

The complaint

Mr H is unhappy that Lloyds Bank PLC (“Lloyds”) has not refunded him after he became the victim of a romance scam.

Mr H is represented by his daughter - Mrs R.

What happened

The circumstances that led to this complaint are well known to both parties, so I won't repeat them in detail here. But, in summary:

In June 2021, Mr H met someone - I will refer to as C - on a dating site. The conversation quickly moved away from the dating site to a social media messaging forum. And not long after that (about a week - according to the messages I've seen) C asked Mr H to lend her some money. Between 14 June 2021 and 2 March 2022 Mr H sent C around £77,000 over 65 transactions.

The bank has now refunded 50% of the transactions from the transfer of £4,000 on 18 June 2021 onwards; so 50% of all - but the first four transactions. This is because it feels the first few transactions were relatively small and not unusual for the account. But it felt it should have done more to stop the remaining transactions. It also offered £150 for the distress and inconvenience as it initially did not offer 50% on a number of transactions it later felt it should have done. However, it felt Mr H should share in the responsibility for his losses – so did not offer to refund the other 50% of his transactions.

Our investigator didn't uphold the complaint. He did explore some points raised by Mr H's representative regarding vulnerability with the bank but reached the view that the bank's position to refund 50% of the transactions from the fifth transaction onwards was fair. Mrs R, on behalf of Mr H, did not agree. She felt Mr H was vulnerable and the bank should have done more.

I issued my provisional decision on 1 September 2023 explaining why I was thinking of the same outcome as the investigator but explained my reasoning in more detail and proposed Lloyds pay an additional sum for distress and inconvenience. Lloyds accepted with my provisional decision. Mrs R, on behalf of Mr D, did not accept my provisional decision. In brief she said:

They feel the amount of compensation being offered is appalling. They feel the bank admitted they were in the wrong and whilst the bank did tell Mr H it was fraud, they never at any point called the police. At no point did they say they would try and get his money back. The compensation they gave him was for their mistakes in freezing the current account instead of his credit card.

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 have considered Mrs R's response to my provisional decision.

It's not in dispute the bank could and should have done more; Lloyds and I have accepted that conclusion. I think the difficulty here is that I do feel (for the reasons outlined in my decision) Mr H should also take some responsibility for his decisions and actions. This is not a decision I've made lightly. I appreciate this is a significant amount of money to Mr H and his family.

I am sorry if the additional award I made has caused more upset - that certainly was not my intention. I do appreciate the award is small in comparison to the overall losses Mr H has suffered but such awards are separate from, and not intended to compensate for, those losses.

Deciding on an award of compensation for distress and inconvenience, isn't an exact science. And I don't have the power to make any punitive award against Lloyds. As I've said it is not intended to compensate for any actual financial loss a consumer has experienced. I do think the scam had a significant impact on Mr H's mental wellbeing. He has a lot of health problems which have escalated over the last year both mentally and physically. But I need to carefully consider the impact of Lloyds' mistakes have made, not those of the other parties involved here. Most significantly, this means attempting to discount the actions of the fraudster, who was ultimately the party who committed this fraud on Mr H and, as such, was the direct cause of Mr H's losses and the subsequent impact.

As outlined in my provisional decision, Lloyds did try to recover the funds as soon as it was notified by Mr H this was a scam.

Having considered Mrs R's representations carefully, I see no reason to depart from the conclusions set out in my provisional decision. For completeness, I have set this out below.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

There is no dispute that Mr H has been a victim of fraud and I am deeply sorry for that, but it doesn't automatically mean Lloyds is liable for some or all of his losses. In fact, the relevant regulations (and the terms of his account) make him responsible for payments he's made himself in the first instance.

In broad terms, the starting position is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. There's no dispute here that Mr H authorised the payments.

However, where a customer makes a payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

When thinking about what is fair and reasonable in this case, I've considered whether Lloyds should have reimbursed Mr H in line with the provisions of the Lending Standards Board Contingent Reimbursement Model (the CRM Code) it has signed up to and whether it ought to have done more to protect Mr H from the possibility of financial harm from fraud.

There's no dispute here that Mr H was tricked into making the payments. He thought he was helping someone he believed he was in a relationship with and this wasn't the case. But this isn't enough, in itself, for Mr H to receive a full refund of the money under the CRM Code.

The CRM Code

Lloyds has signed up to the CRM Code. The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this, in all but a limited number of circumstances.

One such circumstance might be when a customer has ignored an effective warning.

A second circumstance in which a bank might decline a refund is, if it can be demonstrated that the customer made the payments without having a reasonable basis for believing that:

- the payee was the person the customer was expecting to pay;
- the payment was for genuine goods or services; and/or
- the person or business with whom they transacted was legitimate

There are further exceptions within the CRM Code, but they do not apply in this case. The CRM Code also outlines the standards a firm is expected to meet. And it says that when assessing whether the firm has met those standards, consideration must be given to whether compliance with those standards would have had a material effect on preventing the APP scam that took place.

I am also mindful that when Mr H made these payments, Lloyds should fairly and reasonably also 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). And 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. For branch transactions, those steps may include following the Banking Protocol where appropriate.

Did Lloyds meet its obligations under the CRM Code and did Mr H ignore an effective warning?

The CRM Code says that effective warnings should be risk based and, where possible, tailored to the APP scam risk indicators and any specific APP scam types identified through the user interface with which the customer is initiating the payment instructions. The first few transfers were relatively small, and I don't think Lloyds ought reasonably to have identified a risk. The first payment was for £250 – an unremarkable amount. That said, Lloyds did provide a 'friends and family' warning which asked '*do you know this person well?*' As Mr H had known C a few days/weeks and never met her in person, Lloyds says it would have expected Mr H to not sent the money without meeting her first and do more checks. Although I don't think the bank needed to provide an effective warning at this point - I don't think this warning can be considered an effective warning as defined by the CRM Code. I don't think it's impactful and it doesn't seem to relate to romance scams. It also doesn't warn of the consequences of an irrevocable payment. Because I don't think it's effective - I can't fairly say Mr H ignored an effective warning either.

I agree the bank could and should have done more from the £4,000 on 18 June 2021 onwards. A pattern was emerging, and the amount(s) were unusual for the account. Lloyds has accepted its responsibility for its part from this point onwards – acknowledging that it ought to have done more and recognising that means it bears some accountability for Mr H's loss. I haven't seen any other warnings other than the one Lloyds says was provided for the first £250 transaction. As I said above - I don't think this warning constitutes an effective warning as defined by the CRM Code – so I don't think Mr H ignored an effective warning when making the transfers via his mobile banking application.

Did Mr H have a reasonable basis of belief or could Mr H have done more to mitigate his losses?

I need to consider not just whether Mr H believed he was sending money to help someone he thought he was in a relationship with but whether it was reasonable for him to do so. I've thought about the steps Mr H took to reassure himself about the legitimacy of the transactions and whether it was reasonable for him to proceed with the payments.

Overall, I don't think Mr H had a reasonable basis for believing these were genuine payment requests for a genuine person. I say this because:

- Mr H sent considerable sums of money based on message requests from someone he had only recently met through an online dating site. Mr H had not met C in person, and I think the risk is clearly heightened and warranted further checking.
- I do think there were points within the messages that Mr H clearly was concerned about the requests and I think he appreciated and realised the risk he was taking (or ought reasonably to have done so).
- I can't ignore the intervention from the bank and how this ought reasonably to have filtered into Mr H's basis for belief. He was told quite early on (July 2021) that *this was a scam* but continued to make payments.
- The bank also told Mr H the reasons he was given for making the payments (that C's funds couldn't be released until she'd paid tax) was '*nonsense*'.
- Mr H was also promised by C he would get the earlier payments back around mid-July and he even agreed with the bank on 12 July 2021 that he would wait until he got the money back before making further payments. But Mr H continued to make further payments despite not receiving anything back from C.

Mr H ultimately placed a lot of trust in a stranger who he had never met. I consider that Mr H ought to have had greater concerns and that, in turn, ought to have led to a greater degree of scrutiny on his part. Sending money to someone you haven't met in person was always a big risk. Mr H would have had time between messages to reflect on what was being asked of him. He wasn't, in my view, under immediate pressure to proceed with the various payments.

So, I'm not persuaded Mr H had a reasonable basis for believing the payee was the person he was expecting to pay; that the payments was for genuine goods or services; or the person with whom Mr H transacted was legitimate.

My intention is not to further Mr H's distress where he's already been victim of a cruel fraud. But merely to highlight that I do find Lloyds has been able to demonstrate that he could have done more to verify the validity of the person he was communicating with and the proposals they were making. And this would have ultimately prevented his own losses.

Vulnerability under the code

There are provisions under the code which might lead to a refund, even when a customer doesn't have a reasonable basis for belief. The relevant part of the Code, says:

A Customer is vulnerable to APP scams if it would not be reasonable to expect that Customer to have protected themselves, at the time of becoming victim of an APP scam, against that particular APP scam, to the extent of the impact they suffered. This should be assessed on a case-by-case basis.

It's clear from all that has been said that Mr H was going through a lot – in particular he was self-isolating during lockdown due to his medical conditions and it seems his mental health was suffering. And the scam has clearly impacted him further.

I'm sorry to hear of all Mr H has been through. Not just in terms of this scam, but also what's happened to him prior to the scam. I've no doubt that he has been through a lot and I don't doubt that his mental health has suffered as a result. And no doubt the scam has impacted him further.

But I've considered whether there were vulnerabilities present at the time to such an extent that Mr H was unable to take steps to identify the scam he fell victim to or to recognise steps he might take to test the legitimacy of what he was being told by the fraudster. To do so I must consider the details of the scam, Mr H's actions throughout, and the wider circumstances of what was happening in his life at the time.

I don't doubt Mr H has suffered as a result of his physical and mental well-being as well as his own existing relationship and the impact of social isolation during lockdown. But there is also evidence within the circumstances that suggests he was capable of taking steps to protect himself from fraud and financial harm. That is to say there was more he might reasonably have done that would have led to the scam being uncovered.

The evidence indicates he was in full control of his finances and the content of the messages persuades me he recognised the risk involved in sending money to C and that he was capable of protecting himself from financial harm. He even discussed the possibility he was being scammed.

Having thought very carefully about everything Mrs R has told us, whilst I'm not saying Mr H's circumstances had no impact on him at the time, I'm not persuaded that it would be unreasonable to expect him to have protected himself against the particular scam he fell victim to. And so, I don't find that Lloyds need refund Mr H's entire loss under the vulnerability clause of the code.

Should Lloyds have done more to try and prevent the scam and protect Mr H?

As well as the CRM Code, a bank still has wider obligations and a duty to protect its customers, as far as is reasonably possible, against the risk of financial harm from fraud and scams. As such, there are circumstances where it might be appropriate for a bank to take additional steps or make additional checks before processing a payment to help protect its customers from the possibility of financial harm from fraud.

I'm not going to go into detail here because under these considerations, I would still reach the same overall conclusion as I have under the CRM Code; that is I would still expect Lloyds to refund 50% of the transactions from the fifth transaction onwards.

I don't think the first four transactions would have caused Lloyds concern. The payments were relatively small and did not look unusual or suspicious based on the account activity. Banks can't reasonably be involved in every transaction. There is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments.

In this case, it seems Lloyds did have concerns as it stopped a payment on 11/12 July 2021 before processing it. So, it seems Lloyds identified an APP scam risk in the payment journey. And as I have already said Lloyds accepted its part. It said it restored Mr H's bank account when it accepts it ought to have invoked the Banking Protocol.

But under these considerations I still also need to consider Mr H's actions and how those contributed to his losses. Having done so, I do think it is fair and reasonable for him to share in the responsibility - broadly for the same reasons as I set out above when I said he didn't have a reasonable basis to believe the person he was paying was genuine or that the payment requests were genuine. I've also considered that Mr H was prepared to mislead the bank about how long he'd known C and that he had met her in person.

Given that Lloyds could have prevented the loss (but Mr H should share in the responsibility for his loss) I think it's offer to refund 50% of the transaction from the fifth transactions onwards is fair and reasonable in this case.

Did Lloyds do enough to recover Mr H's funds?

I've thought about whether Lloyds took reasonable steps to recover Mr H's funds once it was made aware he was the victim of a scam. The first payment was made on 14 June 2021 and the last one on 2 March 2022. Mr H reported the scam to Lloyds on 8 March 2022. From what I can see Lloyds contacted the receiving bank at the same time but were told that no funds remain. This is not unusual as scammers usually remove funds within hours. So, I don't think Lloyds could have done anymore to recover Mr H's funds.

Distress and inconvenience

Finally, I've considered whether Lloyds should pay Mr H any further compensation for distress and inconvenience he's experienced as a result of its actions. In considering this, I've specifically thought about the impact of Lloyds' actions, rather than the impact of the crime itself. Lloyds failure to sufficiently act has had an impact on Mr H, not least because he has been facing the very real possibility that he would not get his money back. As I've explained, Lloyds had an opportunity to prevent the scam and the loss. For these reasons, I think it's fair and reasonable for Lloyds to pay a further £350 for distress and inconvenience on top of the £150 it has already paid (so £500 in total) in this case.

I am upholding this complaint in part. I realise my decision will be a significant disappointment to Mr H. I sympathise with his circumstances and I am sorry he has fallen victim to a scam and lost so much money. But I think this is the fair and reasonable outcome taking everything into account.

Putting things right

Lloyds Bank PLC should put things right for Mr H as follows:

Pay £350 for the distress and inconvenience caused.

My final decision

My final decision is that I uphold this complaint in part and require Lloyds Bank PLC to put things right for Mr H as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 12 October 2023.

Kathryn Milne
Ombudsman