DRN-4323453

Financial Ombudsman Service

The complaint

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

What happened

Both parties are familiar with the details of the scam so I will not repeat them in full here. In summary, on 16 October 2020 Mr H made an international payment of £4,031.25 online. He understood he was paying this amount as a refundable bond to enable the release of shares he held in a company that was being taken over. Mr H had carried out thorough due diligence before making the payment. When he was then asked to pay an additional amount for tax Mr H became concerned and reported the scam to Lloyds.

Mr H says Lloyds failed to protect him from this fraud and then provided poor service when he reported it. Mr H says when he called to find out how to make this international payment, Lloyds had told him it would place the payment into a suspense account until more checks were completed and it would wait on his further instructions – yet it went ahead without doing this. He asks for a full refund, £500 compensation and an indemnity against any legal costs he must pay as a result of the scam.

Lloyds says the payment was not unusual for Mr and Mrs H's account so there was no need for it to intervene. Once Mr H reported the scam it tried to recover the money but was unsuccessful. It confirmed it had apologised for the poor service Mr H received and made two compensation payments for the distress this caused, as well payments to cover his call costs and international charges. This totalled £134. It said it had recordings of two calls from 15 October 2020, but no other records of any calls between the parties on or around the date of the transaction.

Our investigator did not uphold Mr and Mrs H's complaint. She found that Lloyds ought to have intervened as the payment was out of character. But she felt this would not have stopped the payment as Mr H had thoroughly checked the circumstances. She listened to the two calls from 15 October but found Lloyds did not mention placing the payment into a suspense account.

Unhappy with this assessment Mr and Mrs H asked for an ombudsman's review. In summary, they said the crux of their complaint has been missed: Lloyds told Mr H it would place the payment into a suspense account prior to his final instructions, but it did not do this. They ask what has happened to this call recording. They say the transaction was not authorised and was unusual. And had Lloyds intervened Mr H would have listened to the bank and not made the payment. They find the assessment shows bias in favour of Lloyds.

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 want to assure Mr H I have thought carefully about all of his comments and submissions.

And I mean no discourtesy by this, but in keeping with our role as an informal dispute resolution service, and as our rules allow, I will focus here on the issues I find to be material to the outcome of this complaint.

Mr H has said that our investigation to date shows bias. We are an independent and impartial organisation and we do not act on behalf of financial services companies or consumers - it is not in our interest to find in favour of one party over the other.

Where the evidence is contradictory or incomplete (as some of it is here) I have reached my decision based on the balance of probabilities, so on what I find is most likely given the available evidence and the wider circumstances.

I want to start by addressing Mr H's point that Lloyds told him it would place the funds in a suspense account, and wait further instructions from him, but processed the payment anyway.

Lloyds provided recordings from two calls from 15 October 2020. Mr H is certain the discussion around the suspense account arose when he called to find out how to make an international payment. From the recordings I have been able to listen to he provided the beneficiary details on the first call, but there is no mention of a suspense account, or of Lloyds waiting to hear back from Mr H. Rather the payment did not go ahead on the first call on that date as the advisor's system was unable to process international payments at that time. On the second call the adviser explained to Mr H how he could set up an international recipient online. Again there was no discussion about a suspense account or further checks. And Mr H ended that second call seeming satisfied he understood how to make the payment online himself.

We asked Lloyds to check if there are any other relevant calls, and it has confirmed it has no record of other calls around that time. I accept this is frustrating for Mr H as he recalls a discussion about Lloyds holding his money in a suspense account. I don't doubt these are his honest recollections, but we are an evidence-based service and without a recording of the call he remembers to evidence the bank error he describes I cannot fairly conclude Lloyds acted against its own advice as he alleges. From the available evidence it seems whilst Mr H called about the payment on 15 October 2020, he went ahead and made it online after receiving clear help on 'how to' from the international payments team.

So on balance I am satisfied that Mr H made and authorised the payment. I find had that not been the case, he would have contacted Lloyds immediately, given he recalls he believed it to be waiting his instructions. Given it was a significant sum, had it debited his account without his authorisation I would have expected him to contact Lloyds to query it as soon as he became aware – so most likely within days, not months.

Mr H knew why he was making the payment. At the stage he was making this payment, he believed he was transferring money to pay a refundable bond that would allow him to access shares he held. I don't dispute Mr H was scammed and he wasn't making the payment for the reason he thought he 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 Mr H's instructions. So in the first instance Mr H is presumed liable for his 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 was international the Contingent Reimbursement Model (CRM) code does 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 the account. Mr and Mrs H did not make international payments, infrequently or otherwise.

This means I need to decide what the most likely outcome would have been if Lloyds had made an effective intervention. And based on the available evidence I don't think a proportionate intervention would most likely have changed the outcome.

I say this for a number of reasons: Mr H had carried out significant due diligence and would have been able to credibly answer a proportionate level of questions about the payment; he had researched the company at Companies House and via the Financial Conduct Authority; he had spoken to different people at the organisation over a period of time; the scammer had precise details about Mr H's shareholding which legitimised the request; and Mr H had received a number of documents that appeared genuine, such as proof of ownership of the shares and an agreement of the offer for the sale of the shares.

So I don't think Lloyds would have uncovered any signs that Mr H was at risk of financial harm and so advised him not to proceed. I think Mr H would have provided plausible answers to a sufficient line of questioning, and so it would have been reasonable for Lloyds to release the payment. It follows I have not found any evidence to show that Mr H's likely replies would have been so concerning Lloyds should have refused to process the payment.

Mr H also raised that Lloyds had failed to carry out necessary compliance and KYC (Know your customer) checks on the beneficiary. But its obligation to complete KYC checks extend only to its relationship with Mr H as its customer, and not to his payees. Due to the time since the payment was made the internet banking logs that show the exact payment journey are no longer available, but Lloyds has confirmed that there would have been an extra layer of security (such as a one-time passcode or the right password/memorable information combination) given the characteristics of the transaction.

I have also considered if Lloyds did enough to try to recover Mr and Mrs H's money once Mr H reported the scam. I can see this was on 12 February 2021, some months after he made the payment. It then contacted the recipient bank but no funds remained; in the circumstances 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 Mr and Mrs H. I anticipate they will be very disappointed. This is a difficult decision to make, I'm sorry they have lost a considerable amount of money and I can understand why they would like to be compensated for their loss. I do accept Mr 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 and related call costs and fees to be reasonable given the impact and duration of the those issues.

My final decision

I am not upholding Mr and Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 1 November 2023.

Rebecca Connelley
Ombudsman