

The complaint

Miss V says Lloyds Bank PLC (“Lloyds”), didn’t do enough to help when she fell victim to a an ‘authorised push payment’ (“APP”) car purchase scam. She says Lloyds should reimburse her for the money she lost.

What happened

As both parties are familiar with the circumstances of this complaint, I’ve summarised them briefly below.

In summary, Miss V fell victim to a car purchase scam. She saw an advert for a car online and rang the number. She realised the seller was a mutual friend of someone else that she knew and knew that the seller had been selling and buying cars for many years. Miss V advised she discussed the car in question, with the seller advising that it needed a little bit of work and some parts and then it could be sold on for a profit. While Miss V did not know the seller – as she knew their mutual friend, she assumed the seller was honest and professional. Believing everything to be genuine, Miss V sent two payments on 13 October 2017, one payment of £10 followed by a second payment of £10,990 for the purchase of the car.

Over the following weeks and months, Miss V was then given excuses as to why the car couldn’t be delivered or collected and ultimately, she realised that she had fallen victim to a scam.

Miss V reported the matter in May 2018. Lloyds contacted the beneficiary bank (the bank where the funds had been sent to) to see if any funds could be recovered. Unfortunately no funds remained.

Miss V then formally complained to Lloyds in December 2022 as she felt Lloyds ought to have done more to prevent her from fraud. Lloyds issued its final response letter on 14 January 2023 advising that it didn’t consider it was liable for the losses Miss V had incurred. It considered Miss V made regular faster payments out of her account and so the faster payments she made weren’t abnormal for her account activity – so it hadn’t intervened when the payments were made. It also explained that it had contacted the receiving bank and as no funds remained it wasn’t able to recover any of the money Miss V had sent.

Unhappy, Miss V brought her complaint to our service. Our Investigator reviewed the matter and didn’t recommend the complaint be upheld.

They explained that banks are expected to process payments and withdrawals that its customer authorises it to make. But they also explained that there are some situations where banks, taking into account relevant rules, codes and best practice standards, shouldn’t have taken their customers’ authorisation instruction at ‘face value’ – or it should have looked at the wider circumstances surrounding the transaction before making the payment.

In this case, the Investigator considered the payment Miss V made for £10,990 was out of character and Lloyds ought reasonably to have carried out some additional checks or questioned Miss V about the purpose of the payment. But the Investigator concluded that even had Lloyds intervened she didn't think it likely that it could have prevented the loss. And that was because of the circumstances surrounding the relationship between Miss V and the seller with Miss V believing everything to be genuine at the time and that they had a mutual friend, and that Miss V knew the seller bought and sold cars.

So the Investigator concluded that Lloyds, had they intervened, would have been – on balance – assured that Miss V wasn't at risk of financial harm or was falling victim to a scam.

With regards to the recovery of any funds, as Lloyds explained that it had received a response from the beneficiary bank advising that no funds remained, the Investigator considered there wasn't anything further that Lloyds could do to recover the funds.

Miss V disagreed with the Investigator's opinion and as the matter hasn't been resolved, it's been passed to me to decide.

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.

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; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

I'm aware that I've summarised this complaint and the responses briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here – which is to determine whether Lloyds should have done more to prevent Miss V's losses. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as an alternative to the courts.

Having thought carefully about Lloyds' actions, I'm not upholding Miss V's complaint. I do appreciate how disappointing this will be for her. Miss V sent money in good faith to someone she felt she could trust and was cruelly taken advantage of by that person. But in weighing everything up, I don't consider I can fairly say Lloyds are liable to reimburse Miss V for the payments she made. I'll explain why.

Why the 'Contingent Reimbursement Model' ('CRM Code') isn't applicable

The CRM Code was implemented to further combat and prevent the increase of fraud and to reimburse consumers who are victims of fraud and scams, in all but a limited number of circumstances. But the CRM Code came into force in May 2019 – and it isn't retrospective. As Miss V payments were made in October 2017 it means the CRM Code isn't applicable in this case.

The relevant law and regulations in place at the time

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 terms and conditions of the customer's account.

It is agreed by all parties that Miss V made the payments from her Lloyds account. So it is the case that Miss V authorised the payments that are in dispute. And under the Payment Service Regulations 2009 (which are the relevant regulations in place here) that means Miss V is responsible for them. That remains the case even though Miss V was the unfortunate victim of a scam.

However there are times when I might expect a bank to question a transaction or payment, even though it may have been properly authorised. Broadly speaking, firms like Lloyds are expected to be on the lookout for and to protect customers from fraud.

What does this mean for Miss V?

Given the above, I've looked to see first, whether Miss V's payments were unusual and out of character. And second, whether Lloyds should fairly and reasonably have stepped in and intervened – so taking some additional steps or checks with Miss V about the payments.

But importantly, I have to determine whether these additional checks would have put Lloyds on notice that something might not be right, and that Miss V may be at risk of financial harm or revealed the scam.

Here Lloyds has explained that it didn't intervene on the payments Miss V made. I agree that Lloyds didn't need to intervene on the £10 payment Miss V made – but I find the follow up payment of £10,990 to be out of character and unusual for Miss V's account activity. So I do think it ought to have carried out some additional checks on the payment Miss V was making.

However, and as mentioned above, with any intervention, I need to determine whether that intervention should have given Lloyds cause for concern that Miss V may have been at risk of financial harm.

A conversation didn't take place when the payment was made in 2017. But I'm satisfied I can make a finding, on the balance of probabilities, about what I think was more likely than not to have happened had a conversation taken place. Having carefully considered Miss V's testimony about what happened in relation to the scam she fell victim to, I'm not persuaded Lloyds, had it intervened like I consider it ought reasonably to have done, would have been on notice that Miss V was at risk of financial harm or that the scam would have been revealed.

I say this because Miss V believed everything to be genuine at the time. And I think that is extremely important in this case. I think, on balance, Lloyds would have been reassured had they spoken with Miss V at the time. Miss V has advised that the seller was a mutual friend of someone else that she knew, and she knew that the seller had been selling and buying cars for many years. Miss V has explained while she did not know the seller – as she knew their mutual friend, she believed the seller was honest and professional and she didn't have any doubts. In short, at the time, Miss V had no doubts and fully believed everything to be genuine and ok at the time of making the payment.

All things considered I don't think any conversation Miss V had with Lloyds would have more likely than not revealed to Lloyds the scam Miss V was falling victim to, or that she was at risk of financial harm from fraud – which may have prompted Lloyds to have been concerned to such an extent that it would have asked further probing questions. I think Lloyds would have been reassured that Miss V was buying a car from a known acquaintance so wouldn't have reasonably foreseen that Miss V was at risk of financial harm or was being scammed here. And I can't be as satisfied as I would need to be that had Lloyds gone on to provide any further advice (which I'm not persuaded it would have needed to, given the above) that Miss V would have acted any differently and not gone ahead with the payment such was her belief in the seller and that everything was ok at the time.

I know Miss V feels strongly on this point. But I have to be mindful of what she thought at the time – and that was that she trusted the seller through having a mutual acquaintance and knowing that the seller was in the business of buying and selling cars. Overall, I don't think Lloyds would have been on notice that Miss V was at risk or that the scam would have been revealed.

Recovery of the funds

I have also considered whether Lloyds did all it could to try and recover the money Miss V lost. Lloyds did contact the beneficiary bank when Miss V reported the matter. But some time had passed by this point. Lloyds received a response from the beneficiary bank advising that no funds remained, so unfortunately there wasn't anything further that Lloyds could do to recover Miss V's funds.

Summary

While I appreciate Miss V's been the unfortunate victim of a cruel scam – and sadly through a person whom she felt she could trust, I think Lloyds' decision not to refund her in this instance was fair and reasonable in the circumstances. I say this because I don't find Lloyds, even had it carried out some additional checks on the payment Miss V made, would have been on notice that Miss V was potentially at risk of financial harm. So I don't find I can fairly and reasonably say Lloyds could have prevented the loss or should be held liable in some way. And unfortunately, as no funds remained in the beneficiary account, there wasn't anything further Lloyds could do to help Miss V recover her funds.

My final decision

For the reasons given above, I don't uphold this complaint.

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

Matthew Horner
Ombudsman