DRN-4915605

Financial Ombudsman Service

The complaint

Mr K complains that Lloyds Bank PLC (Lloyds) won't refund money he lost in an investment scam.

What happened

What Mr K says:

Mr K is represented by a third-party claims firm but I will refer to Mr K here.

Mr K found a crypto currency firm online and completed the online registration form. He paid a fee of £2. He was contacted by various 'investment managers' and was shown how the scheme worked. He was given access to his own online trading platform. The website was professional and showed the deposits were being received; and that strong investment performance was taking place. He made payments to an online crypto wallet and then to the crypto currency firm, under instruction from the scammers.

Over time, he was persuaded to invest more and more money. When he tried to make a withdrawal from the scheme, he was asked to pay in more money. He then realised he had been scammed. The payments were made between April 2019 and December 2019.

Then, in January 2020, he was contacted by another company which claimed to be acting to get his lost money back. For that, he paid a further amount of £4,371 in August 2020.

The payments (and refunds) were:

Date	Payment	Amount
10 April 2019	Faster payment - crypto wallet	£2
23 April 2019	Faster payment - crypto wallet	£1,000
24 April 2019	Credit from crypto wallet	(£2,000)
24 April 2019	Faster payment - crypto wallet	£4,000
24 April 2019	Credit from crypto wallet	(£3,999)
24 April 2019	Faster payment - crypto wallet	£4,000
24 April 2019	Credit from crypto wallet	(£3,999)
26 April 2019	Debit card payment - crypto wallet	£4,000 (bank intervention)
7 May 2019	Debit card payment - crypto wallet	£5,000 (bank intervention)

8 May 2019	Faster payment – credit card	£2,850
22 May 2019	Faster payment – credit card	£500
22 May 2019	Faster payment – credit card	£4,000
17 October 2019	Debit card payment - crypto wallet	£4,500 (bank intervention)
19 December 2019	Debit card payment - crypto wallet	£1,800 (bank intervention)
10 August 2020	Faster payment – recovery agent	£4,371
Total loss		**£26,023**

Mr K says Lloyds should've done more to protect him. He says he had very little investment experience, and no experience of investing in crypto currency.

Mr K says the first payment of £4,000 on 24 April 2019 was out of character and the bank should then have intervened but didn't. The bank should've asked open and probing questions. The bank would then have found out that the investment firm was unregulated; that he had downloaded a screen sharing software; he was asked to set up a crypto account to send funds to. These were all signs of scam and the bank was well placed to advise him to not go ahead. He says the money should be refunded, plus interest at 8% per annum.

What Lloyds said:

Lloyds said the transactions weren't unusual for Mr K. So, there wasn't a need for the bank to stop the payments. And as the money was sent to an account in Mr K's name, there was no loss of funds as a result of the payments made from the Lloyds account.

Our investigation so far:

Mr K brought his complaint to us. Our investigator didn't uphold it. He noted there had been a number of calls with Mr K about the payments and considered Lloyds did all they could to advise Mr K of the risks he was taking - but he wanted to go ahead with the payments.

Mr K (through his advisors) didn't agree. He said Lloyds' interventions weren't good enough. They didn't ask open questions; the bank was aware of scam trends and types; Mr K was in his 70s at the time; the payments were out of character for him to make; the bank didn't push him with follow up questions. There were clear red flags that should've been seen by the bank.

He says Lloyds should've refused to make the payments, asked Mr K to visit a branch and invoked the banking protocol (which involves calling the police).

Our investigator didn't agree and so Mr K's complaint has come to me to review.

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 Mr K has lost money in a cruel scam. It's not in question that he authorised and consented to the payments in this case. So although Mr K didn't intend for the money to go to a scammer, he is 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 Mr K when he 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 on 28 May 2019 – after most of the payments in question.

The first consideration here is: if the payment was of a sufficient size and was out of character with how Mr K normally used his account – then we would expect Lloyds to have intervened and spoken to him about them. I looked at his account, and there are regular payments of up to £1,000 leading up to the scam.

These were less that the scam payments and so, it was reasonable for Lloyds to intervene – which is what the bank did. And this decision comes down to the quality and content of the conversations with Mr K at the time he attempted to make the payments in question. I listened to the calls.

Call – 25 April 2019 – debit card payment: £4,000:

Lloyds stopped the payment and Mr K called the bank. Mr K explained that two earlier payments (the day before) had been returned by the payee bank and he had been asked to make payment to another bank/ wallet. Mr K couldn't recall how he found out about the investment firm.

During the call, Lloyds advised Mr K:

- That the firm was not regulated by the Financial Conduct Authority (FCA).
- This should give him cause for concern.

- The call handler warned Mr K about the risks of investing in crypto currency and using an unregulated firm.
- He said that if the investment went wrong, he would likely not get his money back.
- The call hander said it was odd that the returned payments the previous day were £1 short – that something didn't seem quite right.
- There were online reviews of poor experiences and people had lost money.
- All told, these were warning signs that Mr K should be aware of.
- Mr K should do some research into the firm.
- The call handler said he couldn't prevent Mr K from making the payments, but he should be aware of the risks he was taking.

During the call, and in response to the call handler's points, Mr K said:

- *"I'm diversifying my portfolio…I understand (the risks)".*
- "*I've said to myself I will commit this amount of money and no more…if I lose it it's not the end of the world".*
- (in looking at the online reviews pointed out by the advisor)…*"looking at it now, it's not encouraging".*

Call – 6 May 2019 – debit card payment: £5,000:

On this call, Mr K said he had gone through the questions before on the previous call.

Lloyds call handler said:

- The firm involved weren't registered or licensed.
- So if the money was lost, no one can assist Mr K, e.g. the bank.
- The call handler asked if Mr K had asked to make a withdrawal – he said he hadn't.
- The call handler said he should try to make a withdrawal- as this would make sure the scheme was OK.
- She said the investment was very high risk and to be careful.

Call – 16 October 2019 – debit card payment: £3,000:

A payment for £3,000 was stopped by Lloyds. Mr K said that in the past they'd been allowed to go through after questioning.

The call handler asked:

- Do you trust them enough (to go ahead)? Mr K said "yes".
- The account was then unblocked and Mr K said he would then make a payment for £4,500 – which he did.

Call – 18 December 2019 – debit card payment: £1,800:

Mr K said he'd made similar payments before – and that he could see the money had arrived in his crypto wallet.

The call handler said the firm weren't registered in the UK and making the investment was at Mr K's own risk. She asked if Mr K had tried to make any withdrawals – and he said he hadn't. She said that's when scams were uncovered. She then said 75% of people making such investments had lost money.

On balance, I'm satisfied that Lloyds gave sufficient warnings about the risks Mr K was making – and he accepted those and said he wanted to go ahead.

Moreover, Mr K came across as someone who was confident in what he was doing, and indicated he was an experienced investor – because of the reference to ‘diversification’ on two of the calls. In this context, I can see he received two credits of £5,000 and £4,599 into his account (in April 2019 and May 2019) – which appeared to be from share dealing. So, I’m persuaded that given this, Mr K was relatively experienced – and he had made a decision to take on the risk, as he had said to Lloyds.

Faster payments – to credit cards - £2,850; £500; £4,000. I’ve not seen any evidence that these were payments which were then moved to Mr K’s crypto wallet from the credit card accounts. And as he made regular payments to those credit cards previously, I don’t think it’s reasonable to have expected Lloyds to intervene in those. And - they were for relatively low values.

Payment - 10 August 2020 – £4,371: I considered whether Lloyds should’ve intervened here. And I don’t think it’s reasonable to say they should have. 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. This was a single payment for relatively low value – and it took place a long time after the initial scam payments. So, in this case, I think Lloyds acted reasonably in processing the payment.

Recovery:
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 lost money. But here, given the passage of time between the scam and the complaint being made to the bank, there was little chance of any recovery and no contact was made by Lloyds – which under the circumstances, I consider was reasonable.

I’m sorry Mr K has had to contact us in these circumstances. I accept he’s been the victim of a cruel scam, but I can’t reasonably hold Lloyds responsible for his loss.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr K to accept or reject my decision before 5 September 2024.

Martin Lord
Ombudsman