

## **The complaint**

A company which I will refer to as 'K', complains that Lloyds Bank Plc won't reimburse the money the company lost following an Authorised Push Payment (APP) scam.

## **What happened**

The background to the complaint is known to both parties and so I won't repeat it at length here.

Briefly, in early 2023, a scammer emailed K impersonating to be a supplier of K. They advised K that their bank account has changed, and all future payments should be made to a new bank account. K duly amended the account details in their system. Two weeks later, the scammer chased K for an outstanding payment and K paid the amount to this new account.

The scam came to light about ten days later when the genuine supplier contacted K for the payment. K immediately reported the scam to their bank Lloyds who in turn contacted the recipient's bank. Unfortunately, no funds remained in the recipient's account.

K says that Lloyds could have done more to help them and that it should reimburse the loss. Lloyds says that it hadn't done anything wrong and so it would be unable to reimburse K the money lost.

One of our investigators reviewed the complaint and concluded that it couldn't be upheld. They said that Lloyds correctly followed K's payment instructions. The payment wasn't particularly unusual or suspicious in appearance to the bank at the time considering the company's normal account and payments activity. The payment also didn't consume all of the funds in the account – which might have been an indicator it was at risk of fraud. The payment was to a new payee, but this alone wouldn't have given Lloyds much cause for concern.

So, the investigator said that they are unable to conclude that the bank missed an opportunity to identify that the payment was being made in relation to a scam. The investigator also noted the Lloyds took action swiftly on being advised of the scam.

The investigator concluded that the bank hasn't done anything wrong - so it doesn't need to take any further action such as reimbursing the loss to K.

K did not agree and asked for the case to be referred to an ombudsman.

## **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.

Having done so, I agree with the Investigator, essentially for the same reasons.

As the Investigator has said, in broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that its customer authorises it to make. However, there are circumstances where it might be appropriate for banks to take additional steps – as for example have systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud.

I have reviewed K's account statements for several months prior to the payment to the scammer, to understand the general account activity. Over the period, I see that this was an active account. There have been several similar or higher payments out of the account. As such I can't say that the payment ought to have stood out as unusual. The payment was to a new payee, but this alone wouldn't have given Lloyds much cause for concern. Also, the payment was made about two weeks after the new account details was set up.

Ultimately, it is a matter for Lloyds as to how it chooses to configure its fraud detection systems and strike a balance between allowing its customers to transact business and questioning transactions to confirm they are legitimate. But where it is alleged that it didn't do enough to prevent a loss which resulted from an authorised push payment fraud, I will look into the circumstances of the case and based on what I have seen, decide whether in that case the bank could have fairly and reasonably done more.

After taking all of the above into account, I can't say that the disputed payment stood out sufficiently from the prior account activity to reasonably have prompted Lloyds to take further action. I'm not persuaded that there was enough here for me to find Lloyds was at fault in carrying out K's payment instruction in line with its primary obligation to do so.

Further, from what I can see, there was no delay on part of Lloyds in contacting the recipient's bank on being advised of the scam. Unfortunately, no funds remained in the account. Given that the contact was made about ten days after the scam, this isn't surprising as the scammers tend to take the money swiftly out of the account as soon as it was paid in.

On some occasions, it's possible to consider whether a customer is covered under the Contingent Reimbursement Mode Code which came into effect from 28 May 2019. However, K aren't not covered by the Code. Where the customer is a business (as in this case), the Code only applies if they were a micro-enterprise at the time the transaction took place.

For this purpose, a *micro-enterprise* is essentially an enterprise which employs fewer than 10 persons. And, if they employ fewer than 10 persons, then either their annual turnover or total gross assets should not exceed €2 million. In this case K isn't a *micro-enterprise* as it employed more than 10 persons at the relevant time. So unfortunately, they aren't covered by the CRM Code.

I am very sorry to see that the loss has, understandably, caused considerable distress and inconvenience. This was a sophisticated fraud, and I can see why K found the scammer's emails believable. For example, when K advised the scammer that a previous payment of £11,000 had already been made, they said that that was fine and that they can still trace that payment despite switching to the new account. This would have reassured K that they were dealing with the genuine supplier.

However, what I am considering here is whether the loss to K was caused by any error or omission by the bank. I appreciate the director's strength of feeling on this matter in that K had been a long-standing customer of Lloyds and so Lloyds could have helped by reimbursing the loss, as they fell victim to the scam. But I can only make an award against a bank if that bank has done something wrong, which has led to a loss. In this case, for the

reasons given I don't think that there was any error or omission on part of Lloyds which led to K's loss. As such I can't fairly or reasonably ask it to refund their loss.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask K to accept or reject my decision before 5 December 2023.

Raj Varadarajan  
**Ombudsman**