The complaint

Mr A complains that Lloyds Bank PLC won't refund the money he lost when he fell victim to a scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat them all again here. Instead, I'll summarise the key points, and focus on giving reasons for my decision.

In early 2022, Mr A was contacted on an instant messaging service by a scammer claiming to be from a well-known company (W), offering a job. He was told it involved purchasing and reviewing products and was "relatively secretive". At one point he had to sign a Non-Disclosure Agreement (NDA).

Mr A has explained he had to log into 'W's' platform, which he says looked professional, and complete tasks such as purchasing and reviewing products. Over several months, Mr A made a series of payments from his Lloyds account to a cryptocurrency wallet held with 'B', which he says the scammer guided him to set up. I understand he was told he had to pay upfront for the products he had to buy, as part of his tasks to earn commission, but would be reimbursed. He received two credits back from the cryptocurrency wallet.

Mr A says he realised it was a scam when he tried to access his earnings but couldn't do so. Supported by a professional representative, he complained to Lloyds that it had failed to do enough to protect him from fraud in response to him making out of character payments.

Lloyds said it had spoken to him about one of the payments and warned him about the risks of investment scams. He had confirmed that he was making the payment of his own initiative, and no one had contacted him or asked him to make the payment. So it didn't accept liability for his loss.

Unhappy with this response, Mr A referred the complaint to our service. Our investigator didn't uphold it. She wasn't persuaded Lloyds ought to have realised Mr A was being scammed based on his responses when it spoke to him. Nor did she think it could have recovered the funds. She noted the Lending Standards Board's Contingent Reimbursement Model (CRM) code didn't apply to any of these payments, due to them being transferred on to another account Mr A held.

Mr A appealed the investigator's view. In summary, he said the NDA would not have prevented him telling Lloyds, if they had asked, that the payments related to work he was doing for W. And there were other questions it should have asked, such as about whether he had been guided to use any remote access software, which would have uncovered the scam.

Later, Mr A said the NDA he signed was "after the loss [he] suffered". He also said the questioning during the intervention call failed to adequately delve into what he was doing. And he didn't lie and wasn't coached on his answers. So, if Lloyds had questioned him appropriately, the scam would have been uncovered.

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. I'll explain why.

In line with the Payment Services Regulations 2017, the bank is expected to execute authorised payment instructions without undue delay. It's not in dispute that Mr A was scammed. But nor is it in dispute that he authorised the payments. So the starting position is that he is liable for them.

The key consideration here is whether Lloyds ought to have done more, as part of its duty to help protect customers from harm from fraud and scams. I agree with the investigator that, given Mr A's account history, the payments didn't initially look concerning. But it did intervene when Mr A made a series of payments in one day. I've considered whether that intervention reasonably ought to have uncovered the scam.

During the initial part of the call, the Lloyds employee asked Mr A to tell them a bit more about the reason for the payment. He simply said it was to pay B, rather than saying (in response to the open question) that he was making payments for a job. He was then transferred through to another staff member.

In response to their questioning, Mr A explained he had been using the account for a few months. He said he had set it up, made transactions, made withdrawals, and he had "done it all [him]self".

Lloyds explained it was seeing cryptocurrency scams where someone would help the customer set up the cryptocurrency wallet, and then the money was moved on and "disappeared". It said, if that happened, there was no way to get the money back. Lloyds also mentioned the wider risk of cryptocurrency.

At the end of the call, Mr A confirmed that he was making the payment at his own instruction. He said he hadn't been contacted and told to lie to the bank, or been told to move the money for any other reason.

I appreciate Mr A says he hadn't been coached or told to lie. And I understand he was the one who set up the wallet – albeit under the guidance of the scammer. But I noticed that, when asked who set up the wallet on a form from his representative, he volunteered that the scammers had guided him to do this. By contrast, when Lloyds asked him, he didn't mention that anyone else was involved – and instead gave the impression he was acting alone.

Based on Mr A's response to this question, I don't think it was, or should have been, clear to Lloyds that anyone else was involved. Thinking he was acting alone, Lloyds had less reason to question Mr A about factors such as remote access software.

Furthermore, the scam risk Lloyds outlined in the call focussed on a scenario where someone else *helped* the customer set up the wallet – which matches what Mr A told us happened to him. So I think that was enough to put him on notice of the risk. Yet he didn't seem concerned at the time. Nor did he clarify, in response to the warning, that he had been helped in setting up the wallet. Instead, he made it clear he wanted to proceed.

Mr A's assertion he had done it all himself, and wasn't acting on anyone's instructions, also seems at odds with his account of the scam. As its premise was that he was being instructed by his 'employer' to set up the wallet and make the payments to earn commission.

Mr A also told us the job was meant to be secretive. And that does affect my judgment on whether, even with more questioning, Mr A was likely to have divulged more detail about what he was doing. Although he said he could still have divulged he was working for W (as he understood it), it's not clear to me, based on his initial submissions, that he would have thought he was at liberty to divulge the nature of the work, in order to account for the payments.

While Mr A told us more recently that the NDA was given to him *after* the scam, the date on the form predates some of the payments reported as part of the scam (although it's after Lloyds' intervention call). But if the scam had been uncovered by that point, it suggests he went on to make further payments after realising it was a scam – making it less likely that Lloyds should have been able to dissuade him from proceeding when it intervened.

On the other hand, Mr A's initial submissions to our service – as well as Lloyds' records of what he told them when reporting the scam – refer to the NDA as part of the 'onboarding' process for the job, and a factor which gave him confidence that it was legitimate. So that is at odds with his more recent assertion that the NDA postdates the scam.

I'm not sure of the reason for this change. Regardless, I find it makes it harder for me to rely on Mr A's argument, in hindsight, that he would have revealed key details, which would have uncovered the scam, in response to further questioning. As it makes it less clear what he thought, and what he was open to divulging, at the time.

Overall, while I do think Lloyds' questioning could have gone further, I'm not persuaded Lloyds is at fault for failing to uncover the scam at the time. Despite outlining some circumstances relevant to the scam Mr A fell victim to, he didn't express concern – and asserted he was acting alone.

Lloyds' questioning was also guided by Mr A's responses. Based on what it knew, it didn't have reason to suspect the payments were being made at the behest of a job – which I agree would have been concerning. In all the circumstances, I don't think any shortcomings in Lloyds' intervention caused him a loss.

I've also considered whether Lloyds could have done more to help recover Mr A's loss. But as the funds were transferred to his own cryptocurrency wallet, which he has confirmed he had control over, it couldn't have recalled the transfers – as they had already been moved on to the scam. And there wouldn't have been grounds for a successful chargeback claims for the card payments, as the concerns reported didn't relate to the merchant (B) paid *directly.*

As the cryptocurrency wallet paid directly was in Mr A's name and under his control, he also isn't entitled to recourse under the CRM code. That is because it doesn't cover payments made to other accounts held by the customer.

While I'm really sorry to hear that Mr A has fallen victim to a scam, I'm not persuaded any failings by Lloyds caused or contributed to his loss. In the circumstances, I'm therefore not persuaded it's fair to direct Lloyds to refund him or otherwise compensate him in relation to this complaint.

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 A to accept or reject my decision before 29 September 2023.

Rachel Loughlin
Ombudsman