

## The complaint

Mr and Mrs B have complained Lloyds Bank PLC failed to sufficiently intervene causing them to fall victim to an authorised push payment (APP) scam or recover their funds after it occurred.

## What happened

The background to this complaint is well-known to both parties, so I won't repeat it in detail here. In summary, Mr and Mrs B fell victim to an investment scam after submitting an enquiry online to what they believed to be a genuine investment firm. However, they discovered they had been scammed when they didn't receive their "profits" and the scammer kept making excuses as to why.

The relevant transaction history from Mr and Mrs B's Lloyds account statements are as follows:

Transaction	Date	Type of Transaction	Amount
1	5 June 2023	Debit card payment to cryptocurrency exchange	£300
2	5 June 2023	Debit card payment to N	£300
3	9 June 2023	Debit card payment to N	£100
4	16 June 2023	Faster payment to cryptocurrency exchange	£2,400
	19 July 2023	Payment from cryptocurrency exchange	£693
5	21 July 2023	Faster payment to cryptocurrency exchange	£50
6	24 July 2023	Faster payment to cryptocurrency exchange	£3,950
7	3 August 2023	Faster payment to cryptocurrency exchange	£8,000
8	10 August 2023	Faster payment to cryptocurrency exchange	£8,000
9	14 August 2023	Faster payment to cryptocurrency exchange	£8,000

Mr and Mrs B are not sure about the details surrounding payments 2 and 3, but for completeness I have included them.

Lloyds offered a refund of £15,249.11 in its final response which consisted of: 50% of Mr and Mrs B's loss from payment 4 (after any credits they received were deducted), 8% simple interest and £40 as an apology for not getting things right initially. Lloyds made this offer because it decided it could have done more when it completed its intervention during payment 4. I understand this amount has already been paid to Mr and Mrs B.

Mr and Mrs B believed Lloyds should have prevented their full loss and so referred the complaint to us. Our Investigator looked into things and didn't uphold Mr and Mrs B's complaint. She thought Lloyds' offer was fair.

As our Investigator couldn't resolve the matter informally, the case 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.

I'm aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focused on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

I've thought carefully about whether Lloyds treated Mr and Mrs B fairly and reasonably in its dealings with them, when they made the payments and when they reported the scam, or whether it should have done more than it did. Having done so, I am partially upholding this complaint.

I have kept in mind that Mr and Mrs B made the payments themselves and the starting position is that Lloyds should follow its customer's instructions. So, under the Payment Services Regulations 2017 (PSR 2017) they are presumed liable for the loss in the first instance. However, there are some situations when a bank should have had a closer look at the wider circumstances surrounding a transaction before allowing it to be made.

Considering the 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 - 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 payment service providers 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 decline to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

So, I've thought about whether the transactions should have highlighted to Lloyds that Mr and Mrs B might be at a heightened risk of financial harm due to fraud or a scam.

Payment 1 was to a cryptocurrency exchange, but that doesn't mean it should have automatically been treated as suspicious; particularly when there are no other concerning factors about the payment. Albeit investing in cryptocurrency is a highly risky endeavour, it is ultimately a legitimate one and so certain banks and Electronic Money Institutions (EMI) do permit transfers to cryptocurrency exchanges. As this was a small payment amount, I am not persuaded that Lloyds should have found this suspicious.

Payments 2 and 3 were also of small amounts and to a different payee than Payment 1. I've noted Mr and Mrs B are not entirely sure of how these payments related to the scam and have not been able to supply me with details surrounding them. Regardless of this they were

not unusual or uncharacteristic of how the account had been used before. Therefore, they would not have been remarkable enough to have caused Lloyds any concern.

However, I agree that it was fair of Lloyds to accept more could have been done to prevent Mr and Mrs B's losses when they made Payment 4. Although Lloyds has decided to pay for the losses from, and including, payment 4 I do not agree their deduction for contributory negligence is reasonable.

Mr and Mrs B clearly believed they had discovered a legitimate investment firm after reading an article published by a reputable company and conducting some online research. It's most likely this article was about a regulated investment firm with a similar name. However, instead of that firm's website they inadvertently found themselves on the similarly named scammer's website. To consider whether Mr and Mrs B's online research should have reasonably uncovered dubious findings, which should have been a red flag, I have also conducted a search. These searches did not, as at the date of the initial investments, return anything that I think should have caused Mr and Mrs B concern. I've noted Lloyds' evidence showing that subsequently information was posted highlighting the firm was a scam. However, I would not reasonably have expected Mr and Mrs B to continue researching an investment company they have already deemed, through their prior research, legitimate.

Although the tactics employed by the scammer were common, such as offering favourable return rates, they would nonetheless have been captivating to anyone unfamiliar with them. There were also relatively sophisticated aspects to this scam, such as a Mr and Mrs B having their own log in details to review the 'investment'. I don't think they could have reasonably known that the trading balance was likely fake or a simulation. Nor, do I think a potential lack of paperwork received at the outset ought to have raised any particular awareness of a scam occurring.

I have considered the emails which were exchanged between 8 – 10 August 2023, where a \$10,000 support bonus was offered, but at this point I'm persuaded Mr and Mrs B were under the scammer's influence. They had already sent seven payments and were under the belief they had generated high returns. So, it would not have been so much of an unreasonable assumption for Mr and Mrs B to believe the firm wanted to maintain a good customer relationship by offering a \$10,000 support bonus. So, I do not agree this should have been a red flag.

On balance, I have not seen sufficient evidence that Mr and Mrs B had any reason to doubt the investment was a real one. Therefore, I would not have expected them to complete more due diligence than they did.

### Recovery

The only method of recovery Lloyds has for the payments made by card is to request a chargeback. The first card payment was not made to the scammer directly, but to a cryptocurrency exchange. The service provided by the cryptocurrency exchange would have been to convert or facilitate the conversion of Mr and Mrs B's payments into cryptocurrency. If these funds had not already been transferred to the scammer, they would be in their control to access as and when they chose. The fact that the cryptocurrency was later transferred to the scammer doesn't give rise to a valid chargeback claim against the merchant Mr and Mrs B paid.

As Mr and Mrs B cannot remember the details of how the other two payments may have been part of the scam (if they were) they have confirmed I can disregard them. I did note Lloyds has also said it asked Mr and Mrs B for details about these payments, but they do not

appear to have supplied it with them either. So, I don't think Lloyds could have done more here regardless.

Therefore, I won't be asking Lloyds to do anything further.

### The Contingent Reimbursement Model Code

Although Lloyds has signed up to the Contingent Reimbursement Model Code, the transfers Mr and Mrs B made from their account aren't covered by the Code because they made the payments from their Lloyds account to their other account and not to another person. I cannot fairly and reasonably say that Lloyds should have to refund payments under the Code when it doesn't apply here.

So, in light of all of the above findings, there's no fair and reasonable basis under which I can ask Lloyds to reimburse Mr and Mrs B's loss.

### **Putting things right**

To resolve this complaint Lloyds Bank PLC should:

- Refund the loss Mr and Mrs B incurred from, and including, payment 4 less the 50% it has already refunded.
- Pay 8% simple interest per year on this amount, calculated from the date of loss until the date of settlement, minus any applicable tax.

### **My final decision**

My final decision is that I uphold this complaint in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 30 May 2025.

Lawrence Keath  
**Ombudsman**