DRN-4636964

The complaint

Mr T complains on behalf of his company 'T', which holds an account with Lloyds V. Mr T is the sole director of the company, so for ease I will refer to Mr T throughout the decision.

Mr T says that Lloyds didn't do enough to protect him when he became the victim of a scam and would like Lloyds to refund the money his company lost as part of the scam.

What happened

The details of what happened are well known to both parties, so I won't repeat them here.

In summary, Mr T was looking for work, and unfortunately fell victim to a task-based job scam. It was explained to Mr T that he would need to use cryptocurrency in order to purchase tasks to complete, after which he would be paid his money back plus commission. Mr T made three payments, totalling £1,890.

However, when Mr T went to withdraw his commission, he was told he needed to pay further fees. He spoke with Lloyds when he was trying to make a fourth payment and was told it was a scam.

Mr T complained on behalf of his company – he said Lloyds should have prevented him from making the payments and would like it to refund the loss.

Lloyds didn't uphold the complaint, so Mr T brought it to this Service. Our Investigator looked into things but didn't think the complaint should be upheld.

Mr T asked for an Ombudsman to make a final 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 Mr T's complaint for broadly the same reasons as our Investigator. I know this will be disappointing for Mr T, so I'll explain why.

It isn't in dispute here that Mr T 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 T authorised the payments in question here – so even though he was tricked into doing so and didn't intend for the money to end up in the hands of a scammer, he is presumed liable in the first instance.

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 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.

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

Having considered the payments Mr T has made, I'm afraid I don't think that any of the individual payments were significantly unusual or uncharacteristic enough for Lloyds to have first got in touch before processing the payments on request.

As I've explained above, there is a balance to be struck – and it is not reasonable for Lloyds to be involved in every transaction made, and I don't consider the amount of these payments to be high enough for Lloyds to had concerns of risk of financial harm. And while the payments were going to crypto, not every payment for this purpose is part of a scam.

I am very sorry that for the situation Mr T now finds himself in – I know that he only took up the opportunity to try and earn money as he was struggling financially as a freelance worker – and that the funds lost mean that he cannot afford the fees to close down his business. To get a refund of funds from Lloyds would be incredibly helpful. But the loss here is caused by the scammer – not Lloyds, and I can't ask it to refund any money when I don't think it has done anything wrong.

My final decision

I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask T to accept or reject my decision before 7 June 2024.

Claire Pugh
Ombudsman