DRN-4158824

The complaint

Mr and Mrs F complain that Lloyds Bank PLC won't refund the money they lost when they were the victims of a scam.

What happened

In late 2022, Mr and Mrs F were buying a car. They had agreed a purchase and paid a deposit and the first part of the outstanding balance. But shortly before they were going to pay the final part of the balance, they received an email which appeared to be from the dealership they were buying the car from, asking them to make the final payment to different bank details.

Mr and Mrs F replied to the email to check the new bank details and then tried to make the final payment, but it was blocked by Lloyds. Lloyds then spoke to Mr and Mrs F about the payment several times over the phone and discussed potential scams, before Mr and Mrs F ultimately went ahead with the payment. Unfortunately, we now know the emails with the new bank details had come from a scammer and the dealership didn't receive the final payment.

Once the scam was discovered, Mr and Mrs F reported the payment to Lloyds and asked it to refund the money they had lost. Lloyds investigated but said it felt it had done all it could to warn Mr and Mrs F about potential scams. It felt Mr and Mrs F had ignored warnings and should have had concerns about the payment, so it didn't agree to refund it. Mr and Mrs F weren't satisfied with Lloyds' response, so referred a complaint to our service.

One of our investigators looked at the complaint. They thought Mr and Mrs F should have had concerns about what was happening and hadn't done enough to protect themselves. They also thought Lloyds had done enough to warn Mr and Mrs F about the possibility of scams. So they didn't think Lloyds should have to refund the money they had lost. Mr and Mrs F disagreed with our investigator, so the complaint has been passed to me.

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 broad terms, the starting position in law 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. However, where the customer made the 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.

Lloyds is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one Mr and Mrs F fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made
- The customer made the payment without 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 these don't apply here.

Did Mr and Mrs F ignore an effective warning in relation to the payment?

The CRM code says that an effective warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. And it says that, as a minimum, an effective warning should be understandable, clear, impactful, timely and specific.

Lloyds has sent us a copy of the warning it says Mr and Mrs F were shown when they tried to make the payment using their online banking, which said:

"[customer name], before you pay:

- *Are you sure this bill is genuine?*
- *Fraudsters will pretend to be a loved one, or a company you've used.*
- *They'll ask you to pay into an account they've set up to scam you.*
- *Always talk directly to the company, or your loved one first. Make sure it's really them.*
- *Use a phone number you trust, not one from a text, email or invoice.*
- *Find out how to stay safe from scam on our Fraud Hub"*

I've also listened to recordings of the calls Mr and Mrs F had with Lloyds after it blocked the payment. And I've considered these together with the warning message they were shown online when deciding whether the warning they were given was effective here.

The warning message said fraudsters will pretend to be a company you've used, which was relevant to Mr and Mrs F's circumstances. And it said to talk to the company directly, using a phone number you trust that hasn't come from an email or invoice, and so explained what they could do to address the risk.

In the calls, Lloyds explains in more detail what this kind of email intercept scam can look like – that scammers will send emails pretending to be a company customers are dealing with and changing the bank details a payment is to be made to. It explains emails are not particularly secure and can be hacked, so the emails can seem like they are coming from the genuine company but are actually coming from scammers. And it says this kind of scam is relatively common, the situation Mr and Mrs F describe is exactly how these scams work, and that it has concerns that they are the victims of a scam.

Lloyds also explains that, in order to make sure they are not the victims of a scam, Mr and Mrs F should call the dealership on a phone number they didn't get from the emails and speak to someone to confirm the bank details they should be making the payment to. Lloyds stops the payment and asks Mr and Mrs F to come back once they have confirmed the bank details over the phone, and explains that once the payment is made it's very unlikely they would be able to get the money back.

So, taken as a whole, I think the warning Lloyds gave Mr and Mrs F was clear and understandable in the language it used. I think it was specific about what the scam could look and feel like and that these circumstances matched this kind of scam. It was delivered to Mr and Mrs F at the time they were trying to make the payments and it was impactful, by requiring them to take further steps before making the payment and explaining the consequences of making a payment to a scammer. And so I think the warning Lloyds gave Mr and Mrs F was effective in these circumstances.

After being given the warning, Mr and Mrs F didn't follow the advice Lloyds gave to call the dealership and speak to someone to confirm the bank details for the payment. Instead, Mr and Mrs F appear to have called the dealership and spoken to the general switchboard, but not spoken to anyone directly involved in the sale and not confirmed the bank details for the payment.

I think Lloyds' warning was sufficiently clear that the risk Mr and Mrs F needed to address was that the bank details had been fraudulently changed since their last payment, not that the entire sale was a scam. So I don't think Mr and Mrs F should reasonably have thought the steps they took following the warning were sufficient to address the risks they were warned about. And as Mr and Mrs F appear to have then lied to Lloyds about whether they had confirmed the bank details, I think it's likely they were aware of this too. So I don't think Mr and Mrs F took appropriate action in response to the warning Lloyds gave them.

And while I appreciate that they felt under time pressure to make the payment and so complete the purchase of the car that day, all these conversations happened early in the morning so there was plenty of time left in the day for the payment to be made. And I'm not satisfied that following Lloyds' advice and confirming the payment details would have taken significantly longer than the call to the dealership Mr and Mrs F did make. So I don't think it was reasonable for them to take the action they did, or to fail to take the appropriate action Lloyds had advised.

If Mr and Mrs F had taken appropriate action, by calling the dealership and confirming the payment details, I think it's likely the scam would have been uncovered. The genuine dealership had not sent the emails changing the bank details. So, if asked, I think they would have told Mr and Mrs F to make the payment to the same bank details they had made the earlier payments to and that the bank details did not need to be changed. And so Mr and Mrs F wouldn't have made the payment to the incorrect bank details and wouldn't have lost the money.

I therefore think this exception to reimbursement under the CRM code applies here, and so Lloyds does not have to refund Mr and Mrs F the money they lost.

Mr and Mrs F have mentioned other cases our service has looked at which they consider similar to theirs, and where the bank was required to refund the money customers had lost. But we look at each case individually on its own merits so I can't comment on the specific differences between Mr and Mrs F's complaint and any others our service has looked at. And, for the reasons I've set out above, I'm satisfied Lloyds isn't required to refund the money Mr and Mrs F lost here.

Did Lloyds do enough to try to recover the money Mr and Mrs F lost?

We expect banks to take reasonable steps to try to recover the money their customers have lost, once they are made aware of a scam.

Lloyds' evidence shows it contacted the bank the payment was sent to within a reasonable amount of time, to ask for the money to be returned. So while unfortunately the bank the payment was sent to hasn't been able to return any of the money, Lloyds has done all I would expect it to have done and I don't think it would be fair to require it to do anything further.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs F to accept or reject my decision before 12 January 2024.

Alan Millward
Ombudsman