

The complaint

Mr C and Mrs C complain that Lloyds Bank PLC (“Lloyds”) failed to make a refund after they were scammed.

What happened

Mr C and Mrs C received a call from a person (scammer) claiming to be from Lloyds fraud team. Mr C and Mrs C later explained that because the scammer knew personal and financial details about them and used these to ask various “security questions”, they were convinced the caller was a genuine Lloyds employee. The security process also included being “transferred” to another person who continued to ask further security questions, including details about a new debit card that hadn’t yet been used online. From this, they were able to convince Mr C and Mrs C their account was at risk.

The scammer said there’d been suspicious transactions on the account and in order to stop them, various codes would need to be entered. Mr C and Mrs C were asked to provide those codes when they appeared on their phone.

In total, three One Time Passcodes (OTPs) were asked for which corresponded to three payments made using their card details. After the first code was given to the scammer, Mrs C said she questioned the situation and called through to Lloyds whilst Mr C was still on another phone with the scammers. During the conversation with the Lloyds operator, the second and third codes were passed to the scammer by Mr C.

Mrs C was told it would be a two hour wait to speak with the (genuine) fraud team. Later, Mrs C spoke with a Lloyds operator who cancelled the debit card to prevent any further loss.

Mr C and Mrs C later sought a refund from Lloyds because three payments had been taken from their account by the scammers. Lloyds declined the refund because Mr C and Mrs C had given the OTPs to the scammers when the message specifically warns against passing the codes to anyone else.

Unhappy with Lloyds’ response, Mr C and Mrs C brought their complaint to the Financial Ombudsman Service for an independent review. The circumstances were looked into by one of our investigators who asked both parties for information about the complaint. Mr C and Mrs C described the call they had and how they were convinced the person on the end of the phone was from Lloyds. They acknowledged they’d read the warning on the OTP message but were being manipulated by the scammer and rushed into acting because they were convinced their account was at risk.

They believed that Lloyds could have acted to stop some of the payments if their first call to them was acted upon. Mr C and Mrs C also confirmed that the debit card used to make the payments was a recent one and hadn’t been used to make any online purchases. The fact that the scammer had these details convinced them they were legitimate (who else could have gotten them at that point?).

Mr C and Mrs C were also dealing with a serious health diagnosis of a close family member

and described how they were also rushing to attend an appointment when the call from the scammers came in.

Lloyds supplied data about the payments and reiterated their position they'd set out that because the OTPs had been passed, they weren't going to make a refund.

After considering all the evidence, the investigator thought that by passing the OTPs, Mr C and Mrs C were responsible for the payments and didn't recommend Lloyds make any refund to them.

Mr C and Mrs C disagreed with the outcome and continued to argue that Lloyds could have prevented some of the loss if they'd acted sooner. They also confirmed that one of the disputed transactions had been refunded by the merchant. This left a further two transactions outstanding.

As no agreement could be reached, the complaint has now been passed to me for a decision.

I issued my provisional findings on the merits of Mr C and Mrs C's complaint on 19 October 2023. In my provisional findings, I explained why I intended to uphold their complaint and offered both sides the opportunity to submit further evidence or arguments in response. An extract of that decision is set out below and forms part of this final decision:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In line with the Payment Service Regulations 2017 (PSR), Mr C and Mrs C aren't liable for payments they didn't authorise.

The original outcome was based on the belief that the transactions had been authorised because the OTPs had been given to the scammer. But, neither Mr C nor Mrs C were involved in any relationship with either of the merchants who took the payments. The evidence from Mr C and Mrs C indicates they didn't enter any payment details into the merchant's payment systems. I think it likely the details from their debit card were entered by the scammers into the merchants payment systems.

Lloyds terms say that in order to make a payment, the following is required:

"Payment instructions: giving your card or your account details (online, in writing or by telephone using your security details) to someone in order to make a payment or to authorise future payments."

As neither Mr C nor Mrs C were involved in providing their payment instructions (their card details) to the merchant (or anyone else to make purchases on their behalf), I can't say they met the requirements set out in the terms of the account for Lloyds to accept that the transactions were appropriately authorised. So, as I think the transactions were unauthorised, I have to now consider the specific circumstances of those transactions. The evidence here indicates the disputed transactions were made either via the internet or by telephone, so called "distance contracts". There are specific rules for dealing with these types of payments which essentially says they should be refunded without reference to the issue of intent or gross negligence, although there are some exceptions.

I've also looked at the terms and conditions governing the joint account which says:

20. Unauthorised payments

You are not liable for any payments or withdrawals from your account that you do not authorise. If you are not liable for a payment, we will refund or pay the amount of the payment and any charges or interest you paid or lost as a result of the payment. We will not have any further liability. There are two exceptions to this rule:

- If we can prove you acted fraudulently, you will be liable for all payments from the account that we could not stop.*
- 2. If we can prove you have been grossly negligent with your device or security details, you will be liable for payments from your account but only until you have told us your device or security details have been lost, stolen or could be misused. **In some circumstances, you will not be liable for a payment instruction you did not give yourself.** These include where we have failed to tell you how to report that your device or security details have been lost, stolen or could be misused or **where the unauthorised payment was made by telephone or internet.***

From the evidence I've seen so far, I'm satisfied that the payments weren't authorised by Mr C and Mrs C. As they were "distance contracts" and because there's no suggestion they were fraudulently involved, they are due a refund. I've highlighted the specific terms in bold above.

Overall

I'm currently intending to uphold this complaint. I intend to require Lloyds to make a refund of the two outstanding disputed transactions, including interest to compensate them for the time they've been out of pocket.

Because Lloyds should've refunded these sooner, and Mr C and Mrs C had to pursue a lengthy complaint, I also intend to add a further payment for the unnecessary stress and inconvenience caused to them.

My provisional decision

My provisional decision is that I currently intend to uphold this complaint against Lloyds Bank PLC and to require them to refund Mr C and Mrs C as follows:

- Refund the disputed transactions which amount to £1,601.00.*
- Pay 8% simple interest per year on this amount, from the date of the unauthorised transactions to the date of settlement (less any tax lawfully deductible).*
- Pay £100 non-financial losses.*

I invited Mr C and Mrs C and Lloyds to give me any more evidence and information they wanted me to consider before issuing my final decision. Both parties responded and neither had anything further to add.

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.

Having done so, and as neither party had anything further to add, I see no reason to reach a different conclusion. So, this final decision confirms the findings set out in my provisional decision.

I'd like to thank both parties for responding quickly to my provisional decision.

Putting things right

I've already set out my thoughts on this and haven't anything further to add.

My final decision

My final decision is that I uphold this complaint against Lloyds Bank PLC and they're instructed to:

- Refund the disputed transactions to Mr C and Mrs C which amount to £1,601.00.
- Pay 8% simple interest per year on this amount, from the date of the unauthorised transactions to the date of settlement (less any tax lawfully deductible).
- Pay £100 non-financial losses.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 23 November 2023.

David Perry
Ombudsman