

## The complaint

Mr L is unhappy that Lloyds Bank PLC will not refund money he lost following an investment, which he believes was a scam.

## What happened

The circumstances which led to this complaint are well-known to both parties, so I won't repeat them all here. But, in summary, I understand them to be as follows.

In 2014 Mr L heard about an investment opportunity, through an advert, that interested him. He's told us he was provided with information about the investment company that assured him that they were genuine, so he decided to invest. Mr L made the following investments, totalling £46,202.76, using his Lloyds debit card;

21 May 2014	£5,952.38
21 May 2014	£5,952.38
21 May 2014	£5,592.38
22 May 2014	£4,753.98
22 May 2014	£5,764.20
22 May 2014	£8,913.72
22 May 2014	£8,913.72

Mr L has explained that he was given access to an investment platform, which he's told us he accessed on a weekly basis and he could see a profit was being made. Mr L was able to make withdrawals, in February 2015, totalling £6,574.15 and has said he didn't have any problems making these withdrawals.

But in June 2021, when Mr L attempted to make further deposits, he was told the investment company had ceased operations in the UK and that, since 2020, it hadn't been able to service clients in the UK and it was no longer responsible if UK customers hadn't moved their money before the investment company had ceased activity.

Mr L believed he'd been scammed and so raised the matter with Lloyds. Lloyds looked into the concerns that Mr L had raised and issued its final response in June 2023, but it didn't uphold Mr L's complaint. In summary, it said in situations such as this it would try and request a refund through Visa, but as the time limit had passed in which it could do this, it was unable to help further. Lloyds has added that it didn't class the payments Mr L had made as fraudulent transactions.

Unhappy with Lloyds response, Mr L then brought his complaint to our service. One of our Investigators looked into things but didn't uphold Mr L's complaint. In summary, he didn't consider Lloyds had done anything wrong in not raising a chargeback and, alongside this, he didn't think it was clear that there was ever an intent to scam Mr L.

He said this because Mr L had explained that, in 2014 when he invested, he had researched the company and they were registered with the Financial Conduct Authority (FCA). Our Investigator added that Mr L had been able to withdraw funds from the investment and had

logged on to the platform many times over a number of years. Overall, our Investigator didn't consider the actions of the investment company were typical of a company scamming people. Our Investigator added that even if Lloyds had intervened at the time he made the payments, he didn't think there would've been enough evidence to have suggested to Lloyds that this was a scam.

Mr L didn't agree with our Investigator's view. In brief, he maintained that he believed this was a scam.

As agreement couldn't be reached 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 focussed 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 haven't. 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.

Having considered everything, I can see no basis on which I can fairly require Lloyds to refund the money Mr L sent. I can appreciate that this outcome is not the one Mr L was hoping for and I can understand why he wants to try and recover this money. But having thought about Lloyds actions, I am unable to say it has a responsibility for refunding the money Mr L sent. I will explain why.

In line with the Payment Services Regulations, in force at the time, the bank had a duty to execute authorised payment instructions without undue delay. It is not disputed that Mr L authorised the payments. So the starting position is that he is liable for them. The relevant regulations and industry guidance makes it clear that banks also have a duty to protect consumers from the risk of financial harm, including fraud and scams. But the obligation to warn customers of the risk of such financial harm will only reasonably have been engaged if there were sufficient grounds for suspecting the payment was going to a fraudster; meaning that Lloyds could have delayed the payments while concerns were discussed with Mr L.

So, in order to determine that Lloyds ought to have done more here, I would need to be satisfied that the investment company were operating a scam when the payments were made. I have borne in mind that there is a high legal threshold or burden of proof for fraud. Even if a merchant can be viewed as having acted unreasonably or unethically, that does not necessarily demonstrate they set out with an intent to defraud their customers.

In order to conclude that the payments Mr L made were part of a scam, I'd need to be reasonably satisfied from the available evidence that the investment company was not legitimate and had set out to defraud him. But based on what I know, I have not seen sufficient evidence to fairly and reasonably establish that the investment company set out with the intent to defraud Mr L. I'm also mindful that what has happened here doesn't carry the typical hallmarks for an investment scam. I say that because;

- Mr L has explained that at the time he made the payment he had done his due diligence on the investment company and could see it was a genuine registered company and that he'd also checked the FCA's website and it didn't have any scam

warnings. This is not what we usually would expect to see if the company had been set up with fraudulent purposes in mind.

- Mr L was able to withdraw £6,574.15 over a year after he made his initial investments and has explained he didn't have any problems withdrawing this money, again this would not be usual in the case of a scam. Scammers tend to be out to maximise the amount of money they manage to get out of people – so whilst we do sometimes see scammers sending money to victims, it would normally be as a 'return' on their initial investment in order to incentivise them to send more money to the scammer. It is not typical for scammers to return such high amounts and it seems unlikely that a scammer would send these funds so many months after receiving the scam payments. More typical of an investment scam would be to see a scammer refusing to return contact at this point in the scam, or trying to illicit further scam funds when their victim tries to withdraw their investment by telling them to cash it in they need to pay fees or taxes.
- Mr L's concerns came to light when he tried to invest further funds. The company Mr L contacted explained that they were no longer servicing customers in the UK and it couldn't take any further deposits. It seems highly unlikely that a fraudster would decline the opportunity to take further funds from one of their victims.

I'm also mindful here that the investment company were seemingly still contactable after Mr L had made the payments and he was able to view his trading platform for many years after he had invested. This is not typically the case with fraudsters, who more often than not are not able to be contacted after they have taken a victim's money.

After taking everything into careful consideration, on balance, I can't safely say this meets the high legal threshold and burden of proof for fraud. Rather, this appears to be a case of a bad investment in a company that ultimately ceased trading in the UK. This being the case, I don't think Lloyds have treated Mr L unfairly in not considering this as a fraud.

I don't underestimate Mr L's strength of feeling in his belief that he has been scammed. So for the sake of completeness, I think it would be helpful for me to add that, even if I did think this was a scam, which for the avoidance of doubt and for reasons explained I don't, I don't think Lloyds missed an opportunity to prevent Mr L making these payments. And I agree with our Investigator's position that there wasn't enough going on for Lloyds to have identified Mr L may have been at risk of financial harm, even if it had of intervened when he made the payments. I'll explain why.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that its customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. When Lloyds made the payments, it was complying with Mr L's instructions. At the time, Mr L wanted to pay the investment company and there was no mistake made as the money was sent to the correct account details.

But even if I considered that Lloyds ought to have identified the payments as unusual or suspicious and should have intervened, at some point, to discuss the payments with Mr L before allowing them to be progressed, I'm not persuaded it would have made a difference. I think it more likely than not Mr L would have continued to make the payments and I don't think Lloyds would fairly and reasonably have been able to have foreseen that Mr L was potentially at risk of financial harm.

I should be clear that I can't know for certain how events would've transpired if Lloyds had intervened. I must reach a conclusion based on the balance of probabilities and that

conclusion must be informed by the available evidence. Having considered this carefully, I'm not persuaded that a proportionate intervention by Lloyds would've prevented Mr L from making the payments. I don't think it's more likely than not that a Lloyds employee would have been able to identify that Mr L may have been at risk of financial harm, by asking him questions about the payments.

I've no reason to doubt that Mr L would have told Lloyds the purpose of the payments was to invest. With this in mind I'd have expected Lloyds to ask Mr L some further questions about the payments, in the context of the particular features of an investment scam. On balance, I'm persuaded Mr L, given the due diligence he's told us he'd carried out, would more likely than not have been able to answer these confidently and plausibly. It follows that I don't think the answers Mr L would likely have provided, would have given Lloyds cause for concern that he might be at risk of financial harm or the victim of a scam and I think Mr L would have been confident he was making payments towards a legitimate investment.

I'm mindful that Mr L, since bringing his complaint to this service, has said that there was a FCA warning about the investment company in 2013. But even if Lloyds had taken the steps, at the point Mr L was making the payments, to advise Mr L to check for any warnings on the FCA website, I don't think it would have made a difference. I say that as Mr L has said himself that he did check for FCA warnings at the time and didn't see anything that concerned him.

Finally, I've considered whether the chargeback process was an option for Mr L. A 'chargeback' is a way for a debit card provider to reclaim money from a supplier's bank when a consumer doesn't get the goods or services they paid for. It isn't a legal right and there's no guarantee the card provider will be able to recover the money this way. The process is subject to the rules of the scheme – which, in this case, are set by Visa – and strict criteria and time limits apply. To be clear, Lloyds doesn't set the rules and I can't change them.

Visa's rules say a chargeback must be initiated within 120 days of the last date that the consumer expected to receive the service – and one can't be initiated more than 540 days from the date of payment in any event. The evidence I've seen shows that Mr L didn't raise this matter with Lloyds until January 2023, which was more than 540 days from the dates of the payments he had made. So I don't think Lloyds did anything wrong when it chose not to attempt a chargeback in January 2023, as it was too late to do so under the scheme rules.

I do have a great deal of sympathy for the situation that Mr L finds himself in and it is unfortunate that he has sent money and clearly things haven't gone as he expected. But for the reasons I've explained I'm not persuaded Lloyds has done anything wrong and so it wouldn't be fair or reasonable for me to ask it to refund Mr L the money.

### **My final decision**

My final decision is that I don't uphold this complaint against Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 8 September 2023.

Stephen Wise  
**Ombudsman**