

## **The complaint**

Mr and Mrs S complain that Lloyds Bank PLC didn't do enough to protect them from the financial harm caused by an investment scam, or to help them recover the money once they'd reported the scam to it.

## **What happened**

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mr and Mrs S were told about an investment opportunity by friends who said they'd made a profit from investing with a company which I'll refer to as "L". The friends said they had researched L and that they had successfully withdrawn some of their profits.

After hearing about the opportunity, Mr S and Mrs S looked up L and were subsequently contacted by someone I'll refer to as "the scammer" who claimed to work for L and who said they were guaranteed to profit from the investment.

Mr and Mrs S agreed to begin with an initial investment of £500. The scammer advised them to first purchase cryptocurrency through a cryptocurrency exchange company which I'll refer to as "C" and then load it onto an online wallet. Between 29 March 2022 and 13 July 2022, they made eight faster payments to C totalling £109,700. On 31 March 2022, they received two withdrawals into their Lloyds account from C for £18,716.90 and £394.04, leaving the total loss at £90,589.06. The payments were mostly funded by large payments into the account and by two loans, with 'home improvements' having been specified as the reason for the first loan.

Mr and Mrs S were given log in details for the trading platform, where they could see their profits. In July 2022, the scammer said that due to abnormal trading conditions, their money had gone, but they could buy insurance that would protect them from further losses and recover 85% of their money. They purchased the insurance for £13,000 and before being prompted to invest a further £5,000, which would enable them to make a withdrawal.

Mr and Mrs S realised they'd been scammed when they didn't receive the withdrawal, they lost contact with the scammer, and they could no longer access the trading platform. They complained to Lloyds, but it refused to refund any of the money they lost. Their representative said Lloyds had allowed payments to a cryptocurrency exchange without giving appropriate warnings and that it should have contacted them because they were making large payments in quick succession to the same merchant. They said it should have provided a tailored warning and that its failure to do so represented a missed opportunity to warn them about the potential risks associated with cryptocurrency investments and to expose the scam. They said Mr and Mrs S had limited experience of buying cryptocurrency and believed the investment was legitimate, and that Lloyds should have invoked the Banking Protocol, keeping in mind they may have been given a cover story.

Lloyds said the payments weren't covered under the Contingent Reimbursement Model ("CRM") Code because the funds had been sent to an account in Mr S's name, and the loss occurred when the funds were then sent from C to the trading platform.

It said payments weren't out of character for the account in either value or frequency, and the funds were sent to an account held in Mr S's name, so it had no reason to intervene. It said the first two payments were relatively low value, and although they were made in quick succession, this wasn't out of character, so its system didn't identify a scam risk. It said the payments were funded by large credits into the account and as this was in keeping with genuine account activity, there was no reasonable indication that Mr and Mrs S were at risk of financial harm.

It said that if Mr and Mrs S had taken reasonable steps to research the investment, they would have been aware that the Financial Conduct Authority ("FCA") had issued a warning about the risks of investing in cryptocurrency. Further, they had gone ahead with the investment despite not being provided with any investment literature or a contract and the offer to pay a fee to recover lost funds should have been a red flag, as should the fact they were told they were guaranteed to make a profit.

Our investigator didn't think the complaint should be upheld. She thought Lloyds should have intervened when Mr and Mrs S transferred £25,000 to C, because they'd transferred £17,000 the day before, making the cumulative total for two days £42,000, which was unusual for the account.

But she didn't think this would have made any difference because even though the FCA had published a warning about L in May 2022, this predated the payments, and she couldn't find any other adverse information which would have been available at the relevant time. She noted Mr and Mrs S had believed the opportunity was genuine as their friends had told them about the L having made a profit from their own investment.

She also noted that on 31 March 2022, Mr and Mrs S had successfully withdrawn £19,110.94 from C, which would most likely have reassured them that the investment was genuine. She explained that Mr and Mrs S had said the withdrawal wasn't related to the investment, but she thought that being easily being able to withdraw a significant amount of cryptocurrency would have provided some reassurance to the extent that an intervention by Lloyds wouldn't have made a difference.

Finally, she didn't think Lloyds needed to intervene at any later point because sending large amounts had become normal for the account. And she didn't think there was any chance of a successful recovery because Mr and Mrs S had purchased cryptocurrency and moved it onto a wallet address.

Mr and Mrs S's representative has asked for the complaint to be reviewed by an Ombudsman arguing that the third payment should have triggered Lloyds' fraud systems. They have said Lloyds should have asked Mr and Mrs S what they were investing in, whether there was a third party involved, who they were transferring the cryptocurrency to, whether they'd checked the reviews and how they found out about the platform, and had they done so they'd have realised there were red flags present and the scam would have been detected.

### **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 largely the same reasons. I'm sorry to hear that Mr and Mrs S has been the victims of a cruel scam. I know they feel strongly about this complaint, and this will come as a disappointment to them, so I'll explain why.

The Contingent Reimbursement Model ("CRM") Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Mr and Mrs S says they've fallen victim to, in all but a limited number of circumstances. Lloyds has said the CRM code didn't apply in this case because Mr and Mrs S were paying an account in their own name, and I'm satisfied that's fair.

I'm satisfied Mr and Mrs S 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although they didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of their bank account, Mr and Mrs S are presumed liable for the loss in the first instance.

There's no dispute that this was a scam, but although Mr and Mrs S didn't intend their money to go to scammers, they did authorise the disputed payments. Lloyds is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

### *Prevention*

I've thought about whether Lloyds could have done more to prevent the scam from occurring altogether. Buying cryptocurrency is a legitimate activity and from the evidence I've seen, the payments were made to a genuine cryptocurrency exchange company. However, Lloyds ought to fairly and reasonably be alert to fraud and scams and these payments were part of a wider scam, so I need to consider whether it ought to have intervened to warn Mr and Mrs S when they tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect Lloyds to intervene with a view to protecting Mr and Mrs S from financial harm due to fraud.

The payments didn't flag as suspicious on Lloyds' systems. I've considered the nature of the payments in the context of whether they were unusual or uncharacteristic of how Mr and Mrs S normally ran the account and I think they were. All the payments were to a legitimate cryptocurrency exchange in Mr S's name and so the payee wasn't concerning. But payments to cryptocurrency merchants are subject to greater scrutiny as they are considered high-risk, and while the first two payments were low-value, payments three and four were large payments and ought to have raised concerns.

Lloyds has explained that it didn't intervene when Mr and Mrs S made the third payment because it followed a large deposit into the account, but I think ought to have contacted Mr and Mrs S either before payment three or payment four. It should have asked why they were making the payment, whether there was a third party involved and if so how they met them, whether they'd downloaded remote access software, whether they'd been promised unrealistic returns, whether they'd made any withdrawals, whether they'd been coached to lie, whether they'd done any due diligence and whether they'd been advised to make an onwards payment from the cryptocurrency exchange.

I note Mr and Mrs S said the loan funds were being used for home improvements, but this doesn't necessarily mean they'd have lied during a conversation with a Lloyds agent, and there's no evidence that they were coached to lie. And if they had described the circumstances of the investment, I think this would have prompted Lloyds to give them a

tailored cryptocurrency investment scam warning and advice on additional due diligence. But I agree with our investigator that this is unlikely to have made a difference.

They didn't do any research before going ahead with the investment because their friends were satisfied by the research they had done. And there was no evidence available online which would have confirmed that L was operating a scam, so if Mr and Mrs S had followed advice to do some research, they wouldn't have found anything to confirm L was operating a scam. It's also significant that they learned about the scam through friends who had told them they'd made a profit and that they'd successfully withdrawn funds from the platform, as opposed to having been cold called or approached on social media, and I think this would have reassured them that the investment was genuine to the extent that a scam warning wouldn't have prevented them from making any further payments to the scam.

Further, as our investigator has pointed out, they made a large withdrawal from C on 31 March 2022 and so if Lloyds had intervened and they tried to make a withdrawal, I'm satisfied this would have reassured them further, whether or not the withdrawal related to the scam.

So, while I agree that Lloyds missed an opportunity to intervene at the start of the scam, I don't think this represented a missed opportunity to have prevented Mr and Mrs S's loss and so I can't ask it to do anything to resolve this complaint.

I've considered whether Lloyds should have intervened at any later point and as the scam payments didn't increase in value, I don't think it should. And I don't think it was necessary to invoke Banking Protocol.

### *Compensation*

The main cause for the upset was the scammer who persuaded Mr and Mrs S to part with their funds and as I haven't found any errors or delays to Lloyds' investigation, I don't think they are entitled to any compensation.

### *Recovery*

I don't think there was a realistic prospect of a successful recovery because Mr and Mrs S paid an account in Mr S's name and moved the funds onwards from there.

I'm sorry to hear Mr and Mrs S have lost money and the effect this has had on them. But for the reasons I've explained, I don't think Lloyds is to blame for this and so I can't fairly tell it to do anything further to resolve this complaint.

### **My final decision**

For the reasons I've outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 28 October 2024.

Carolyn Bonnell  
**Ombudsman**