted the recipient bank, and no funds remained to be repaid. Given that the scam took place in 2019, and Mrs H and Mr H complained to Lloyds in August 2023 – this wasn't a surprise – as normally in such scams, funds are removed from the recipient bank immediately.

I've also considered whether a claim could be made under the chargeback process for debit cards. The scheme is a voluntary one – customers are not guaranteed to get money refunded, and there are strict scheme rules in place by the card schemes (e.g. Visa and Mastercard) which govern chargebacks. In general terms, the chargeback can provide a refund where a customer has bought goods or a service which isn't provided or is not what was advertised.

So – that isn't the case here. This was an authorised payment and a chargeback had no reasonable prospects of success. And in any case, any claim which was made so long after the payments is likely to be out of scope under the scheme rules for chargebacks.

I'm sorry Mrs H and Mr H have had to contact us in these circumstances. I accept they've been victims of a cruel scam, but I can't reasonably hold Lloyds responsible for their losses.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 12 March 2024.

Martin Lord
Ombudsman