

The complaint

Mr R is unhappy that Lloyds Bank PLC hasn't fully refunded him after he fell victim to a scam.

What happened

Mr R saw a post from someone on social media who was promoting investment in cryptocurrency. Mr R looked at the content and it appeared legitimate to him. But Mr R was viewing content posted by a scammer.

Mr R engaged with the scammer and was directed to what he's described as a genuine looking website of what claimed to be an investment firm.

Having decided to invest, Mr R was told he'd need to open an account with a money transfer service. He did so and then proceeded to make payments to his new money transfer account, the first being a card payment for £50 on 11 December 2022. He'd been told he could make guaranteed returns of £5,000 on his investment. Below is a schedule of all payments made.

Date	Time	Transaction detail	Amount
11/12/22	16:43	Card payment to money transfer service	£50
11/12/22	17:54	Card payment to money transfer service	£299
12/12/22	13:25	Card payment to money transfer service	£499
12/12/22	19:27	Card payment to money transfer service	£499
12/12/22	23:29	Card payment to money transfer service	£499
14/12/22	08:54	Card payment to money transfer service	£999
14/12/22	Unclear	Cancelled card payment	£999
16/12/22	01:27	Bank transfer to a personal account	£500
09/01/23	Unclear	Bank transfer to a personal account	£100
09/01/23	Unclear	Transfer returned	£100
10/01/23	23:15	Bank transfer to a personal account	£100

The money went into Mr R's money transfer account, and he sent it on from there at the scammer's instruction.

The scammer sent Mr R a spreadsheet which showed a balance held with the investment firm. That balance was recorded as £5,500 and Mr R told the scammer he wanted to withdraw his money. The scammer told Mr R he'd have to pay a fee to release it.

Mr R proceeded to pay this fee – £299 on 11 December 2022 – and saw his returns increase further. But he was also told he'd have to pay more fees. He proceeded to make four more card payments across the next three days. The fourth payment was returned to his account.

Mr R was told to pay further fees by bank transfer (faster payment) as his card was no longer working. Mr R did so, sending money to an account in the name of an individual who was described as the trading account manager. But Mr R still didn't get any money back.

Mr R contacted Lloyds by phone to report the scam on 16 December 2022 to report the card payments. He later reported the bank transfers as being linked to the scam.

Lloyds investigated and gave a partial refund. It said it wouldn't reimburse any of the debit card losses. But it did return 50% of the money sent by bank transfer, under the Contingent Reimbursement Model (CRM) Code.

Mr R felt he should have been refunded more as the payments out of his account had been unusual and he felt Lloyds ought to have done more to protect him. He brought his complaint to our service.

One of our investigators looked at what had happened and didn't uphold the complaint. She agreed that the spending on Mr R's account had become unusual and that Lloyds ought fairly and reasonably to have recognised a risk of financial harm. She said that point was reached when the third payment was made on 12 December 2022. But she didn't find intervention would have made a difference.

She said as much because she could see from Mr R's contact with the scammer that he clearly had doubts about what he was involved in, even fearing a scam. But despite those fears he continued to send money at the scammer's instruction. She noted Mr R continued to make payments even after reporting the debit card transactions to the bank as a scam. So she didn't believe that intervention from the bank would have made any difference, and it was more likely than not Mr R would have proceeded to make the payments anyway.

Our investigator also found that Mr R hadn't acted reasonably in sending money to the scammer. She noted the unrealistic rate of return offered to Mr R, believing it to be too good to be true. And she felt the information supplied to Mr R – such as the spreadsheet showing returns – couldn't reasonably be said to have established the investment firm/opportunity as legitimate.

Mr R wasn't happy with the answer and asked that an ombudsman review the complaint.

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 Mr R has fallen victim to a cruel scam. From reading his correspondence it's clear he's been significantly impacted by what's happened, and not only in financial terms. I can't imagine how he's feeling or what he's been going through. He has my sympathy. And while I have listened to what he's said, I'm unable to uphold his complaint. I'll explain why.

The starting point for any transaction made from a customer's account, where they have authorised that transaction, is that they are responsible for it. That remains true even where a transaction has been made as part of a scam. The relevant rules here are set out in the Payment Service Regulations 2017 and are confirmed in Mr R's account terms and conditions.

There are other relevant considerations that I need to think about, with card payments and bank transfers needing to be looked at differently. And so I'll deal with them separately.

The bank transfers

Lloyds is a signatory to the Lending Standards Board's CRM Code. This is in place to help protect the victims of scams, like Mr R. And it's designed to see most victims reimbursed.

But there are exceptions to reimbursement set out within the Code and Lloyds can choose to rely on these.

Lloyds has done so in Mr R's case and it's why it has only refunded 50% of the bank transfer losses. Lloyds did acknowledge it could have acted more quickly in dealing with Mr R's scam claim, which is why it refunded 50% of the bank transfer loss. It only remains for me to decide if the deduction made on the basis of the exception is fair and reasonable in all the circumstances of the case.

The exception relied on allows Lloyds to deny full reimbursement if it can be shown Mr R lacked a reasonable basis for believing he was dealing with legitimate parties for legitimate purposes. I'm satisfied the exception has been fairly relied on here, and for broadly the same reasons as our investigator. I'll summarise the key points:

- Mr R found the investment opportunity through an unknown individual on social media. I don't consider this to have been a trustworthy source. It's also worth noting here that Mr R had been scammed through the social media platform previously. And so it's fair and reasonable to say he ought to have regarded it as a less than trustworthy platform, at least in terms of activities outside of standard social interactions.
- Mr R appears to have received little information on exactly what he'd be investing in, under what terms, and what his expected rate of return was.
- He was promised a highly improbable rate of return on a £50 investment, where he was guaranteed £5,000 back.
- I find it implausible that payments would be made to a legitimate investment firm by way of a money transfer service.
- Mr R was repeatedly told of the need to pay more fees and he continued to do so despite receiving nothing in return.
- Mr R had to change payment method part way through the scam as his card was no longer working. Mr R doesn't really seem to have questioned this, or why payments were then going to an individual rather than a business.
- Mr R was sent a spreadsheet which appeared to show his returns. But this doesn't seem to be a document that looks legitimate, professional, or persuasive. It also contains the personal information of other 'customers' which you wouldn't reasonably expect to see.

I'm satisfied there was enough going on here that Mr R ought fairly and reasonably to have recognised something wasn't right. I don't find Mr R can be said to have ever held a reasonable basis for belief here. Lloyds has then fairly relied on the exception to reimbursement. And this would apply even if I were to find Lloyds ought to have stepped in to question any of the payments made toward the scam.

Lloyds did try to recover Mr R's money from the account it was sent to. But by the time he reported the scam all his money had been removed, so there was nothing left to return to him.

The card payments

The card payments made by Mr R went to the money transfer service he became a customer of. They were executed as he expected them to be and in line with his instructions. He then got the service he sought from the money transfer service when it received his funds and sent them on at his further instruction. That's important because it means they would never be refunded under a chargeback claim.

Such a claim can sometimes be raised through the applicable card scheme's chargeback process. But as Mr R knew what was happening with the payments, made them himself, and got the service he contracted for, any chargeback would always fail.

As there was no prospect of a chargeback succeeding, I find Lloyds acted fairly and reasonably in not attempting one.

There are no other grounds on which Lloyds might have sought to recover Mr R's money.

Should Lloyds have done more at the time payments were being made?

There are times when an account provider like Lloyds ought fairly and reasonably question activity on a customer account, despite receiving what is an authorised instruction to make a payment. It's accepted good industry practice that accounts ought to be monitored for fraud. Account providers are, generally speaking, on the lookout for unusual account activity.

This applies to all payment channels, meaning Lloyds actions here should be considered against both the card payments and bank transfers. Our investigator felt Lloyds ought to have done more, saying it would have been fair and reasonable for the bank to step in when Mr R was making the third card payment on 12 December 2022.

I don't consider that to be an unreasonable position. It could be argued the bank ought fairly and reasonably to have stopped that payment and asked Mr R about it. I do, like our investigator, have to consider what would more likely than not have happened had Lloyds stepped in at that point. Our investigator felt Mr R would have continued to make payments to the scammer anyway. I find that to be a reasonable position to take, and my findings are broadly the same.

Mr R appears to have known – or at least very strongly suspected -- he was caught up in a scam by 16 December 2022. That's evidenced by his reporting of the debit card transactions on that day. Despite that being the case Mr R proceeded to make more payments in December 2022 and January 2023. By that stage Mr R had even said to the scammer that he felt he was being scammed.

It's impossible to know for certain what might have happened had the bank stepped in. But the evidence I do have shows that Mr R continued to send money to the scammer despite being aware of the scam. That strongly suggests he would have continued in that way despite intervention from the bank.

That's further supported by the fact that when Mr R was asked to select a payment purpose for the faster payments, he chose 'paying friends and family' rather than 'investment'. And so it appears there was at least some willingness on Mr R's part to hide the true purpose of the payments and to ensure they went through without question.

Is there any other reason Lloyds ought to return Mr R's money?

I've not seen any evidence to make me think Lloyds ought to return anything more to Mr R despite all the above. Mr R has referred to vulnerability brought on by his mental health. But he's not provided any further evidence or explanation on this point. And it seems he told the bank, during its investigation, that his mental health hadn't affected his judgement at the time.

I don't doubt that Mr R's mental health has suffered significantly since the scam. It's an incredibly distressing experience that he's been through. But I can't fairly say he ought to be refunded because of his current condition.

Mr R has stated that he is in financial difficulty because of the scam. That being the case I would encourage him to engage with Lloyds – along with any other financial services businesses he is a customer of – directly about those difficulties. Each has a duty to treat him positively and sympathetically regarding financial difficulties. It's important Mr R start that conversation so that Lloyds can consider what it might do to help.

My final decision

I don't uphold this complaint against Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 5 February 2024.

Ben Murray
Ombudsman