DRN-5419191

The complaint

Mr B complains that Lloyds Bank PLC hasn't reimbursed the money he lost to a scam.

What happened

Mr B saw a celebrity-endorsed advert on social media for an investment opportunity with a company I'll refer to as 'E'. He registered his interest and an 'account manager' got in touch with him, offering him 40% returns over a six-month period.

Mr B made a small initial investment and was given access to a trading portal with E. He was in regular communication with E and saw his initial investment perform well, so he decided to invest more money. He sent the following payments to E from his Lloyds account, via a card transaction (payment 1) and via his own, established account with a cryptocurrency platform (payments 2 to 5).

Payment number	Date of payment	Amount of payment
1	7 September 2023	£1,910.00
2	12 September 2023	£16,805.10
3	25 October 2023	£14,200.00
4	26 October 2023	£11,000.00
5	8 November 2023	£8,600.00

Mr B also attempted to make two further payments via open banking, both for £16,705.10 on 12 September 2023, which did not go through.

Mr B was able to withdraw a small amount from his investment in September 2023, but he realised he'd fallen victim to a scam when he was unsuccessful in his attempts to withdraw a large amount. He reported the scam to Lloyds in December 2023.

Mr B has explained that:

- He had very little investment experience at the relevant time.
- Before investing with E, he attempted to protect himself by carrying out internet searches and reviewing E's website – his research did not raise any concerns.
- The fraudster created an impression of legitimacy by staying in regular contact, coming across as knowledgeable, giving him access to a trading portal and returning some investment profit.
- He felt the promised investment returns were realistic given the media's coverage of cryptocurrency returns.

Mr B has said that payment 2 was out of character and Lloyds should have intervened strongly, with a view to exposing the scam. He's said he wasn't being coached, so if the bank had intervened with the payment, then the scam, which had the hallmarks of a standard cryptocurrency investment scam, would've been uncovered.

Lloyds has said that it did intervene when the payments Mr B was making became unusual. Mr B told the bank that:

- He'd held his account with the cryptocurrency platform for several years.
- He'd been dealing in cryptocurrency for a while.
- He used his cryptocurrency account more as an alternate payment method than for investing, and the disputed payments were for home improvements.
- He had sole access to his cryptocurrency account.
- He hadn't been asked to make the disputed payments.
- No-one had given him investment advice or approached him via social media.
- He hadn't been told to lie to the bank.

Lloyds says that it discussed cryptocurrency investment scams with Mr B and gave relevant warnings. Specifically, it said:

"The UK's Financial Conduct Authority has publicly stated that investing in crypto-assets, which includes Bitcoin, generally involves taking very high risks and if consumers invest in these types of products, they should be prepared to lose all their money. On InvestSmart FCA, they have customer support, which will help customers make better decisions and will advise them to take time to understand both the opportunities and risks."

In response, Mr B said that he wasn't investing, and he knew about the risks of investing in cryptocurrency.

<u>*What did our investigator say?*</u>

Our investigator didn't recommend that Lloyds reimburse Mr B's financial loss because, although they felt that the bank should have intervened in the second payment, they said that it wouldn't have made a difference if it had done so considering an unsuccessful intervention which followed.

Mr B didn't agree with our investigator's findings. He questioned the quality of Lloyds' intervention and said that a better intervention would've been effective in halting the scam. He asked for an ombudsman's final decision, so the case was passed to me to decide.

<u>*My provisional decision*</u>

I issued my provisional decision on 5 March 2025. I'll set out my findings below.

It's common ground that Mr B 'authorised' the disputed payments. So, even though he was the victim of a scam, and he didn't intend to pay a fraudster, the payments were 'authorised' under the Payment Services Regulations. Lloyds had an obligation to follow Mr B's payment instructions, and Mr B is presumed liable for his loss in the first instance. But that's not the end of the story.

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I think that Lloyds should:

- Have been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering and the financing of terrorism.

- 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 (amongst 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 its customers from the possibility of financial harm.

I've looked at Mr B's account statements and I don't think the first payment he made to the scam ought to have stood out to the bank as unusual or out of character in consideration of the normal account activity. The payment was relatively low-value and, although Mr B tended to use his account frequently for very low-value transactions at the time, there were some regular payments and transfers out of the account to Mr B's own account/s for similar amounts to the first payment in the months leading up to the scam.

Mr B and our investigator have suggested that the second payment should've triggered Lloyds' fraud detection systems, and I am in agreement with them. I think it stands out as unusual and out of character. It is high-value, and by far the highest-value transaction Mr B had made in months. It was also destined for a cryptocurrency account and, at the relevant time, it's reasonable to expect Lloyds to have recognised that cryptocurrency related transactions carry an elevated risk (there had been widespread coverage in the media about the increase in losses to cryptocurrency scams, as well as regulator's warnings about the risk of cryptocurrency scams). Additionally, Lloyds had already identified a fraud risk with the open banking payments Mr B had instructed on the same day and they were pending a fraud check (the check took place on 18 September 2023 – after payment 2 had left the account). So, it's reasonable to expect Lloyds to have intervened proportionately with payment 2 before letting it go.

I've gone on to consider whether an intervention from Lloyds on payment 2 is likely to have made a difference and stopped Mr B from going ahead with the payment (or any other payments to the scam), and I think it would. I'll explain why.

I think there was a strong indication that Mr B was at risk of harm from fraud (particularly in light of the two open banking payments he attempted, and Lloyds stopped, prior to instructing payment 2), and a human intervention would've been appropriate in the circumstances. During such an intervention, I would expect Lloyds to have:

- Asked probing questions to get into the detail of the payment, providing context around the questions it was asking.
- Reacted to the information Mr B provided and questioned anything implausible or unusual.
- Been on notice that consumers might be equipped with a 'cover story', so their answers shouldn't always be taken at face-value – challenging them where there are reasons to think they might not be being truthful.
- Provided a warning specific to cryptocurrency investment scams, tackling some of the key features of this type of scam in a way which is understandable to consumers and ought to stand a better chance of breaking the spell than not.

Most consumers would take note of, and be positively impacted by, the type of intervention I've described, and I haven't seen anything to suggest Mr B wouldn't have been. So, if Lloyds had asked enough probing questions to get into the detail of payment 2 and satisfy itself that Mr B wasn't falling victim to a scam, and if it had imparted enough impactful information about cryptocurrency scams to bring them to life to enable Mr B to recognise any fraud risk, I think it would most likely have become obvious to the parties that there was a risk of harm from fraud and the scam would've unfolded without payment 2, or any other payments, being made.

In saying this, I acknowledge that a telephone conversation did take place between Mr B and Lloyds on 18 September 2023, and that it was unsuccessful in halting the scam. But, having listened to a recording of the telephone conversation, I think this is because of the quality of the intervention.

Lloyds told Mr B that he was sending a fairly sizeable amount to cryptocurrency using open banking for the first time, so it was cautious. The bank asked Mr B if he was new to cryptocurrency or had been doing it for a while. He replied that he'd been doing it for a while and he explained that he'd held his account with the cryptocurrency platform for years – primarily using it to make payments, not for investing, and he was currently making payments for *"house stuff"*. The bank gave a warning that investing in cryptocurrency is high-risk. It then asked if Mr B had sole access to his cryptocurrency account and he confirmed. It checked that Mr B hadn't received any investment advice or been approached by anyone on social media and he said *"nothing like that"*. And it asked whether anyone had told Mr B to lie to the bank – to which he replied *"no, all me"*.

I note that Mr B was confidently and intentionally misleading the bank and hindering its attempts to identify the fraud risk, but I think the bank ought to have done more to try to prevent financial harm during the interaction – for example, by probing and challenging Mr B appropriately instead of taking his answers at face-value, providing context around the questions it was asking Mr B and giving a fuller cryptocurrency investment scam warning. And, of course, Lloyds could've invoked the banking protocol if it was unable to break the spell of the scammer with its intervention – I think it's difficult to say that a police intervention here wouldn't have broken the spell.

I've gone on to consider whether Mr B should share some responsibility for his financial loss by way of contributory negligence but overall, I don't think he should.

There were undoubtedly some 'red flags' that I might have expected someone with experience of investments and/or fraud to have picked up on. For example, the level of promised returns. But Mr B has explained why these factors didn't raise alarm bells for him, and I don't find his explanations unreasonable.

Mr B did take some steps to protect himself prior to investing large amounts of money with E – such as, relying on a celebrity endorsement, carrying out internet searches and reviewing E's website, and investing a small amount initially. I haven't had sight of the trading portal he was given access to, but this tactic is often used by fraudsters in investment scams and is generally very persuasive.

There are more checks that Mr B could've carried out with the benefit of hindsight, to assure himself of the legitimacy of the investment opportunity – such as checking the Financial Conduct Authority register. But it doesn't appear he was aware he ought to carry out such checks at the time. And, in any event, such further checks are unlikely to have caused Mr B concern given the information that was available about E at the time.

I can't ignore what happened during Lloyds' intervention on 18 September 2023 – Mr B deliberately misled the bank. But it isn't unusual for consumers to be coached through interventions and to mislead their banks for what they believe to be legitimate reasons and, as I've set out previously, I think Lloyds ought to have been alive to the possibility that Mr B was giving it a cover story and taken steps to circumvent that.

Finally, I've thought about whether Lloyds could've done more to recover Mr B's funds but, due to the nature of the disputed payments, I'm not persuaded that it could.

Responses to my provisional decision

Mr B accepted my provisional decision, but Lloyds didn't. In summary, the bank said:

- The disputed payments went to Mr B's own cryptocurrency account, which he told Lloyds he'd held for years.
- The loss happened when Mr B moved the money on from his own cryptocurrency account.
- Mr B was given a clear investment warning during Lloyds' intervention, highlighting the Financial Conduct Authority's view on cryptocurrency investments and the risk of losing money.
- Mr B was dishonest with Lloyds when it intervened, hindering its ability to uncover the scam.
- A 40% return on an investment within a short period of time is too good to be true, and this ought to be obvious to even an inexperienced investor.
- I've said I haven't seen anything to suggest that Mr B wouldn't have been positively impacted by an intervention, yet, when Lloyds did intervene, Mr B was confidently and assuredly untruthful.
- If Mr B had been honest when Lloyds intervened, then it would've progressed towards asking more probing questions, but the bank had no reason to doubt what Mr B was telling it.
- Lloyds could not have intervened in a way that would've made a difference.
- Lloyds cannot deny making a payment without significant concern.
- Mr B did not carry out due diligence.

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.

Mr B has accepted my provisional decision and, although I appreciate that Lloyds doesn't agree with my provisional findings, in responding, it hasn't provided any new information or evidence that I haven't already considered. As such, I see no reason to depart from the conclusions set out in my provisional decision.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint and instruct Lloyds Bank Plc to reimburse payments 2 to 5 in full and pay interest at 8% simple per annum on the payments from the date they were made to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 21 April 2025.

Kyley Hanson
Ombudsman