

The complaint

Mr and Mrs B complain that Lloyds Bank PLC won't refund the money they lost after they fell victim to an Authorised Push Payment (APP) scam.

What happened

The background to this complaint is well known by both parties, so I won't repeat it here. But in summary I understand it to be as follows.

It doesn't appear to be in dispute that Mr and Mrs B fell victim to a scam when they were looking to purchase a vehicle. Which resulted in them making a payment, in August 2022, to an account which was held with Lloyds.

Mr and Mrs B complained to Lloyds as they didn't think it had done enough to check the person wasn't a fraudster before they opened the account, and Mr and Mrs B believe there was information, which was known to Lloyds, that their account holder was a fraudster.

Lloyds looked into Mr and Mrs B's complaint, but didn't uphold it. In summary it didn't think it was liable under the Contingent Reimbursement Model Code (CRM Code) and that relevant account opening checks were completed. Lloyds also confirmed it had done everything it could to get Mr and Mrs B's money back.

Unhappy with Lloyds' response, Mr and Mrs B brought their complaint to this service. One of our Investigator's looked into things but didn't recommend that it be upheld. In summary, he said as the beneficiary account was opened before 31 January 2019, he couldn't comment on the account opening. He added that, having looked at the activity on the beneficiary account, he didn't see anything that he thought ought to have given Lloyds cause for concern. Alongside this, he was satisfied that Lloyds had taken appropriate actions when it was notified of the scam.

Mr and Mrs B didn't agree with our Investigator's view, so the complaint has been passed to me for a final decision.

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.

First, to clarify, this decision focuses solely on the actions of Lloyds – as the Receiving Firm of the account where Mr and Mrs B made their payment to.

I'm sorry to disappoint Mr and Mrs B but I'm not upholding their complaint about Lloyds. I know they have been the victims of a cruel scam, but I don't believe Lloyds has acted unfairly or unreasonably in its answering of the complaint. I'm satisfied Lloyds has met its requirements under the CRM Code and therefore isn't liable to refund Mr and Mrs B the money they sadly lost. I'll explain why.

Among other things, regulated firms receiving payments like Lloyds, are required to conduct their 'business with due skill, care and diligence' (FCA Principle for Businesses 2) and to comply with legal and regulatory anti-money laundering and countering the financing of terrorism requirements.

Those requirements include maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage money laundering risk – for example through customer due diligence measures and the ongoing monitoring of the business relationship (including through the scrutiny of transactions undertaken throughout the course of the relationship).

And, more generally given the increase in sophisticated fraud and scams in recent years, as a matter of good industry practice at the time, I think firms should reasonably have had measures in place to detect suspicious transactions or activities that might indicate fraud or financial abuse (something also recognised by the Banking Standards Institute's October 2017 'Protecting Customers from Financial harm as a result of fraud or financial abuse – Code of Practice').

And I'm satisfied that this good practice requirement meant not just looking out for situations where a customer might be the victim of fraud, but also situations where the customer might be the perpetrator of fraud or a money mule.

Also relevant in this case, as mentioned earlier, is the CRM Code that Lloyds has signed up to. The relevant considerations for Receiving Firms under the CRM Code sets out the following:

"CRM Code: Payment Journey – Receiving Firm

SF2 Receiving Firms should take reasonable steps to prevent accounts from being used to launder the proceeds of APP scams. This should include procedures to prevent, detect and respond to the receipt of funds from APP scams. Where the receiving Firm identifies funds where there are concerns that they may be the proceeds of an APP scam, it should freeze the funds and respond in a timely manner.

Prevention

SF2(1) Firms must take reasonable steps to prevent accounts being opened for criminal purposes.

Detection

SF2(3) Firms must take reasonable steps to detect accounts which may be, or are being, used to receive APP scam funds.

Response

SF2(4) Following notification of concerns about an account or funds at a receiving Firm, the receiving Firm should respond in accordance with the procedures set out in the Best Practice Standards."

In considering all of the above, and to determine if Lloyds met the standards required of it under the CRM Code, I have looked at whether Lloyds opened the receiving account correctly, whether there was anything in the way the account was being used that should have given it any cause for concern and finally; once notified of fraud did it act appropriately

and in a timely manner. And if I consider there were failings in relation to any of the above, I have to consider whether Lloyds' acts or omissions fairly resulted in Mr and Mrs B's loss.

I would like to point out to Mr and Mrs B at this point, that while Lloyds has provided our service with information about the receiving bank account – it has done so in confidence. This is to allow us to discharge our investigatory functions and Lloyds has provided that which is necessary for the determination of this complaint. Due to data protection laws our service can't share any information about the beneficiary, the receiving bank account or any investigation and action Lloyds subsequently took. However, I would like to assure Mr and Mrs B, I have thoroughly reviewed and considered all the information provided before reaching my decision.

Complaints about receiving banks and any acts or omissions came into our jurisdiction from 31 January 2019. I've seen evidence from Lloyds to show that the receiving bank account was opened prior to 31 January 2019. This means I can't comment on whether there were any failings by Lloyds when the account was opened.

I've gone on to consider whether the activity on the receiving bank account ought reasonably to have caused Lloyds any concern and I've looked at the account history for the beneficiary account. I can't say there was any account activity that I think would reasonably have stood out to Lloyds as suspicious or significantly outside of what might be expected for an account of that type.

I'm also satisfied there was no notification of fraud on the account prior to the payment Mr and Mrs B made into the account. Alongside this, I'm not persuaded there were any other red flags where it could reasonably be argued that Lloyds might have had sufficient grounds to suspect fraud and refuse execution of their customer's payment instructions.

For Mr and Mrs B's benefit, Lloyds wouldn't have known that the incoming credit to the account was as a result of fraud and that its account was being used fraudulently. Personal and business accounts receive incoming credits, and in this case, I think it is reasonable to say that there was nothing to indicate to Lloyds that there was anything suspicious going on with the beneficiary account. It follows that I don't think Lloyds ought reasonably to have had concerns where I would have expected it to have intervened, so I can't fairly say that it could have prevented Mr and Mrs B's loss.

Finally, I've thought about Lloyds' response when it was notified of the scam. The Best Practice Standards set out that a Receiving Firm must take appropriate action, in a speedy manner, upon notification of APP fraud and notify the Sending Firm if any funds remain for recovery. Here, once notified of the scam, I'm satisfied Lloyds took the necessary actions required of it and did so in a timely manner. Unfortunately, no funds remained in the account that could be recovered as they had already been moved on / withdrawn from the account.

So, taking the above into consideration I'm satisfied, following notification of APP fraud, that Lloyds responded in accordance with the procedures set out in the Best Practice Standards. And I don't think I can fairly say Lloyds didn't do enough to respond to the alleged APP fraud.

Overall, while Mr and Mrs B were the unfortunate victims of a scam, I'm satisfied that Lloyds met the standards required of it under the CRM Code. I also don't think Lloyds could've done anything more as the Receiving Firm to have prevented the loss of Mr and Mrs B's money. And it responded appropriately once notified of the fraud. So, it follows that I don't think Lloyds is liable to reimburse Mr and Mrs B for their loss under the CRM Code or otherwise.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 25 October 2023.

Stephen Wise
Ombudsman