

The complaint

Mr S complains that Lloyds Bank PLC (Lloyds) is refusing to refund him the amount he lost as the result of a scam.

Mr S is being represented by a third party. To keep things simple, I will refer to Mr S throughout my decision.

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Mr S came across a post on a friend's Instagram profile for the investment business Cryptosky (X) explaining he was able to make a substantial profit from a small investment. Mr S contacted his friend via Instagram who confirmed X was legitimate and put him in touch with X.

X contacted Mr S and explained he could start investing with a small amount. X instructed Mr S to set up an account with both Coinbase (a cryptocurrency exchange used to transfer funds to X), and its own platform.

Mr S recalls the platform looking legitimate with all the features he would expect from a genuine trading platform.

Following an initial investment Mr S could see his investment had grown and decided to make a withdrawal. However, every time he attempted to withdraw from the platform, he was asked to make further payments first. After making several payments and not receiving any withdrawals Mr S found that his friend's Instagram account had been hacked, it was not his friend posting about the investment, and he had fallen victim to a scam. Mr S had taken out several loans to fund the payments he made into the scam.

The following payments were made into the scam from Mr S's Lloyds account:

<u>Date</u>	<u>Payee</u>	<u>Payment Method</u>	<u>Amount</u>
22 July 2022	Coinbase	Debit Card	£10.00
22 July 2022	Coinbase	Debit Card	£200.00
22 July 2022	Coinbase	Debit Card	£790.00
27 July 2022	Simplex	Debit Card	£181.00
27 July 2022	Simplex	Debit Card	£2,200.00
28 July 2022	Moonpay	Debit Card	£181.00
28 July 2022	Moonpay	Debit Card	£1,048.00
28 July 2022	Simplex	Debit Card	£330.00
1 August 2022	Coinbase	Credit	- £61.79
5 August 2022	Coinbase	Debit Card	£760.00
5 August 2022	Coinbase	Debit Card	£53.00
5 August 2022	Coinbase	Debit Card	£10.00

Our Investigator considered Mr S's complaint and thought it should be upheld in part. He said Mr S and Lloyds should share responsibility for Mr S's loss. Mr S disagreed, so this complaint has been passed to me to decide.

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.

It has not been disputed that Mr S has fallen victim to a cruel scam. The evidence provided by both Mr S and Lloyds sets out what happened. What is in dispute is whether Lloyds should refund the money Mr S lost due to the scam.

Recovering the payments Mr S made

Mr S made payments into the scam via his debit card. When payments are made by card the only recovery option Lloyds has, is to request a chargeback.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. Time limits also apply.

Mr S was dealing with X, which was the business that instigated the scam. But Mr S didn't make the debit card payments to X directly, he paid separate cryptocurrency exchanges. This is important because Lloyds would only have been able to process chargeback claims against the merchants Mr S paid, not another party (such as X).

The service provided by the cryptocurrency exchanges would have been to convert or facilitate conversion of Mr S's payments into cryptocurrency. Therefore, they provided the service that was requested; that being the purchase of the cryptocurrency.

The fact that the cryptocurrency was later transferred elsewhere – to the scammer – doesn't give rise to a valid chargeback claim against the merchants Mr S paid.

Should Lloyds have reasonably prevented the payments Mr S made?

It has been accepted that Mr S authorised the payments that were made from his account with Lloyds, albeit on X's instruction. So, the starting point here is that Mr S is responsible.

However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether Lloyds should have been aware of the scam and stepped into question Mr S about the payments he was making. And if it had questioned Mr S, would it have been able to prevent the scam taking place.

The payments Mr S made from his account into the scam were all made to genuine cryptocurrency exchanges. The payments weren't for such a high value that I would necessarily have expected them to trigger Lloyds' fraud prevention systems. However, the

fifth payment Mr S attempted to make into the scam for the value of £2,200 did trigger its systems and several conversations between Mr S and Lloyds took place.

I have listened to recordings of the calls that took place between Lloyds and Mr S. Mr S confirmed he was making the payments himself, that he had not followed any links to setup his crypto account, and that no one else had setup the account for him. All the information provided in this call matches Mr S's description of the scam given to us in his letter of complaint.

Lloyds would have been able to see that Mr S had recently started making payments to cryptocurrency exchanges. With Lloyds' experience I think it would have known these types of business are often linked to cryptocurrency scams. So, I think it would have been reasonable for Lloyds to have asked more probing questions about the payments. If Lloyds had asked more probing questions, it would likely have found that Mr S found the business via Instagram and was being asked to make payments to release funds. This is a hallmark of common cryptocurrency scams I would expect Lloyds to be aware of.

Had Lloyds asked more probing questions about the payments I think it's likely it would have uncovered the scam and prevented any further loss. Lloyds is therefore responsible for Mr S's loss from the payment of £2,200 made on 27 July 2022 onwards.

Did Mr S contribute to his loss?

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000).

In the circumstances, I do think it would be fair to reduce compensation on the basis that Mr S should share blame for what happened. It's clear from the information available that Mr S had concerns about the payments he was being asked to make, yet he didn't speak to his friend about them (only via Instagram). The investment also offered unrealistic returns that I think should have been a red flag to Mr S.

Mr S also took out several loans to fund the payments. Loans are not usually made available for the purpose of investment, so I think it's likely Mr S was not entirely honest with the loan companies he used.

If Mr S had taken more care before making the payments into the scam, I think it's likely he would have realised the investment wasn't genuine and would not have continued to make the payments that he did.

I think it would be fair to reduce compensation by 50% on the basis that Mr S should share some blame for what happened.

Putting things right

To put things right I require Lloyds Bank PLC to refund Mr S from the fifth payment onwards, less any credits he received, minus a 50% deduction for contributory negligence. Lloyds Bank PLC should also pay Mr S 8% per annum simple interest on this amount from the date of the payment to the settlement date (less any lawfully deductible tax).

My final decision

I uphold this complaint and require Lloyds Bank PLC to do what I've outlined above to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 6 March 2024.

Terry Woodham
Ombudsman