DRN-5203567

The complaint

Mr L complains that Lloyds Bank Plc has decided not to refund him after he was the victim of a scam.

Mr L is being professionally represented – I'll refer to his representatives as T.

What happened

Mr L fell victim to an investment scam. As a result, he made three payments to crypto currency platform in November 2023, totalling £2,773.
Lloyds said Mr L's claim was not covered by the CRM code. The payments here were made by open banking and deemed to be in line with Mr L's normal account activity and it didn't require intervention. Lloyds also couldn't request the money back as the payments couldn't be reversed and Mr L had already passed them on to the scammer.

T brought the complaint to our service on behalf of Mr L.

One of our investigators looked into things. In summary he said:

- The payments individually were of low value, and he wouldn't have expected Lloyds to have been concerned when Mr L made them.
- He compared this to the normal activity on the account and didn't think these payments appeared out of character.
- The three payments were spread over 13 days.
- Although the payments were going to a crypto account, he didn't think that in and of itself was enough to say Lloyds ought to have been on alert that Mr L was at risk of falling victim to a scam.

T responded to say it didn't accept the investigators findings. It said:

- The payments were made to a crypto business which of itself ought to have triggered further enquiries.
- Crypto scams are on the increase and other institutions protect consumers by barring or tightening their security measures and do so align to the Consumer duty which came into force in July 2023.
- The consumer duty puts an obligation on firms to avoid foreseeable harm.

The investigator considered these points but said these didn't change the outcome of the complaint. He said:

- The payments were relatively low in value and not enough for Lloyds to have had cause for concern.
- Although the second and third payments were made on the same day there is a balance to be struck between banks identifying transactions that could be fraudulent and minimising disruption to legitimate payments. These payments were not significant in value despite being made to crypto currency.

T responded to say our service had upheld a different complaint where payments from a Lloyds account were made to a crypto currency platform. T said whilst it was aware each case is decided on its own merits, Lloyds ought to have been aware of the increase in crypto scams at the time and should have considered payments made to such providers as high risk. T said that in the other case Lloyds weren't sufficiently cautious or robust and that applies in this case. T asked for an ombudsman to review the complaint.

As the complaint couldn't be resolved it 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.

And having carefully considered everything, I'm not upholding Mr L's complaint. I'll explain why.

I'll start by saying T has referenced a different complaint resolved by our service. But I would remind T that we decide each case based on its own merits. Not all payments to crypto providers will be upheld or indeed considered as an APP scam risk. Everything depends on the circumstances of the scam, the payments, the consumer etc. Here I've decided the outcome of this complaint based on the merits and facts as they occurred here to Mr L and his scam claim with Lloyds.

I've taken into account that these payments were made to cryptocurrency providers and I'm aware that scams involving cryptocurrency are becoming increasingly prevalent and well-known to banks. But, at the time these payments were made I also think it was reasonable for the bank to take into account a range of factors when deciding whether to make further enquiries of its customers about particular payments. In this case, the pattern and value of the payments wasn't consistent with fraud and did not indicate in my opinion a heightened risk of financial harm.

T says Lloyds has a duty to protect Mr L. But in broad terms, the starting position at law is that a bank, payment service provider or electronic money institution is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. And I have taken that into account when looking into what is fair and reasonable in this case.

I've considered whether there was anything about the circumstances surrounding the payments that could have put Lloyds on notice that they were being made as part of a scam. And I don't think there was.

I am satisfied that, taking into account longstanding regulatory expectations and requirements and what I consider to have been good industry practice at the time, Lloyds should *fairly and reasonably* have been on the look-out for the possibility of fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances.
But Lloyds ought only do this where it did or ought to have identified that Mr L might be at heightened risk of fraud. And here I don't think there was any indication of this from the payments Mr L made as part of this scam. I'll explain why.

Overall, I don't think the payments Mr L made, were inherently suspicious. In considering this I have to take into account what Lloyds knew at the time Mr L made the payments and not take a retrospective approach that we now know he was scammed.

Mr L's account had been open for a number of years and was used regularly. There were sufficient funds in the account and the payments left the account with a healthy balance. The payments themselves are not what would be considered as high in value, either individually or combined in their total value. And in terms of how they would look to Lloyds where it processes thousands of payments on any given day, I don't agree that these payments ought to be considered as high value and therefore suspicious. Also, when compared to Mr L's normal account activity he doesn't regularly make payments of over £1,000 but he has made several payments higher in value than this in the 12 months previous. And I've considered that the second and third payment were made on the same day and represent all but £100 of the total loss being claimed here. But as I've already set out the combined value of those payments is still not significantly high to warrant Lloyds to consider the payments as representing a scam risk. I also agree with the investigator that the £100 payment made 13 days earlier shows there doesn't appear to be the same urgency that we see in many scams.

In conclusion, I'm sorry that Mr L has been the victim of a scam, but I don't think the payments were so unusual that Lloyds should have been concerned Mr L was at risk of financial harm. So, I don't think Lloyds made an error by not intervening when Mr L made the payments.

My final decision

I don't uphold Mr L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 3 April 2025.

Sophia Smith
Ombudsman