DRN-5046280

The complaint

Mr V, Mr V and Mrs V complain that Lloyds Bank PLC did not refund a series of payments they say they lost to a scam.

As Mr V was the individual actively involved in the investments and who primarily raised the complaint, I will mostly refer to him throughout this decision. This is not meant as a discourtesy to Mrs V and his father, Mr V.

What happened

Mr V was actively looking for investment opportunities in early January 2021 and found two companies he was interested in. I'll call them 'L' and 'B' for the purposes of this decision. For each of these investment opportunities, he was given access to an advisor who would help facilitate trades in commodities and in companies such as Tesla and Amazon. He had access to online platforms where he could see his trades, and he received a small amount of returns for B, as well as significant returns for L.

Mr V eventually felt both companies were operating as scams. For B, he was told he had lost significant funds on trades, so he needed to keep investing to be able to make more trades to recover. He was later told that in order to withdraw his balance of over a million pounds, he needed to pay various fees. Mr V had significant doubts about the validity of the fees and charges but paid these on a number of occasions. Eventually, when he still did not receive his returns, he blocked the company and realised he had been the victim of a scam.

For L, Mr V invested a significant amount of money in the company across various accounts he held, and between early 2021 and late 2022, he received returns somewhere in the region of £150,000. In November 2022, Mr V felt he had been lied to by L so they could get more money from him, and he felt he had been scammed. Mr V made the following payments from his Lloyds account:

Date	Amount
25/01/2021	£5,250
25/01/2021	£5,250
28/01/2021	£10,000
09/02/2021	£2.00
10/02/2021	£2,550
10/02/2021	£13,550
12/02/2021	£15,000
15/02/2021	£14,530
15/02/2021	£3,250

Mr and Mrs V raised a scam claim with Lloyds, via a representative, in June 2023. Lloyds responded and explained that they had intervened in some of the payments prior to them being processed and discussed them with Mr V over the phone. As Mr V had confirmed no third party was involved and he was happy with the risks, they did not think they had made an error in processing the payments. They also did not think Mr and Mrs V had suffered a loss, as while the amount debited from the account was £69,383, there was a total credited back to the account from a cryptocurrency exchange of £110,550 following the scam.

Mr V referred the complaint to our service and our Investigator looked into it. They were satisfied that B was a scam, but they did not think it was clear if L was a scam or not, as they still appeared to be operating two years after Mr V's last interactions with them. And while they recognised there was a warning about them operating while unregulated in the United Kingdom on the Financial Conduct Authorities ("FCA") website, they did not think this was evidence of a scam. In any event, they felt Lloyds had taken appropriate intervention and they did not think any more effective intervention would have prevented the loss.

Mr and Mrs V's representatives disagreed with the outcome. In summary, they argued that L was a scam due to the returns promised, the warning on the FCA website and how they operated in general. And they felt Lloyds' interventions were not sufficient as they did not ask probing enough questions.

As an informal agreement could not be reached, the complaint has been passed to me for 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.

As the payments were going to cryptocurrency wallets in Mr V's name, they are not covered by the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code, which provides additional protection to victims of authorised push payment ("APP") scams such as Mr V.

I've firstly considered whether the payments in question were made to scams, as Mr V has described. Having done so, I'm satisfied that B has the hallmarks of an investment scam. Mr V received token returns at the start of the process of around £5,000, and towards the end was told he had to pay various fees, taxes and charges to access the million pounds that B said was remaining in the account. However, each time he paid there was another excuse as to why they needed more money before he could withdraw the funds.

I've gone on to review L and I can see it was licensed in a different country to trade securities as an agent, but I do note that in January 2021 the Financial Conduct Authority issued a warning that L was not registered in the United Kingdom to trade. But this alone does not mean that L set out to defraud Mr V and take his money without providing him with a legitimate service.

Having looked into L further, I can see its license to trade securities in a different country was revoked in June 2022 but it continued to trade and still appears to have a website today. Mr V sent L a significant sum of money between January 2021 and late 2022, though it is difficult to quantify exactly how much due to the various accounts and currencies involved. But he also received around £150,000 in returns and while I recognise this was just a portion of what he sent; this was still a significant sum to receive back, which is not what we would generally expect to see if L was a scam. With all of this in mind, I can't say with certainty whether L was a scam, but to be fair to Mr V I have gone on to make an assessment as if he was the victim of a scam.

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 to be good industry practice at the time.

Broadly speaking, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. And a customer will then be responsible for the transactions that they have authorised.

It's not in dispute here that Mr V authorised the payments in question as he believed they were part of a legitimate investment. So, while I recognise that he didn't intend the money to go to scammers, the starting position in law is that Lloyds was obliged to follow his instruction and process the payments. Because of this, he is not automatically entitled to a refund.

The regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams. So, I've also thought about whether Lloyds did enough to try to keep Mr V's account safe.

I've reviewed Mr V's statements and compared the scam payments to his genuine account activity. In doing so, I can see he did make higher value payments in the months leading up to the scam, from around £3,000 to £22,000. So, I don't think the value of the payments were particularly unusual. But I do recognise that the pattern of the payments was quite frequent and Mr V did make multiple payments in just a few days to a new payee, so it could be argued that some form of intervention was warranted prior to the payments being processed.

I can see that a number of the payments were flagged for further checks and there were a few telephone calls between Mr V and Lloyds about them. The first payment of £5,250 was held and Mr V's account was frozen until he telephoned Lloyds to discuss the payment. I have listened to a copy of this call and on balance, I don't think Lloyds missed an opportunity to reveal the scam in it. I'll explain why in more detail.

In this call, the call handler gave a general investment scam warning, that consumers can respond to adverts for investment opportunities to expand their portfolios, and this can include cryptocurrency investments, and scammers could offer services that seem to be believable. He was asked who the payment was to, and Mr V confirmed the name of the payee which was Bitstamp. It should be noted this is the name of the cryptocurrency exchange Mr V was using, but was not the name of the 'scam' trading companies B or L.

Mr V was then asked if the payment was for an investment, and he confirmed it was. He added that he had been with the company for a long time, he had checked the account and he was happy it was not a scam as he had a history with them and it was not the first time he had used them. Mr V was then asked if he was sure the company was genuine and if he had checked they were regulated by the FCA, and he confirmed he was happy. He was asked if anyone had contacted him and asked him to make the payment, which he said no to and he went on to confirm a few more times that he was happy with the company and had used them before.

Mr V has told our service that he had not invested in cryptocurrency before, and I cannot see any earlier payment to Bitstamp, so it does not appear that Mr V had been using them previously. It's therefore unclear why he confirmed to Lloyds on multiple occasions in the call that he had been using them for a while and was happy that they were genuine. It's possible that in response to this question, he was talking about either B or L (Mr V has said the payment of £5,250 was connected to L whereas the communications between Mr V and B suggest the payment was connected to B). However, Mr V had only just started communicating with both L and B, and this appears to be the first significant payment to them, so I think it's more likely Mr V was exaggerating his relationship with the investment he was paying into.

I can see Lloyds had also asked if Mr V checked the FCA register and he confirmed he had, though I note L did have a warning against them as they were unregulated in the United Kingdom. As explained previously, there is some confusion about which 'investment firm' the initial payment was connected to, but I think this could have prompted Mr V to check the FCA website if he had any concerns about the legitimacy of the companies. And I think Lloyds acted appropriately by asking this question.

I note that Mr V talked confidently on the call, and came across as though investing was not new to him and he had an understanding of what he was doing. He said that no-one had told him to make the payment, which wasn't entirely accurate as he was making the payment under the guidance of the 'investment company' that was helping to facilitate the trades. Overall, based on the answers Mr V gave, I don't think Lloyds had reason to suspect Mr V may be at risk of financial harm. And I don't think they reasonably missed an opportunity to reveal the scam in the circumstances.

Lloyds went on to stop payments 2, 3 and 8, and Mr V spoke with them over the phone about each payment. The later calls did not go into as much detail, but each time he was asked what he was investing in as well as some other additional questions. For example, on the call regarding the third payment, Mr V was asked if he was able to log into his investment account and withdraw funds, and he confirmed he could. However, as far as I have been able to see, Mr V did not receive withdrawals from the trading website until after this time. And in each call, he confirmed he had been using the account for a long time, which I don't think was entirely accurate.

Overall, while I do think Lloyds could have gone into more detail on the later calls, I think it is unlikely a better intervention would have revealed the scam in the circumstances. Mr V appeared to be convinced by the scammers at that time as he had access to an online portal that looked sophisticated in which he could make his own trades, and based on his answers to the questions in the first call, I don't think Lloyds would have had concerns about the payments overall. I've taken on board the comments made by Mr V's representatives that Lloyds should have had concerns when he said in one of the calls that he was investing in commodities. However, it is possible to invest in commodities through cryptocurrency and the term commodities covers a broad range of things. So, I don't think this would have been an immediate red flag to them. And I don't think Lloyds needs to reimburse Mr and Mrs V in the circumstances

I've finally considered if Lloyds took the steps that it should have once the scam claims were raised. On balance, I think that had Lloyds contacted the beneficiary banks once it became aware of the scams, it would not have been able to recover the funds. I say this because the funds went into an account in Mr V's name, before being passed onto the scammer. So, the funds had already left the beneficiary account before the scam was reported. As such, Lloyds wouldn't be able to recover any of the funds.

I want to acknowledge that Mr and Mrs V lost a significant amount of money and I'm sorry they've gone through this experience. But I can't ask Lloyds to refund them their losses when I don't think they could reasonably have been expected to uncover the scam at the time the payments were made.

My final decision

I do not uphold this complaint against Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr V, Mrs V and Mr V to accept or reject my decision before 13 December 2024.

Rebecca Norris
Ombudsman