

The complaint

Mr and Mrs C complain that Lloyds Bank PLC (Lloyds) failed to act in time to help them to recover money they had sent from their bank account in error.

Mr and Mrs C are represented in this case by a solicitor, but for ease of reading I will refer only to Mr and Mrs C in this decision.

What happened

I set out the background to this complaint and my initial findings in my provisional decision dated 20 February 2024 (below)

On 22 August 2022, Mr and Mrs C made a payment in error from their bank account of £12,950.18 to a third party, who I'll call Z. They had meant to make the payment but to someone else and not to Z.

Z was known to Mr and Mrs C as he was a contractor, they had used in the past to do work for them. They contacted him and asked him to return the funds and he agreed to do so.

Mr and Mrs C also contacted Lloyds on the same day to get their assistance in having the funds returned.

Mr and Mrs C received a £1 payment from Z on 22 August 2022 but nothing else followed.

Lloyds contacted the receiving bank who I'll refer to as S on 24 August 2022 to ask it to return the funds. S responded on 25 August 2022 to Lloyds saying Z had withdrawn the funds from his account and so there were no funds to return.

Mr and Mrs C were unhappy with this and complained to Lloyds. It didn't uphold their complaint. And so, they referred it to this service.

Our investigator didn't think Mr and Mrs C's complaint was one that should be upheld. In summary they said Lloyds had contacted S within the time frames set out in the industry guidelines and so hadn't done anything wrong. Mr and Mrs C disagreed, they felt if Lloyds had acted immediately on the 22 August 2022, the funds would have still been available in Z's account and so they would have been returned to them.

As no agreement has been reached the matter has been passed to me to decide.

What I've provisionally 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 realise that I've summarised this complaint in less detail than the parties and I've

done so using my own words. I've concentrated on what I consider to be the key issues. The rules that govern this service allow me to do so. But this doesn't mean that I've not considered everything that both parties have given to me.

Industry guidelines for faster payments say that when a person makes a payment in error the payment service provider – in this case Lloyds – should take reasonable steps to recover the funds. A reasonable step here would be to contact the receiving payment service provider – in this case S. The guidelines set out that the timescale for Lloyds to do this is two working days.

These guidelines only apply where:

- A customer has made a payment in error*
- There is clear evidence of a genuine mistake*
- The recipient doesn't dispute what has happened; and*
- The money is still available*

It's not been disputed that an error was made when Mr and Mrs C made the transaction. So, the first two points above are not in question.

To assist with the investigation of this case both S and Lloyds have provided information about what happened after the transaction was made in error. Some of this information has been shared in confidence with this service so I cannot disclose it, so some of what I say may appear brief or vague, which I appreciate won't be helpful to Mr and Mrs C, but I can assure them I have seen evidence to support what I say.

I have seen that Z made a payment to Mr and Mrs C for £1. I have also seen evidence that before Z withdrew the money from his account, he confirmed to S the funds rightly belonged to him. Z withdrew the funds from his account on 23 August 2022.

I can see that Lloyds contacted S on 24 August 2022. This was within the two working day time frame set out. I understand that Mr and Mrs C believe that if Lloyds had acted straight away the funds would have still been in Z's account and could have been returned to them, but I disagree.

I say this because even if the funds were still available in the account, in order for them to have been returned to Mr and Mrs C, Z would have needed to agree they were paid to him in error. Given what I've seen about what Z told S I think it's more likely than not he would have disputed this. And I think the fact he withdrew the money, soon after, supports this. And so, points three and four above haven't been met. This means there was nothing further Lloyds could have done to recover the money for Mr and Mrs C despite it having made a reasonable attempt to do so.

Mr and Mrs C appointed a solicitor to act on their behalf and have said they would like to be reimbursed the costs they have incurred for this. They say they only did this as Lloyds' suggested they take legal advice. Lloyds have a duty to advise its customers of the next steps they can take. I can see from the letter it sent on 16 September 2022 it did this. It advised that it hadn't been able to recover the funds and that if Mr and Mrs C wanted to take matters further it suggested they take independent legal advice. It also suggested they speak to their local Citizens Advice

Bureau. This is standard industry practice.

Mr and Mrs C chose to appoint a solicitor to help them pursue the money, but this doesn't mean Lloyds should cover the cost of the legal services the solicitor has provided.

Additionally, The Financial Ombudsman Service is a free to use service to all consumers, and there is no requirement for representation, legal or otherwise for a complaint to be brought here. As such we don't consider any charges representatives make to consumer's when supporting them with their complaints. So, I don't think it would be right to ask Lloyds to cover the cost of this here.

I realise this will be incredibly disappointing to Mr and Mrs C and understand they feel let down, but my role here is to see if Lloyd's has followed the process as it should have. And given the evidence that's been presented to me, I can't fairly say that Lloyds has done anything wrong here. So, I'm not currently intending to uphold this complaint.

My provisional decision

For the reasons set out above, I'm currently not intending to uphold this complaint.

I invited both parties to let me have anything in response they thought was relevant.

Lloyd's didn't respond.

Mr and Mrs C responded disagreeing – I've summarised the points they have made using my own words:

- Had Lloyds acted sooner S would have been aware that the transfer of funds into Z's account was made in error before speaking with him and they could have frozen the funds pending investigation. We would like to know what would have happened if S had known this information before Z spoke with them and withdrew the funds. What steps would have they taken knowing that the monies in Z's account had been transferred in error?
- Could the funds have been frozen pending investigation
- Had the banks investigated properly they would have found that Z had a criminal record and that the funds belonged to Mr and Mrs C
- They did everything in their power to recover the funds

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've thought carefully about the points Mr and Mrs C have raised. While I have great sympathy for their situation and totally agree they did all they could in the circumstances to try to recover the funds, their arguments haven't changed things for me, I'll explain why.

As I explained in my provisional decision the process for the funds to be returned rely on the receiver of the funds in this case Z – to accept they have received them in error – he didn't do this. I think it may be helpful to run through the process here in order so it's clear for Mr

and Mrs C why I can't uphold their case.

All four points of the process need to be met in order for the funds to be returned.

- A customer has made a payment in error

- There is clear evidence of a genuine mistake

Mr and Mrs C made the payment to the wrong person and reported this that person hoping they would return them. They also reported this to Lloyd's. Points one and two are not in dispute and have been met.

Let's assume for now that Lloyds acted immediately and contacted S— even though they didn't.

S would have frozen the funds and contacted their account holder, Z.

- The recipient doesn't dispute what has happened; and

Z likely would have said to S something similar to what he did say to them when they contacted him about moving the funds – which was - this was payment for work he had completed for Mr and Mrs C, and he wouldn't have authorised the return of those funds.

- The money is still available

Given what I've said above the process would have failed at stage three and so stage four would have been irrelevant as even if the money was still available Z would have needed to accept, he had received the funds in error and agreed to have returned them.

The efforts of any bank in situations like these are to try to recover the monies as a best endeavour. Lloyds responsibility here was to inform S with 48 hours that there had been a payment made in error – it did this. While I do truly feel for Mr and Mrs C's situation, I can't fairly say that Lloyd's didn't meet its responsibility here in the actions it took.

Mr and Mrs C have asked would S have frozen the funds pending investigation. The answer here is yes – but the investigation would have been as described above – they would have contacted Z to see if he agreed the funds were not his, so the outcome would, more likely than not, have been the same – as we know Z did dispute the funds were paid in error.

Mr and Mrs C have also raised that Z has a criminal record. Lloyd's would not have been privy to this information but even if it was, that has no bearing on this complaint. I say this because people with criminal records can and do work and have bank accounts and legitimately receive funds into their accounts. So just because someone has a criminal record it wouldn't automatically mean a bank shouldn't believe what they say, freeze payments made to them or return them to the payer on demand.

I know Mr and Mrs C will be extremely disappointed with the outcome I've reached and I'm sorry for that. But once Z disputed the funds were paid in error there was nothing further Lloyd's could have done to recover the monies for them, and this became a matter from them to pursue as a civil matter or to report it to the police if they felt it was a criminal matter.

My final decision

For the reasons outlined above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to

accept or reject my decision before 24 April 2024.

Amber Mortimer
Ombudsman