

The complaint

Mr R is unhappy Lloyds Bank PLC haven't refunded money he lost as a result of a scam.

Mr R is being represented by a claims management company but for ease I'll only refer to him throughout the decision.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here. Mr R was researching online and found information about online investment trading. He then came across an advert for a merchant which he thought offered a credible investment profit. He researched the online reviews for the merchant and was impressed with the positive reviews from people who had made money. So, he created an account with a genuine cryptocurrency exchange before being told by the merchant to also create a decentralized application (dapp). He started to send his money to the cryptocurrency exchange and was able to make two withdrawals back to his Lloyds account which only made him more satisfied that everything was legitimate.

In total, Mr R sent around £28,600 in eleven payments between 28 June 2022 and 01 July 2022 to the cryptocurrency exchange. When Mr R spoke to the merchant about withdrawing all his money, he checked the account at the cryptocurrency exchange and saw that there were no funds remaining. Mr R then realised that he had been scammed. So, he raised the scam claim with Lloyds.

Lloyds said the payments weren't covered under the voluntary code known as the Contingent Reimbursement Model (CRM) as Mr R made the payments to an account in his name at the cryptocurrency exchange - so that couldn't be considered here. Lloyds added that when Mr R downloaded the dapp at the scammer's request this had inadvertently allowed them access to his account and withdraw the money from the cryptocurrency exchange. So, Lloyds said it was unable to retrieve any of Mr R's funds.

Mr R remained unhappy, so he brought his complaint to this service. He said Lloyds should've done more to protect his money and the payments he made were unusual.

Our investigator didn't think the complaint should be upheld. He said the CRM code wasn't applicable here as Mr R had made the payments to an account in his own name. And the payments Mr R had made towards the scam didn't seem unusual or suspicious compared to other transactions he had previously made.

Mr R disagreed and asked for an Ombudsman's review. He said the fact that the payments were made to a new and high-risk payee meant that Lloyds should've done more to hold the payments and speak to him. If it had done so this would've stopped the scam. Mr R also raised that the account held at the genuine cryptocurrency exchange wasn't in his name.

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 reached the same conclusion as our investigator. And for largely the same reasons. I'm sorry to hear that Mr R has been the victim of a cruel scam. I know he feels strongly about this complaint and this will come as a disappointment to him, so I'll explain why.

I've read and considered the whole file. But I'll concentrate my comments on what I think is relevant. If I don't mention any specific point, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is a fair and reasonable outcome.

It is common ground that Mr R authorised the scam payments totalling around £28,600. I accept that these were authorised payments even though Mr R was the victim of a scam. So, although it wasn't his intention to pay money to the scammers, under the Payment Services Regulations 2017 (PSRs) and the terms of his account, Mr R is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory rules and guidance, relevant codes of Practice (which Mr R has mentioned) and good industry practice, there are circumstances where it might be appropriate for Lloyds to take additional steps or make additional checks before processing a payment in order to help protect customers from the possibility of financial harm from fraud.

So, the starting point here is whether the instructions given by Mr R to Lloyds (either individually or collectively) were unusual in relation to his typical account activity. So, I've reviewed the account statements around the time Mr R made the payments in question here. The account was typically well maintained with the balance ranging from around £20 up to around £10,000. And there were genuine transactions ranging from £3,000 and £6,000 on 16 May 2022, £5,000 on 17 June 2022, £3,100 on 27 June 2022 and £18,000 on 28 June 2022.

On 28 June 2022 Mr R sent £1 to his account at the cryptocurrency exchange, before sending a further £1,000 and £9,000. He then sent a total of £5,100 on 29 June 2022, before sending a total of £7,500 on 1 July 2022 and £6,000 on 6 July 2022.

I appreciate Mr R has said the payments towards this scam were sent to a high-risk cryptocurrency exchange which should've raised a concern for Lloyds. But that alone isn't sufficient for me to consider these to be unusual payments – account usage can change over time. And the payments he made towards the scam were largely similar in size to the payments he made previously.

As a result, I don't think the payments towards the scam were so unusual or out of character for this account that it's reasonable to have expected Lloyds to have intervened at the time.

Mr R has said that the account at the cryptocurrency exchange wasn't in his name. This service has asked the cryptocurrency exchange for the name of the person who held the account. It's confirmed that it was in Mr R's name. Which is consistent with the testimony we received from Mr R previously which said the account was held in his name and that he could make withdrawals. So, I'm satisfied that Mr R's account at the cryptocurrency exchange was in his name and that the most likely reason for his money disappearing was because the scammers gained access to his account via the dapp he was instructed to download.

So, I've considered whether Lloyds acted reasonably when it was made aware of the

scam. I can't see that Lloyds attempted to recover Mr R's funds on this occasion. But because the account Mr R sent the money to was in his name, before being taken by the scammer, it's unlikely that Lloyds would've been able to reclaim his money here.

In these circumstances I can't conclude the outstanding loss is the fault of Lloyds. To be clear, I'm not blaming Mr R for the loss – it's ultimately the scammer who is to blame. But for the reasons I've explained above, I don't think he's been treated unfairly by Lloyds.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 7 December 2023.

Mark Dobson
Ombudsman