

## **The complaint**

Mr and Mrs H are unhappy that Lloyds Bank PLC won't refund money they lost to an investment scam.

## **What happened**

Payments to the scam were made from Mr H's sole account and a joint account that he held with Mrs H. But, as it was Mr H that interacted with the fraudsters and the bank, for ease, I'll mostly refer to him throughout this decision.

After seeing an advert on social media, Mr H became involved in what he thought was a legitimate investment opportunity. It was explained to him that, in order to invest, he'd need to open an account with a legitimate cryptocurrency provider and then send cryptocurrency to the investment company. Mr H was given access to a trading account and could see the value of his investment increase. It appears that the fraudsters went on to impersonate the legitimate cryptocurrency provider and claimed that Mr H would need to pay money in order to access his funds. Mr H eventually contacted the genuine cryptocurrency provider and the police and the scam was revealed. In total, Mr and Mrs H lost over £50,000.

During the period of the scam, Mr H had a number of conversations with Lloyds. Lloyds hasn't been able to produce a recording of every interaction but I understand the events broadly took place as follows. In late August 2021 Mr H attempted to make a payment to the cryptocurrency provider. He spoke to the bank and revealed the involvement of a third party. It appears the bank expressed concern that he might be falling victim to a scam at this point and he did not go ahead with the payment.

Mr H attempted to make a similar payment on 31 August 2021. The payment was declined and he was referred to a branch. There doesn't appear to be a detailed record of what was discussed in the branch but, based on what is discussed during later conversations, it appears that at this point Mr H told the bank that he was no longer using a broker. The payment was made on 1 September 2021. Mr H attempted to make another payment on 7 September 2021, but his online banking was still blocked, so he spoke to the bank again. Only the first part of this call is available – but another payment was released following it and, again based on what is said during this call and later conversations, it appears he also told the bank that the broker was no longer involved.

A payment on 17 September 2021 was also stopped by Lloyds. Mr H said that there had previously been third party involvement, but he'd recognised the risk of that and now wished to invest in cryptocurrency on his own. During this call Lloyds staff explained the specific risk and features of the kind of cryptocurrency scam that Mr H was falling victim to. A final intervention took place on 22 September 2021, again warnings were provided and Mr H said that he had previously been helped to invest, but now was doing so of his own accord. A further three payments took place, without intervention, after that one.

Mr H reported the matter to Lloyds, but it declined to reimburse him. It said that the payments weren't covered under the provisions of the Lending Standards Board Contingent Reimbursement Model ("CRM Code") because they hadn't been made to 'another person'. It

also said that as the funds hadn't been lost from Lloyds, but the legitimate cryptocurrency provider, it couldn't be held responsible for their loss.

The matter was referred to our service. One of our Investigators agreed that the circumstances weren't covered by the CRM Code and thought that Lloyds had acted in line with good industry practice by intervening and questioning some of the payments made.

They felt that Lloyds had provided a clear warning to Mr H and that he hadn't been truthful in his responses. They concluded that Lloyds' intervention was sufficient and that it couldn't be held responsible for Mr H's loss.

Mr and Mrs H's representative didn't agree. He pointed out that Lloyds had failed to intervene on the final three payments and argued that this was a failure that should result in liability for it. He also said that Lloyds could have asked different, better, questions.

As no agreement could be reached, the case was 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.

The starting point under the relevant regulations is that Mr H is responsible for payments he's authorised himself. I'm also satisfied that the transactions Mr H made are not within the scope of the CRM Code. Information obtained from the cryptocurrency provider shows that the I.P. addresses used to access Mr H's cryptocurrency account were largely consistent with the I.P. addresses used to access his Lloyds online banking facility. This strongly suggests that, if he did not transfer cryptocurrency to the fraudsters himself, he was present when those transactions took place and he had access to the cryptocurrency account when they were being made. Therefore, I cannot say that the payments from Mr H's Lloyds account went to 'another person' as required by the CRM Code.

But taking into account regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time these payments were made, I think Lloyds ought, fairly and reasonably, to have been on the lookout for out of character and unusual transactions and other indications that its customer might be at risk of financial harm from fraud.

It's not in dispute here that Lloyds did intervene and discuss a number of the payments with Mr H before they debited his account. I think this was warranted given the unusual nature of the activity. And there certainly were reasons for the bank to be concerned here. Mr H had admitted the role of a broker just a week before he attempted to make a payment on 31 August 2021. Mr H hasn't provided his recollections about this or his correspondence with the fraudster around this time. I can only imagine that that fraudster was able to convince him to continue with the investment and not to disclose their involvement.

But, I think there was only so much the bank could do here. It appears that Mr H was adamant that he was now investing of his own accord and not sending any money to a third party. I think that, particularly in the calls on 17 and 22 September 2021 Lloyds gave good, clear, warnings about the particular risk of the scam Mr H was falling victim to. Given that Mr H was dissuaded from going ahead with a payment on 24 August 2021 and was referred to the branch on 31 August 2021, it's likely similar warnings were given around those times as well.

The warnings I have heard describe in some detail the hallmarks and mechanics of a typical cryptocurrency investment scam – pointing out key features like the involvement of a third party claiming to be a broker or cryptocurrency investment company, customers being asked to set up cryptocurrency accounts, the promise of significant returns and customers being told that the fraudsters will manage their investment. The circumstances the bank described appear to have quite closely mirrored what happened to Mr H. He also misled the bank about the involvement of a third party and the fact he had given them access to his computer. It seems to me that some of the payments were only released because Mr H assured the bank that he was not sending any cryptocurrency from the legitimate provider to a third party. While, as Mr H's representative argues, Lloyds could have asked different questions, I'm not persuaded that Lloyds reasonably should have done this or that those questions would have been answered any more honestly.

While Lloyds, fairly and reasonably, ought to question unusual payments, I wouldn't expect them to interrogate Mr H and, in these circumstances, after having provided a clear warning to him and satisfied themselves that a third party was no longer involved, I don't think they made an error in releasing the payments. I don't wish to blame Mr H for giving the answers he did, I understand he's likely to have been coached into giving them. But I cannot hold Lloyds responsible for his loss unless I think it ought reasonably to have prevented the scam. It's difficult to see how it could have done in these circumstances.

While I recognise that there were three payments of a significant size that were not stopped by Lloyds, it doesn't necessarily follow that it made a mistake by not stopping every payment. After all, it had already discussed payments to the same recipient with Mr H on several occasions, much to Mr H's frustration. But even if I accepted it should have questioned those payments, I don't think that the scam would have come to light and, some or all of, the loss would have been prevented. The evidence of the previous conversations he had with Lloyds suggests that Mr H would have been just as likely to have not disclosed the involvement of a third party, or the true circumstances around the payments, and to have been equally determined to carry on making them.

Finally, as these payments were made to Mr H's account at a cryptocurrency provider and the firm operating that account has confirmed the cryptocurrency was sent to a third party, I don't think Lloyds had any realistic prospect of recovering his money.

I know this will be very disappointing for Mr H. I don't doubt that he was taken in by sophisticated fraudsters, but I'm afraid that I don't find Lloyds responsible for his loss.

### **My final decision**

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 29 September 2023.

Rich Drury  
**Ombudsman**