

## **The complaint**

Mrs K is unhappy that Lloyds Bank PLC has only refunded 50% of her losses, after she says she was the victim of an Authorised Push Payment (APP) scam.

## **What happened**

Mrs K obtained a £20,000 loan with Lloyds. She transferred £18,000 of that loan to someone who she says she thought was helping her to set up her own business. Mrs K says, at the time, she was vulnerable due to her personal circumstances.

Mrs K has used a Claims Management Company (CMC) to bring her complaint to our service.

The circumstances aren't entirely clear, but the CMC has said Mrs K was in contact with an individual (H) who was helping her to set up her business. H was helping her to secure premises, an accountancy company, and a website to get her business up and running. H had been referred by a mutual friend and Mrs K saw examples of H's work, on his laptop, of other similar businesses he had helped to set up. They communicated in person and via a social media app, where messages aren't stored or saved.

Mrs K made an initial payment to H for £10,000. Mrs K then changed her mind and asked for the money back, but H refused, threatened and blackmailed her, so she transferred a second payment of £8,000.

There is a different version of events in Lloyds' calls and call notes. In those Mrs K says she was on a night out when she met H who offered to help her set up her business. During one of the calls with Lloyds she was asked about the loan that funded the payments. Mrs K initially said she took the loan out before she met H and he had nothing to do with her taking out the loan. Later in the same call Mrs K is asked about the events again and she says she was told to take out the loan by H as she would need the funds to get her business up and running.

She sent H £10,000 to start the business. Eight days later H asked for a further £8,000 for further expenses. Mrs K transferred the second amount but did not ask what H had done with the previous £10,000 payment, only that it had been invested in her business. Mrs K was meant to meet with H, but he kept providing excuses. She asked for her money back and he initially agreed to return her money, although she ultimately didn't receive this back and therefore thought it had been a scam.

Mrs K was asked if H had his own business and he said he had an investment business, but she didn't look into or verify this.

When logging the claim with the bank Mrs K mentioned she had given the Police additional information which she hadn't shared with the bank, out of embarrassment. She later added H was now blackmailing her if she didn't retract the claim.

The payment reference on both payments was “borrowed” and Mrs K says she was told to put this, so the bank didn’t ask too many questions. The loan application reason was “home improvements”.

Mrs K has reported the matter to the police and provided a crime reference number. Lloyds looked into Mrs K’s claim and said Mrs K ought to have independently checked the information about the business/individual who was helping her, including reviews about them. And she ought to have reported the matter to the police before sending the second payment. Lloyds contacted the receiving bank, but no funds remained.

It agreed the payments were out of character and it ought to have intervened. It was willing to refund 50% of Mrs K’s losses. But it found too many inconsistencies and changes to Mrs K’s story to get a full understanding of the events. But ultimately, it concluded she had made the payments without carrying out any checks on the individual.

Mrs K said this has all taken its toll on her mental and physical health. And she is struggling to repay the loan.

Our investigator looked into things, and said she thought the offer from Lloyds was fair. She thought it was fair that Lloyds was relying on the exception not to offer a full refund because Mrs K didn’t have a reasonable basis of belief when making the payments. She said:

- Mrs K had sent funds without any proof of the previous projects completed, without a contract or formal agreement;
- she spoke with H over a social media platform which isn’t a professional medium;
- it didn’t seem logical to pay H direct given he was securing premises;
- there was no evidence to show what Mrs K was making the payments for; and
- she added that by the time the scam claim was raised with Lloyds no funds were available.

Mrs K’s representatives disagreed and provided the additional information:

- She met H in-person and they appeared legitimate.
- She saw examples of previous work, through websites and spreadsheets of accounts, showing they were a successful business person, and knew all areas of business; including tax requirements.
- H was recommended by a long-time trusted friend.

The investigator wasn’t persuaded that these further comments changed the outcome of the complaint. She reiterated that Mrs K hadn’t provided any clarity or evidence what the payments were for.

As the complaint couldn’t be resolved it was passed to me.

### **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’ve come to the same conclusions as the investigator but provided more detail about how I’ve come to those findings.

*Has there been a scam?*

I have considered everything carefully and I am aware of the impact Mrs K says this has had on her. I know this won't be the outcome Mrs K was hoping for and I'm sorry that the events surrounding this claim have caused her such distress and upset. But I can't say that Lloyds has made any error here or that it is responsible for Mrs K's distress and upset.

Mrs K hasn't provided any evidence to support her claim she was setting up a business. She hasn't provided any evidence or correspondence she had with H about what was agreed, what steps were being taken, or what the payment was for.

We have a crime reference number and two messages which show H is aware Mrs K has contacted the police and is unhappy about that. The messages with threatening behaviour don't demonstrate she's been the victim of an APP scam for the purposes of the CRM code. That's because such circumstances do not fall under either definition of an 'APP scam' according to the code:

(i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or

(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.

Mrs K knew the person money was going to - H. And although not consistent on this point, she's said at least one of the transactions was made through duress, not deception. Therefore, the first definition doesn't apply. The second definition also doesn't apply either, as payments to a blackmailer can't reasonably be described as legitimate. While the actions of the blackmailer would clearly be criminal, they can't be described as fraudulent

So if Mrs K was blackmailed prior to making either of the payments these wouldn't be considered as a scam. The two payments sent to this individual could have been for any number of reasons. And, as I've said, there's no evidence to suggest Mrs K was trying to set up a business. Moreover, Mrs K has changed her version of events throughout the course of this complaint. And unfortunately, I don't find any of her versions particularly persuasive. I don't doubt that something has occurred here that has left Mrs K out of pocket and with a loan that she feels she shouldn't be held liable for. But I haven't seen any evidence that persuades me she was the victim of a scam. In which case the offer she's received from Lloyds is more than I would be awarding.

#### *Lloyds' refund*

Even if I were to find that Mrs K had been the victim of a scam, I'm not persuaded Lloyds needs to refund more than it already has.

I say this because, like the investigator, I agree Mrs K didn't have a reasonable basis of belief that the payment was for genuine goods or services, or that the person or business with whom she transacted was legitimate. This is in line with the application of the Contingent Reimbursement Model (CRM) code. I can't see that Mrs K took any steps to verify the credentials of the individual she was dealing with. Other than seeing on his laptop, work he had allegedly done for others in a similar field.

Mrs K has given two versions of events for the second payment. If it was as a result of H requesting more funds, then I'm persuaded Mrs K decided to do so without seeing any evidence of work completed or receipts for the spending or use of the previous £10,000, and this wasn't reasonable in the circumstances. Or, if Mrs K sent the money under duress or as a result of blackmail, then I can't say that she thought this second payment was for

legitimate purposes. Either way I'm satisfied that Mrs K didn't have a reasonable basis for sending the second payment.

In concluding Mrs K didn't have a reasonable basis of belief for proceeding with these payments I'm satisfied Lloyds is entitled to rely on the exception not to refund Mrs K in full. And the 50% refund she has received is fair in the circumstances.

I appreciate Mrs K won't see a refund of 50% of her losses as fair here. But ultimately it is H who has her money and who is to blame. My role is to decide if the bank ought to refund her here. And I don't find that it should.

Mrs K has said that she can't afford to make the loan repayments. Lloyds needs to treat her sympathetically and fairly and discuss her repayment options, in light of her financial situation. I would expect both Mrs K and Lloyds to discuss this to find a suitable repayment plan.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 8 September 2023.

Sophia Smith  
**Ombudsman**