

The complaint

Mrs H is unhappy Lloyds Bank PLC will not refund the money she lost as the result of an authorised push payment (APP) scam.

Mrs H's complaint has been brought by a representative, for ease of reading I will refer solely to Mrs H in this decision.

What happened

On 25 July 2017 Mrs H used telephone banking to transfer £3,271.26 from her classic account to a forex company her husband had used previously. She then paid for accommodation abroad to use in August 2018 from the forex company. Mrs H says she had checked all the reviews of the property and the property owner. When she spoke to the ownership company it was professional and helpful, supplying a detailed contract, invoice and booking confirmation on receipt of the payment. Months later in November 2017, triggered by a national anti-fraud campaign, Mrs H went to check her booking and found the property owner's website had disappeared and they could not be contacted. She contacted Lloyds to report the scam but found the bank to be unhelpful and dismissive.

Lloyds rejected Mrs H's fraud claim saying it had no reason to intervene, and even had it done so it did not feel this would have changed the outcome. But it accepted its service could have been better and so apologised and paid Mrs H £50 compensation. Mrs H said she is seeking a full refund of the money she lost, £500 compensation and for the bank to cover any related legal costs.

Our investigator did not uphold Mrs H's complaint. She didn't find the payment should have triggered checks from Lloyds and as the money was sent to an account Mrs H had control of she wouldn't have expected the bank to try to recover the money. She explained there are no records of any discussion that took place during the telephone banking interaction. She found the £50 compensation for the poor service to be fair.

Mrs H disagreed with this assessment and asked for an ombudsman's review. She said without evidence that Lloyds adequately probed her before processing the transaction this outcome is not fair. She said there are number of obvious questions that would have revealed, and therefore prevented, the scam.

I reached the same conclusion as the investigator but made different findings so I issued a provisional decision. An extract follows and forms part of this final decision.

Extract from my provisional decision

There's no dispute that Mrs H made and authorised the payment. Mrs H knew why she was making the payment. At the stage she was making this payment, she believed she was transferring money to a forex company her husband had used before to then pay for holiday accommodation. I don't dispute Mrs H was scammed and she wasn't making the payment for the reason she thought she was, but I remain satisfied the transaction was authorised under the Payment Services Regulations 2017.

It's also accepted that Lloyds has an obligation to follow Mrs H's instructions. So in the first instance Mrs H is presumed liable for her loss. But there are other factors that must be taken into account.

To reach my decision I have taken into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time. To note, as the payment pre-dates the Contingent Reimbursement Model (CRM) code and the British Standard's Institute (BSI) code for protecting customers from financial harm as a result of fraud the principles of those codes do not apply in this case.

This means I think that Lloyds should have:

- been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.*
- had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which financial institutions are generally more familiar with than the average customer.*
- in some circumstances, irrespective of the payment channel used, taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.*

In this case I don't think Lloyds ought to be held liable for the transaction. I'll explain why.

I do think the transaction ought to have triggered an intervention from Lloyds. I say this as it was out of character for how Mrs H used her classic account. This was very uniform – in the prior 12 months there were just two credits at the start of each month for £90 and £150. Neither the amount nor the source ever varied. There was only a single exception to this pattern of use in a year – one inter account transfer for £240. So I do think the debit payment for £3,721.26 was unusual enough to merit further checks from Lloyds.

There are no call notes from the time Mrs H called to make the payment, so I cannot know what was said. However, this does not prevent me from making a fair finding as Mrs H suggests. I say this as based on the available evidence I don't think an appropriate intervention would have changed the outcome.

On balance, I believe Mrs H would have gone ahead. I say this as she was moving money to a forex company her husband used regularly. She was doing so to pay for the rental of holiday accommodation and had spent a significant amount of time checking reviews and comparing how it was advertised on different platforms. She had successful calls with the scammer. She had received a detailed signed contract and then an invoice that reinforced her view that this was a legitimate, professional property rental company and she was keen to secure the best exchange rate for the payment.

Mrs H argues the forex company was not a typical beneficiary for the payment of a holiday and Lloyds ought to have spotted this. But as she knows it was not the final beneficiary, it was being used for currency conversion. I disagree that this is an unusual way to pay for an overseas rental.

So had Lloyds asked a proportionate level of questions about the transfer, and subsequent payment, I don't think the scam would have been uncovered. Mrs H argues had she been asked why the booking had moved away from a certain online accommodation rental

platform the scam would have unravelled. But I am not persuaded that is the case for two reasons. Property owners and agencies often list on a number of sites, this booking had not started on one but with payment requested 'off site'. Rather the property was seen advertised one place but then checked and progressed via a different channel. I am also not wholly certain that how Mrs H originally found the property would have come to light through proportionate questioning given the quality of the information she had and how certain she was about the authenticity of the rental at that time.

I have also considered if Lloyds did enough to try to recover Mrs H's money once Mrs H reported the scam. Mrs H contacted Lloyds with her concerns four months after she had transferred the money to a forex account that she (or she and Mr H) had sole control of so I would not expect Lloyds to have taken any further action to try to recover the funds.

It follows I am not planning to instruct Lloyds to refund any money to Mrs H. This is a difficult decision to make, I'm sorry Mrs H has lost a considerable amount of money and I can understand why she would like to be compensated for her loss. I do accept Mrs H has fallen victim to a sophisticated scam. But I can only consider whether the bank, which had no involvement in the scam itself, should be held responsible for what happened. For the reasons set out above I do not find Lloyds can be held liable in the circumstances of this case. I find the compensation it paid for its poor service to be reasonable given the impact and duration of that issue.

I asked both parties to send any comments or new information by 27 June 2023.

Mrs H responded saying she did not accept the provisional decision, she did not give any reason why or provide any new evidence. Lloyds did not respond.

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.

Where some of the evidence is incomplete I have reached my conclusion based on the balance of probabilities. In other words, what I find to be most likely given the available evidence and the wider circumstances.

As neither party submitted any comments or new information for me to consider I have no reason to change the findings or the outcome I set out in my provisional decision.

It follows I am not instructing Lloyds to refund any money to Mrs H.

My final decision

I am not upholding Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 28 July 2023.

Rebecca Connelley
Ombudsman