

The complaint

Miss M complains that Lloyds Bank PLC (Lloyds) won't refund money she lost in an investment scam.

What happened

What Miss M says:

Miss M saw an advert on Facebook for a scheme investing in cryptocurrency. She completed the online form and got a call back. The caller claimed to be calling from a bank in Cyprus. He gave instructions as to how to invest in cryptocurrency and told her to send money for the investment using a payment firm (which I will call A) and then to a trading platform (which I will call B). The caller coached Miss M how to open her accounts with A and B on Skype calls.

Miss M then made payments from her Lloyds account as shown:

Date	Transaction	Amount
1. 13 September 2022	Online payment to A – blocked by Lloyds but then released	£990
2. 13 September 2022	Online payment to A	£2,010
3. 22 September 2022	Online payment to A	£19,000
4. 21 October 2022	Online payment to A – blocked by Lloyds	(£10,000)
5. 21 October 2022	Online payment to A	£100
6. 25 October 2022	Online payment to A	£500
7. 25 October 2022	Online payment to A	£500
Total Loss		£23,100

Miss M borrowed money to finance the payments she made:

Date	Finance	Amount
12 September 2022	Credit card	£2,500

21 September 2022	Loan	£20,000 (repaid 26 October 2022)
21 October 2022	Loan	£10,000 (repaid 25 October 2022 when payment was stopped)
26 October 2022	Refinance loan	£29,000.70

The investments turned out to be a scam and Miss M lost the money. She was left with a large refinance loan of £29,000. Miss M says Lloyds should've done more to protect her. She said they should've intervened in the second and third payments but didn't. If they had, the scam would've been uncovered and she wouldn't have made the payments. She said Lloyds should refund the money she'd lost.

Miss M is now struggling as she has lost all her money. She has suffered depression, loss of sleep and is on medication.

What Lloyds said:

Miss M complained to Lloyds. They said:

- Miss M could've protected herself better.
- She didn't carry out any checks on the company she was speaking to.
- The scammers didn't ask her for identification – which showed it must have been a scam.
- She didn't get any paperwork from the bank in Cyprus.
- There were many negative reviews online about the bank in Cyprus.
- There were warnings about using bank B on the Financial Conduct Authority's (FCA) website.
- When Lloyds called her about the first payment, she hadn't been truthful as she said no one had advised her about making the payments.
- On the first call about the first payment, Lloyds had clearly advised Miss M that it could be a scam, and she could lose the money.
- Lloyds also told her she shouldn't be borrowing money to make investments.
- The payments weren't covered by the Contingent Reimbursement Model (CRM Code) – as they were 'me to me' i.e. from Miss M's account with Lloyds to her account with bank A.

Lloyds declined to refund the money to Miss M.

Our investigation so far:

Miss M brought her complaint to us. Our investigator didn't uphold it. She said:

- On the call about the first payment (13 September 2022), Lloyds asked clear, probing questions, and gave appropriate warnings about its risks before releasing it. Miss M

confirmed she wanted the payment to be made.

- The payment of £19,000 (22 September 2022) wasn't intercepted by Lloyds. But if it had been, she was satisfied that the warnings given on the first call would still have applied. And it was unlikely that Miss M would've given any more information than she gave on the first call. So – she didn't think Lloyds could've established there was a scam in operation, and it was more likely than not the payment would've been sent. It was also evident Miss M was keen to invest – as she had taken a loan of £20,000 to finance it.
- Payment of £10,000 (21 October 2022): this was blocked by Lloyds, and Miss M's account was suspended as a result. Miss M didn't proceed with the payment after she later spoke to Lloyds on 25 October 2022.
- Two payments of £500 – these were of low value and didn't warrant intervention by Lloyds.
- Lloyds didn't try to recover the funds as the payments had been made to Miss M's account with bank A and had been moved onto the investment by her. So - there wasn't anything to recover.

Miss M didn't agree. She asked that an ombudsman look at her complaint, and so it has come to me to make 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 sorry to hear that Miss M has lost money in a cruel scam. It's not in question that she authorised and consented to the payments in this case. So although Miss M didn't intend for the money to go to a scammer, she is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case. But that is not the end of the story. Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Lloyds should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) doesn't apply in this case. That is because it applies to faster payments made to another UK beneficiary – and in this case, the payments were made by Miss M to her account with bank A. i.e. it was a 'me to me' payment.

But that's not the end of the story - I need to decide whether Lloyds acted fairly and reasonably in its dealings with Miss M when she made the payments, or whether they should have done more than they did. I have considered the position carefully.

I looked at Miss M's account behaviour – to see if such payments were normal for her to make. And – they were unusual. Her account was used for day-to-day expenses and the receipt of her salary. I couldn't see any payments similar to the larger amounts she later sent to bank A. So – in broad terms, I would've expected Lloyds to intervene and ask questions of Miss M – as the guidance to banks sets out.

And here, Lloyds did intervene in the first payment – and this is important in the context of Miss M's complaint. Therefore, I quote the important parts of the call.

13 September 2022 - £990:

Lloyds called Miss M about the payment. It had been held by Lloyds for investigation. I listened to the call. It was very clear indeed.

Miss M said she wanted to make the payment to her account with bank A. Lloyds call handler said: *"your payment has a higher than normal risk of being fraudulent. Remember that once this payment has left your account, the money is gone and we're unlikely to recover it. Fraudsters are contacting our customers with convincing stories. They can be very believable. Fraudsters often tell customers not to discuss the call with their bank however this makes it more difficult for us to protect you from the fraud on your account."*

The UK's Financial Conduct Authority has stated that investing in crypto assets which includes bitcoin generally involves taking very high risks and if consumers invest in these types of products they should be prepared to lose all their money. They have already ruined the lives of many of our customers. I want to help you today to make sure they don't do this to you."

I consider this was a very clear warning indeed about the risks Miss M was facing in making the payment.

The call handler asked if the account had been set up by herself or had someone done it for her. Miss M said *"No, no. I've done that myself."* I considered this – and Miss M told us (and later told Lloyds in her complaint call in January 2023) that she was coached to open the account with bank A – on a Skype call with the bank in Cyprus. So – she wasn't telling the truth here. If she had said as such to Lloyds, they may have been able to uncover the scam, but in view of what Miss M said – they couldn't be expected to have done so.

Lloyds call handler asked, *"Has anyone asked you not to discuss this payment with the bank?"* Miss M replied *"No"*. But on the call in January 2023, Miss M told Lloyds she had been coached to say that if the bank asked such questions – so again, I can't reasonably expect Lloyds to have uncovered the scam in those circumstances.

I also noted that Miss M was keen to invest – as she had drawn £2,500 from her credit card the day before.

So – in summary, Lloyds did all they could on the call, and it was reasonable for them to make the payment.

13 September 2022 - £2,010 and 22 September 2022 - £19,000

These are the crux of Miss M's complaint – as Lloyds didn't intervene in these or contact Miss M about them. Lloyds told us their systems didn't flag the payments as they were to the same payee as the first one. I've considered whether Lloyds' actions here were reasonable or not.

On the payment of £2,010 – I note this was on the same day as the payment for £990, and to the same beneficiary. And it was for a relatively low amount. So – I wouldn't have expected Lloyds to block it. I say this as there's a balance to be struck: Lloyds has obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. In this case, I think Lloyds acted reasonably in processing the payment.

On the payment of £19,000 – because of the large amount, I would've thought it was reasonable for Lloyds to have stopped it and asked questions of Miss M, but they didn't. So I need to consider what would likely have happened if they had. And here, I agree with our investigator.

- Miss M had been given very strong and clear warnings indeed about the payments to bank A a few days earlier, on the first call. And the warnings were directly relevant to this payment.
- The payment was to the same beneficiary (Miss M's account with bank A) and for the same purpose.
- Miss M had borrowed money to make the payment – as the loan of £20,000 had been drawn the day before and paid into her account. So she was clearly intending to make the payment to the investment.
- So – I'm persuaded that even if Lloyds had contacted Miss M, she would've answered their questions in the same way as she had on the first call, and the payment would've been released.

Therefore, I don't think Lloyds can reasonably be held responsible for the loss of £19,000.

21 October 2022 - £10,000:

Lloyds blocked this payment and Miss M subsequently cancelled it – so it has no bearing on Miss M's complaint.

21 October 2022/25 October 2022 – payment of £100 and two payments of £500: given the low amounts of these payments, I don't consider Lloyds should've intervened in these. It's not clear why Miss M went ahead with these payments - as she said on the call with Lloyds in January 2023 – that she suspected the scheme was a scam earlier – at the time when she cancelled the payment for £10,000. But in any case, I don't think Lloyds can be liable for these payments.

In summary, I don't think I can reasonably hold Lloyds liable for any of the payments made by Miss M – for the reasons I've given.

Recovery

We expect firms to attempt to recover funds from recipient banks when a scam takes place. I looked at whether Lloyds took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost money. But here, the funds were sent to Miss M's account with bank A, and she then moved them herself to the scammer. So - there wasn't anything Lloyds could do to recover any money for her.

Miss M has lost a lot of money. I'm sure this must have been upsetting for her. She will therefore be disappointed by my decision, but I'm not asking Lloyds to do anything here.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 28 September 2023.

Martin Lord
Ombudsman