

The complaint

Mr F complains that Lloyds Bank PLC hasn't refunded him in full for money he sent in connection with what he now believes was a scam.

What happened

The background to this complaint is well-known to both parties, so I won't repeat it all here. But briefly, and based on the submissions of both parties, I understand it to be as follows.

Mr F says Mr B, his stepbrother (or brother-in-law), asked him to make payments on his behalf, in connection with an immigration matter. In summary, Mr B had entered the country in 2016 and was applying for asylum. This had been denied. Mr B appealed but the appeal judge commented on inconsistencies in Mr B's testimony and found his evidence incoherent, denying his appeal in December 2019.

Mr B told Mr F he'd found a company (which I'll refer to as E) online, that said it could help in these circumstances. Because Mr B didn't hold a suitable bank account, he asked Mr F to send money to E on his behalf. Between January 2020 and January 2021, Mr F sent seven payments to E from his Lloyds account. In total, this amounted to £46,800.

With the exception of the final payment sent in January 2021, before making each outbound payment Mr F received credits to his account corresponding to the amount he was about to send on. Mr F explains this money was sent to him by Mr B's friends, in order that he could pay E.

However, it appears the results promised by E did not materialise. Mr F reported the matter to Lloyds as having been fraudulent – an Authorised Push Payment scam (APP scam).

Lloyds is a signatory of the Lending Standards Board Contingent Reimbursement Model (the CRM Code) which can offer additional protection from APP scams. But Lloyds said it wouldn't refund Mr F in full because it didn't think he'd taken enough steps to check he was paying a legitimate company for a legitimate service. But it thought it could have done more to protect Mr F. It refunded 50% of the amount he'd paid from the fourth payment onwards.

Mr F didn't accept this. One of Investigators looked into what had happened. She thought Lloyds could have taken action sooner, and recommended it refund 50% of the overall amount (with interest on that amount at 8% simple per year). But she didn't think Lloyds needed to pay back more than this. She thought Mr F had made the payments without having a reasonable basis for belief that the transactions were legitimate.

Lloyds agreed. It paid Mr F in line with the Investigator's recommendations.

But Mr F didn't accept the investigator's findings. In light of this disagreement, I have been asked to reach a final decision on the matter.

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 deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Lloyds has a primary obligation to carry out the payment instructions its customers give it. As a starting point, a customer is therefore assumed liable for a payment they have instructed to be made.

But that isn't the end of the story. In particular, as I've mentioned above, the CRM Code can provide additional protection where payments have been made as the result of an APP scam.

Lloyds hasn't disputed that Mr F's payments resulted from an APP scam. It hasn't disputed that these payments fall within the scope of the CRM Code. In short, Lloyds hasn't accepted that the additional protections of the CRM Code should apply here.

Indeed, the bank has confirmed that it has now made a partial refund to Mr F equating to 50% of the total amount he sent, with statutory interest added to account for the time he was without the money. Lloyds accepts it was at fault, but it considers Mr F must equally share part of the blame.

So, what remains for me to decide is whether Lloyds can fairly be required to repay the balance.

The CRM Code won't always require a firm to refund payments in full. In particular, it says a firm can choose not to fully reimburse APP scam losses where the firm can establish that the customer made the transactions without having a reasonable basis for believing what they did - including that they were paying for a genuine service from a legitimate person or business.

I need to therefore consider whether Mr F made the payments without having a reasonable basis for believing this was for a genuine service from a legitimate person or business. I've carefully considered everything Mr F has submitted as well as the evidence submitted by the bank.

Mr B had found E through an online search. He saw E's website, which looked professional. E apparently had an office in London. There were some features that therefore looked genuine or legitimate.

Mr B then communicated with someone claiming to represent E mainly through a messaging app. I can see from the chat history that he was told he could visit E's office after he'd made the transfer. It's unclear from the chat when this visit happened if it happened at all. Mr F recalls that they did visit. However, the comments in the chat lead me to conclude this must have been after the first payment had been sent. In any event, based on what I can establish, there seems to have been limited information given before the first payment was made.

Later in the chat there is discussion between E and Mr B about E helping Mr B arrange a marriage ceremony and paying extra to have the marriage certificate backdated. This and

other comments throughout indicate to me that Mr B was almost certainly aware these arrangements were not legitimate, and further that the representative of E was not operating legitimately.

Furthermore, the sums being requested were disproportionate to the service supposedly being offered. The comments show Mr B offering huge sums unbidden to secure what he wanted. That again points to a recognition that what was being paid for was understood not to have been legitimately offered.

I appreciate Mr B was in a truly desperate situation. His comments indicate he was willing to pay whatever sum it took to secure residency. But I think this meant he was willing to ignore the obvious risks here that E wasn't offering a legitimate service.

Having reviewed everything, I am not satisfied that Mr B could be safely said to have had a reasonable basis for believing the service being offered was genuine or that the representative was legitimate at the time these payments were made. Neither am I persuaded Mr F (acting on Mr B's behalf) had a reasonable basis for thinking this was legitimate when he sent the payments. Rather, it seems most likely to me (given the familial ties between Mr B and Mr F and the duration of the arrangement) that Mr F placed reliance on what Mr B told him, in the knowledge that Mr B may not have held a reasonable basis for believing in the legitimacy himself.

I've considered the evidence here thoroughly including everything Mr F has said. But overall, I'm satisfied that Lloyds has fairly established that the exception to full reimbursement under the CRM Code can be applied to Mr F's payments.

Even setting aside the requirements of the CRM Code, I don't find I could fairly require Lloyds to refund Mr F by more than it has for any other reasons.

In particular, even were I to find Lloyds at fault for further reasons than those it already accepts, I don't consider the circumstances here could fairly and reasonably lead me to make an award higher than Lloyds has paid Mr F.

With all of the above in mind, and based on what I've seen, I don't consider that Lloyds needs to do more than it has already done, and it does not need to refund more than the 50% it has already paid to Mr F. I understand that this is not the outcome Mr F wants. But I can reassure him that I've carefully considered all the circumstances of his complaint before reaching what I consider to be the fair and reasonable decision in all of the circumstances.

My final decision

For the reasons given above, I do not uphold Mr F's complaint about Lloyds Bank PLC. The bank does not need to refund Mr F by more than it already has paid him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 22 August 2023.

Stephen Dickie
Ombudsman