

The complaint

Mr P complains that Lloyds Bank PLC (“Lloyds”) hasn’t protected him from losing money to a scam.

What happened

The background to this complaint is well known to both parties, so I won’t repeat everything here. In brief summary, Mr P has explained that between February and May 2022 he made five payments totalling £12,385 from his Lloyds account ultimately for what he thought was a legitimate investment. Mr P subsequently realised he’d been scammed and got in touch with Lloyds. Ultimately, Lloyds didn’t reimburse Mr P’s lost funds, and Mr P referred his complaint about Lloyds to us. As our Investigator couldn’t resolve the matter informally, the case has been passed to me for a 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.

Having done so, I’ve decided to not uphold Mr P’s complaint for materially the same reasons as our Investigator. I’ll explain why.

I’m sorry if Mr P has been scammed and, if he has, he has my sympathy. Ultimately, however, if this is what happened, Mr P has suffered his loss because of fraudsters, and this doesn’t automatically entitle him to a refund from Lloyds. It would only be fair for me to tell Lloyds to reimburse Mr P his loss (or part of it) if I thought Lloyds reasonably ought to have prevented the payments (or some of them) in the first place, or Lloyds unreasonably hindered recovery of the funds after the payments had been made; and if I was satisfied, overall, this was a fair and reasonable outcome.

Prevention

I’m satisfied Mr P authorised the relevant payments. Lloyds would generally be expected to process payments a customer authorises it to make. And under The Payment Services Regulations and the terms and conditions of the account, Mr P is presumed liable for the loss in the first instance, in circumstances where he authorised the payments. However, this isn’t the end of the story. Good industry practice was that Lloyds ought to have been on the lookout for transactions that were uncharacteristic or unusual to the extent that they might have indicated a fraud risk. On spotting such a payment instruction, I would expect Lloyds to intervene in a manner appropriate to the risk identified.

Bearing this in mind, I’ve considered whether Lloyds acted fairly and reasonably in its dealings with Mr P when it processed the relevant payments. However, there are many transactions made by customers each day, and it’s not realistic or reasonable to expect Lloyds to stop and check every payment instruction. I appreciate Mr P has indicated his partner’s bank always or often texts or calls about transactions to ensure they are legitimate. But I’m deciding here on what I’d reasonably expect of Lloyds in this particular case. There’s

a balance to be struck between identifying payments that could potentially be fraudulent, and minimising disruption to legitimate payments (allowing customers ready access to their funds). And here, I'm not persuaded I can reasonably say Mr P's payments were such that Lloyds reasonably ought to have intervened before following Mr P's instructions to make them.

I say this because, by February 2022, the crypto exchange all five of the disputed payments were sent to wasn't a new payee or merchant: by this stage, Mr P had paid them several times before. I'm not persuaded the first three disputed payments in February 2022 (for £2,000, £780, and £765) ought reasonably to have concerned Lloyds, bearing in mind the spacing between the £2,000 and the other two, and given the history of Mr P's account activity.

I acknowledge that the remaining two disputed payments made in May 2022 for £5,840 and £3,000 (both made on the same day) might, in some cases, be unusual to the extent Lloyds ought reasonably to have intervened. But here, bearing in mind Mr P's previous account activity, I don't think these transactions would reasonably, in this case, have looked suspicious enough for me to say Lloyds ought to have intervened in them. I say this because the only real difference between these payments and Mr P's previous payments to the crypto exchange, by this point, was the size of them. But Mr P had previously made payments of £7,700 in April 2021 and £20,000 in January 2022. I acknowledge these appear to have been to Mr P himself, to an account he'd paid before. But by now, in May 2022, he'd also paid the crypto exchange numerous times before. Not all payments made for cryptocurrency are made as a result of a scam. And I don't think it would have been unreasonable for Lloyds to conclude that the size of the payments in May 2022 therefore didn't look so unusual that it ought to be sufficiently concerned of a fraud risk so as to intervene in them. This means I'm not persuaded Lloyds unreasonably failed to intervene in or prevent the payments before they were made.

Recovery

After the payments were made, because they were debit card payments the only potential avenue for recovery of them would have been via the chargeback scheme. However, Mr P made the payments from his Lloyds debit card to the crypto exchange (and not directly to the scammers). This means the merchant here, for chargeback purposes, would be the crypto exchange (and not the scammers). I understand Mr P would've received the services from the crypto exchange intended, which was the transfer of his funds into cryptocurrency. Any transfer of the cryptocurrency to the scammers would not give rise to a valid chargeback claim through Lloyds. So I can't reasonably say Lloyds unreasonably hindered recovery of the funds.

I'm sorry if Mr P was scammed and lost money. However, I can't reasonably tell Lloyds to refund him where I don't think it unreasonably failed to prevent the payments or recover them.

My final decision

For the reasons explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 17 June 2024.

Neil Bridge
Ombudsman

