

The complaint

Ms R complains that Lloyds Bank PLC ("Lloyds") won't refund £51,000 she lost to an investment scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat everything again here. In brief summary, Ms R fell victim to an investment scam in April 2022 after she was contacted by a broker 'Terra Markets' ("the scammer").

She was encouraged to invest, and accounts were opened with several cryptocurrency platforms and electronic money institutions such as Wise and Revolut, which she was told were needed for trading. Ms R then made several payments from her Lloyds account to her Santander, Wise and Revolut accounts between 14-20 May 2022 totalling £31,000. The funds sent to Ms R's accounts were then transferred on again to cryptocurrency accounts in her name, before finally being sent to the scammer.

As part of the scam, Ms R says that the brokers applied for loans on her behalf from several lenders, including a £20,000 loan with Lloyds, which she objected to, but said that cash then started being deposited into her accounts. Ms R started to cancel all the other loans that she received emails about, but the Lloyds loan was paid into her account and subsequently paid to the scammers.

Ms R later realised she had been scammed and reported the fraud to Lloyds, but it refused to refund the money she lost and said she would also be liable to repay the loan she had taken out. Unhappy with this, Ms R referred the matter to our service.

Our investigator didn't uphold Ms R's complaint. She didn't think there was anything more Lloyds could have done to prevent the scam, as Ms R did not give honest answers when it called her on several occasions to discuss the payments. She also didn't think it was unfair for Ms R to be held liable for the loan given she knew it was being taken out in her name. Ms R disagreed, so the matter has been escalated to me to determine.

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 agree with the conclusions reached by the investigator and have decided not to uphold it.

Did Lloyds do enough to prevent Ms R's loss to the scam?

It isn't in dispute that Ms R authorised the disputed faster payments she made from her Lloyds account as part of the scam (where her funds were subsequently transferred on again before reaching the scammer). The payments were requested using her legitimate security credentials provided by Lloyds, and the starting position is that banks ought to follow

the instructions given by their customers in order for legitimate payments to be made as instructed.

However, I've considered whether Lloyds should have done more to prevent Ms R from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character.

It's common ground that the payments Ms R made were considered unusual for her account as they prompted several interventions via phone call from Lloyds between 16 – 20 May 2022. Accordingly, it's just a question of whether the bank went far *enough* in all the circumstances with its interventions.

Having listened to the various call recordings, I don't think there was anything more Lloyds could have done to prevent the scam in this instance, as Ms R failed to provide honest answers to the questions she was being asked. Lloyds asked her on several occasions whether anyone had told her to lie to the bank, to which she said they hadn't. This was despite her having confirmed that the scammer stressed the need for her to lie to the bank if it asked her questions about the payments. When asked about the reason for the payments, Ms R also gave misleading answers, such as saying they were towards her father's operation or for home improvements. She said she had researched the builders she was paying, and even confirmed to Lloyds that the payments were not being made as a result of an investment when it specifically asked her.

I appreciate that Ms R wasn't forthcoming with the true nature of the payments because she had been coached by the scammer to lie to the bank. However, I'm satisfied Lloyds asked the right sorts of questions and gave her enough opportunity to be honest and reveal what was happening, e.g. by asking her whether anyone had asked her to make the payments or was telling her to lie to the bank. It was based upon the answers she gave that Lloyds was satisfied the payments were not likely being made as part of a scam. And there was little to suggest that she was nervous or unsure about what she was saying. If she had answered the questions accurately and said she was in contact with a third-party broker who was telling her to lie, then I accept it would have been incumbent on the bank to maintain suspicion and warn her that she was being scammed. But seeing as Ms R was not forthcoming with these details, I don't think there was any failing on Lloyd's part to probe any further.

So, overall, I'm not persuaded Lloyds could have done anything more to have prevented Ms R's loss in these circumstances, as it seems likely she would have continued to provide false information in order to make the payments. As such, I don't consider it would be fair and reasonable to hold the bank liable for failing to prevent the scam.

I've also thought about whether Lloyds could have done anything more to recover the funds after the fraud was reported. However, in this instance, the funds were transferred to accounts in Ms R's own name, and we know they were swiftly transferred on again to the scammer. So, there would have been no prospect of Lloyds being able to recover the funds from the receiving accounts in these circumstances.

Has Lloyds acted fairly by holding Ms R liable to repay the loan?

As part of the scam, Ms R says the fraudster took out several loans in her name on her device via remote access software. This included a £20,000 loan with Lloyds, and Ms R is unhappy that she's being held liable for this debt. I've therefore considered whether it's fair and reasonable for Lloyds to expect her to pay this back, or if it should write the debt off.

Section 83 of the Consumer Credit Act (CCA) 1974 sets out that a person won't be held liable for a debt if it was taken out by another person who wasn't acting as their agent. So, I've considered the extent to which Ms R was involved in the loan application with Lloyds, and whether she ought reasonably to have known that she had received the proceeds of a loan into her account.

When the loan was being applied for, Ms R says screen was moving very quickly, and that she couldn't keep up with what the scammer was doing on her computer. However, she was nonetheless aware they were taking out a loan in her name, and says she also gave information for them to be able to complete the loan application, as she was concerned she would lose her investment profits if she didn't cooperate. I also note that she confirmed to Lloyds she had taken out a £20,000 loan during the call it had with her on 20 May 2022, which she said was for house renovations. She didn't tell the bank that she no longer wanted or needed this money, so I'm satisfied she was aware of it.

I understand Ms R thought she could cancel the loans later, which for some she was able to do so. But it appears she didn't stop the scammer from applying for the Lloyds loan on her behalf, so I don't think it could reasonably be said that she didn't consent to it. Therefore, I'm not persuaded Section 83 of the CCA 1974 would have the effect of absolving Ms R of any liability for the debt in such circumstances, as the scammer can effectively be treated as having acted as her agent.

Ms R says that she didn't receive any correspondence regarding the loan application or any cooling off period before receiving the funds, which I accept may have been the case. But as I've set out above, I'm satisfied she was aware of the loan, and even how much it was for, so she ought reasonably to have known that the £20,000 credit she received into her account were the proceeds of the loan, which she would need to pay back with interest.

However, Ms R didn't take any action to return the funds to Lloyds and instead transferred the loan proceeds to her Revolut account, where they were subsequently lost to the scammer. I'm also satisfied Lloyds undertook reasonable credit checks to ensure the loan was affordable for Ms R at the time it was applied for. As a result, I don't think it would be fair and reasonable to ask Lloyds to write off the debt in these circumstances, so I won't be asking it to take any further action in response to her complaint.

I appreciate this will likely come as a disappointment to Ms R, and I'm sorry to hear she has been the victim of a cruel scam. However, I'm not persuaded that Lloyds have acted unfairly in these circumstances.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 27 November 2023.

Jack Ferris
Ombudsman