

The complaint

Mr B complains Lloyds Bank PLC won't refund the money he lost to a scam.

What happened

Around early 2019, Mr B saw an online advert for an investment company, Z. It appeared to be endorsed by a well-known public figure so Mr B thought it seemed legitimate and decided to invest. Unfortunately, it seems Z were operating a scam.

Mr B sent the following payments to the scam from his Lloyds account. Please note the international/non-GBP transactions also incurred fees:

| Date | Payment method | Amount charged |
|------------|------------------------|----------------|
| 30/01/2019 | Card | £250 |
| 21/02/2019 | Card (non-GBP) | £325.94 |
| 21/02/2019 | Card (non-GBP) | £562.02 |
| 21/02/2019 | Card (non-GBP) | £766.68 |
| 13/03/2019 | Card (non-GBP) | £1,758.21 |
| 20/03/2019 | International transfer | £1,775.25 |
| 18/09/2019 | Card (non-GBP) | £600.47 |
| 25/09/2019 | Card (non-GBP) | £201.40 |
| 18/10/2019 | Card | £1 |
| 28/10/2019 | International transfer | £223.11 |

When Mr B asked to withdraw some funds from the trading platform and was repeatedly met with excuses for why he couldn't do this, he realised Z were a scam. In late 2023, he complained to Lloyds (via a professional representative) that it should have done more to protect him when he made the payments.

Lloyds didn't agree to refund Mr B. It said the payments weren't deemed high risk, so it didn't have cause to intervene at the time. It also highlighted public information from the time which could have alerted Mr B to the scam.

Unhappy with Lloyds' response, Mr B referred the matter to our service. Our investigator didn't uphold the complaint. They didn't think the destinations or character of the payments ought to have alerted Lloyds that Mr B was at risk from fraud. Nor did they think Lloyds could recover the loss – as the scam was reported too late to attempt chargeback claims, or to have a realistic chance of recovering funds from the foreign banks.

The investigator also explained the Contingent Reimbursement Model (CRM) code, which Mr B's representative had referred to, didn't apply to the payments. Overall, they didn't think Lloyds ought to refund or compensate Mr B.

Mr B has appealed the investigator's outcome. His representative argues the payments on 21 February 2019 should have warranted intervention – as there were multiple international payments sent to the same, new payee. They think Lloyds would have uncovered the scam – noting that scammers are known to direct consumers to send them funds via cryptocurrency merchants. They also say Z asked B to download remote access software, which is a common hallmark of this type of scam.

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 not to uphold it. I'll explain why.

While it's accepted Mr B has lost out to a scam, it's also accepted that he authorised these payments. Under the relevant regulations – the Payment Services Regulations 2017 – that means Mr B is presumed liable for his losses stemming from these payments in the first instance. Firms have a contractual duty to make payments in compliance with customers' instructions.

However, taking into account relevant rules, codes and best practice, I think Lloyds should fairly and reasonably have been on the look-out for the possibility of fraud or scams and have taken additional steps, or made additional checks, before processing payments in some circumstances. That might be appropriate where a payment looks significantly unusual or uncharacteristic compared to the normal use of the account, or otherwise presents a clear fraud risk.

I've therefore considered whether Lloyds ought to have intervened with any of the payments Mr B made due to the scam. Overall, I do consider it reasonable that Lloyds simply processed these payments in line with Mr B's authorised instructions without completing further checks.

I appreciate the amounts sent will not be insignificant to Mr B. But what I'm considering is whether they looked so *significantly* high, or otherwise unusual or worrying, that Lloyds should have known to intervene. There is a balance to be struck between identifying payments that could potentially be fraudulent – and then responding appropriately to any concerns – and ensuring minimal disruption to legitimate payments

As seems to have been accepted, I don't think the first payment, at £250, would have looked particularly concerning to Lloyds. But Mr B's representative thinks the payments on 21 February 2019 should have prompted intervention.

I do appreciate the recipient appears to be foreign, which did look a bit unusual for Mr B, and that there were a series of payments. However, looking at the overall level of the payments – just under £1,700 – I'm not persuaded the overall nature of the transactions ought to have alerted Lloyds that Mr B was likely falling victim to a scam. I've not seen anything to suggest Lloyds ought to have had concerns about the merchant he was paying.

Similarly, the next few payments were for similar amounts. These were spread out – occurring several weeks after the previous scam payments, and with a week in between. The merchant paid in March 2019 appears very similar to the merchant from January 2019, which makes the payment appear less uncharacteristic within Mr B's account activity.

The subsequent international transfer also appeared in keeping with the February 2019 payments – in terms of the international destination and the overall amount sent. The remaining payments were for lower amounts. And again, the card payments went to a merchant that was the same, or similar, to those Mr B had paid before.

Mr B's representative appears to be suggesting Lloyds would have known the payments were connected to cryptocurrency. I don't think that's particularly clear for all the payments. For example, I've not been able to find much information about the merchant paid in February 2019 – and it's not one of the more 'established' cryptocurrency merchants. Likewise, it's unclear who the recipients for the transfers were.

It's unclear if the other merchant(s) the card payments were sent to *may* have been identifiably linked to cryptocurrency. Regardless, I don't think that in and of itself would mean Lloyds had cause to intervene with these payments. I can't see it would have had reason to suspect, at the time, the merchants might be illegitimate or associated with fraud. The payments were also spread out over time, making the activity appear in keeping with the general account use. And not all cryptocurrency-related transactions are connected to fraud.

Overall, I don't think the scam payments were so significantly unusual or concerning that it seems unreasonable Lloyds didn't intervene to find out more about what Mr B was doing. I therefore don't think it missed a clear opportunity to prevent the scam.

I've considered whether there are any other reasons why it might be fair to hold Lloyds liable for Mr B's loss. I agree with the investigator that Mr B isn't liable for a refund under the terms of the CRM code – as it covers neither card payments nor transfers sent internationally. Some payments also occurred before the code came into force in late May 2019.

I also don't think Lloyds missed an opportunity to recover the funds. It wasn't told about the scam until late 2023, over four years after the payments were sent. I don't think there was a realistic chance of successfully recalling the transfers after so long, and it was also too late to raise chargeback claims for the card payments.

When assessing Mr B's loss I'm also conscious that, aside from the disputed transactions he has reported (as set out in my table), he received a number of credits that appear likely connected to the scam. For example, there was a £1 credit – as well as debit – from the same merchant on 18 October 2019. There were also several credits from another merchant Mr B paid in connection with the scam in March and April 2019. However, as I'm not making an award, I don't require more information about these credits to reach a fair outcome.

I do appreciate this will be disappointing for Mr B, who has lost a significant amount to this scam. My role is to look at whether Lloyds, as his account provider, holds any fault for that. Having considered this point carefully, I'm not persuaded any errors by Lloyds caused or contributed to Mr B's loss. I therefore don't consider it fair to direct it to refund him – or otherwise compensate him.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 31 July 2024.

Rachel Loughlin
Ombudsman