

## **The complaint**

Limited company 'B' complains that Lloyds Bank PLC hasn't refunded it after it paid money upfront by bank transfer for a vehicle and this turned out to have been a scam.

## **What happened**

In January 2022, B (a motor repair company) was attempting to buy a vehicle advertised for sale on a well-known auction website.

The seller's advert didn't allow the use of the auction website for the purchase. It said anyone interested in buying needed to contact the seller directly. So B messaged the seller and then spoke to them on the phone.

The seller said the vehicle was about to be purchased by a trader, but if B paid a deposit (half the price) then the vehicle would be secured for B.

The seller said the vehicle was in great condition, and it was the mileage and age B wanted.

B's director later explained to Lloyds it was such a good deal that he decided to proceed. B explained it didn't carry out checks into the seller or the vehicle at that point, because the seller sounded genuine.

B offered to pay the full price advertised, rather than a deposit - wanting to ensure the purchase was secured. The seller accepted this, and he sent over bank details to be used for the payment. B then made a Faster Payments bank transfer of £4,500 from its business current account with Lloyds. The payment was made to an account (the receiving account) in a different name to that of the seller.

However, when B's director travelled to the supposed location of the vehicle that weekend, he found out the address was fake. The seller stopped responding and it was apparent that the sale had been a scam.

B reported the matter to the police and later to Lloyds.

Lloyds tried to recover B's money from the receiving account. But unfortunately, by the time the scam had come to light, the money had been removed and none remained to be recovered.

Lloyds is signed up to the Lending Standards Board's Contingent Reimbursement Model (the CRM Code) which can offer additional protection from Authorised Push Payment scams (APP scams) such as this one. But Lloyds said it wouldn't refund the loss because B hadn't been sufficiently cautious when deciding to go ahead and make the payment.

B didn't agree and referred a complaint about the outcome to this service for an independent review.

Our Investigator looked into everything that had happened. But she didn't think Lloyds had treated B unfairly, and didn't think it needed to refund the money it had lost.

The Investigator said the price advertised was very low relative to the normal market value for that vehicle, taking into account its age and mileage, being less than half what trade valuations suggested. She thought this was too good to be true. The Investigator thought other features of the sale should have raised concerns. B hadn't carried out checks to reassure itself prior to making the payment. Lloyds could have given a scam warning when the payment was being made but this would have been very unlikely to have prevented the payment being made. Under the CRM Code, B wasn't entitled to a refund from Lloyds, and Lloyds wasn't liable for any other reason.

B didn't accept the Investigator's assessment. The complaint has been referred to me 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.

I'm sorry to hear about what happened to B here. This was a criminal scam, and B now faces the financial consequences of that. Of course, the principal cause of the loss are the scammer's actions, and it doesn't follow that Lloyds is necessarily liable for what happened.

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

As I've mentioned above, the CRM Code can provide additional protection for the victims of APP scams. I'm satisfied that the payment B made fell within the scope of the CRM Code. But despite offering additional protections, the CRM Code includes provisions allowing a firm not to reimburse APP scam losses in some situations.

Relevant here, this includes where the bank's customer made a payment without a reasonable basis for believing that the person the customer was dealing with was legitimate, selling genuine goods, or that the payee was the person the customer was expecting to pay.

Lloyds says this exception applies here. It reviewed B's claim against the CRM Code, but it didn't think it was required to reimburse the money lost.

In deciding this complaint, I must first determine whether Lloyds has established this exception to reimbursement can be fairly applied – in other words, that B made the payments without having a reasonable basis for believing either that it was legitimate, selling a genuine vehicle or that B was paying the person it believed it was paying.

In determining these points, I have carefully considered everything submitted by B (and B's representatives) as well as the evidence submitted by the bank.

Firstly, I think the price was very low relative to the market value of the vehicle. Arguably this was simply too good to be true. From what I've seen, the market value for this vehicle at the

time (given the mileage, condition and age) would, conservatively, be more than double what was being asked for it.

I don't doubt that offer would have appeared enticing, considering how cheap it was in comparison to the typical price. But a very low price can be one indicator that there is potentially something untoward about the seller or the proposed deal.

I understand B's argument that sometimes vehicles can be bought at a lower than usual cost and that B was an experienced purchaser of vehicles, one with the facility to repair the vehicle if it happened to need it. But all things considered I think the low price of this vehicle indicated higher than usual risk here and that this should have led B to take greater than usual care about whether or not to go ahead.

Besides the low price, I find there were other factors here that should have raised additional concerns about the legitimacy of the seller.

The seller's advert indicated from the outset that the auction website's purchase platform couldn't be used for the sale. B notes that, normally, going through the platform allows the use of other payment methods (which might provide some buyer protection). But for this vehicle any purchasers were told they'd need to leave the platform and contact the seller directly. While this might have been done to avoid platform fees, moving the sale away from the platform and associated methods of payment was also a red flag - a sign that a sale might not be legitimate.

The name of the account B was asked to pay didn't correspond to the person who'd been acting as the seller. B's director thought it might have been the seller's partner or daughter. But it doesn't seem to me this was queried at the time of making the payment - B simply made the payment to the account directed by the supposed seller without question. This mismatch was another risk or red-flag.

Besides the above, B accepts it hadn't carried out any further checks on the vehicle (such as an HPI check) or checks on the seller. B had only seen photos of the vehicle on the advert and didn't ask the seller to provide any further evidence of ownership or their identity. Unfortunately, I think this was only very limited information to base the decision to send a large sum of money by irreversible bank transfer. When B later checked the seller's profile it was found he had minimal sales history.

In short there were a number of factors indicating that things might not be as they seemed with the sale, and B had done little to mitigate those risks. Ultimately, I think B was putting a lot of trust in a stranger. Buying a vehicle available for sale only outside the website it was advertised on, sight unseen, and at a considerable discount was always a big risk.

All considered, I think B should have considered walking away from the deal - it was too good to be true, and other factors about the sale were red flags. Unfortunately, I think paying a large upfront payment in that situation was an unreasonable and unnecessary risk to have taken. However I understand why B might have been willing to run that risk in exchange for the possibility of a very good bargain.

With all of this in mind, and while I am sorry to hear how B has lost money to this scam, I don't find that B had a reasonable basis for believing the payment was: for genuine goods or services; being paid to the person B thought it was; or that the person with whom they transacted was legitimate.

In terms of the CRM Code, where a customer made a payment without having a reasonable basis for believing they were paying for legitimate goods from a legitimate seller, or that they

were paying the person they believed they were, then their bank does not need to refund them for their loss even when this was due to a scam. I think Lloyds is entitled to rely on that here – I think it has done enough to establish that B didn't have a reasonable basis for believing this was legitimate.

Based on what Lloyds could reasonably have known at the time, this payment wasn't one which would have particularly stood out as being at risk of being connected to a fraud or scam. The payment doesn't stand out from the normal transactions on B's business account and at the time it was made, and only equated to around 10% of the account balance. With this being a business account expected to be used for this type of transaction, arguably Lloyds wouldn't have considered this particular payment presented an obvious risk of being an APP scam. I don't think Lloyds needed to take specific steps at the time, such as intervening directly before it would release B's payment.

But even if the CRM Code still obligated Lloyds to give an 'Effective Warning', I am not persuaded that this would have made a material difference to the success of this scam. I think B would most likely still have made this payment, knowing it had made similar purchases in the past, the director having been in the motor trade for several decades, and in the belief that it had secured a very good deal with a plausible sounding seller.

When Lloyds was made aware of what had happened it acted appropriately and tried to recover the funds, although none remained in the receiving account.

In short, I don't find Lloyds is to blame for B's losses. I don't find it is liable to refund B under the terms of the CRM Code either.

### **My final decision**

For the reasons given above, I do not uphold B's complaint about Lloyds Bank PLC.

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

Stephen Dickie  
**Ombudsman**