

The complaint

Mr A complains that Lloyds Bank PLC won't refund the money he lost when he was the victim of a scam.

What happened

In December 2022, Mr A received a phone call claiming to be from HMRC. The person he spoke to told him he hadn't paid the correct amount of tax and that, if he didn't agree to pay immediately, he would have to go to court and could face fines and a prison sentence. As Mr A believed he was speaking to HMRC, he then made a payment of £1,997 from his Lloyds account to the bank details he was given.

Unfortunately, we now know the call and the person he spoke to were part of a scam.

After the scam was uncovered, Mr A reported it to Lloyds and asked it to refund the money he had lost. Lloyds investigated but said it thought Mr A could have done more to protect himself from the scam, so it didn't agree to refund the money he had lost. Lloyds did pay Mr A £30 as compensation for incorrect information it gave him when he initially reported the scam though. Mr A wasn't satisfied with Lloyds' response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think the payment was unusual enough that Lloyds should have intervened or warned Mr A before allowing it to go through. And they thought Mr A should have had concerns about what was happening. So they didn't think Lloyds needed to refund the money Mr A lost. Mr A disagreed with our investigator, so the complaint has been 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.

In broad terms, the starting position in law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

Lloyds is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one Mr A fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made
- The customer made the payment without a reasonable basis for believing that:
 - o the payee was the person the customer was expecting to pay;
 - o the payment was for genuine goods or services; and/or
 - o the person or business with whom they transacted was legitimate

There are further exceptions within the CRM code, but these don't apply here.

Was Mr A vulnerable, under the CRM code?

The CRM code says that, where a customer is vulnerable, the bank should refund them in full – regardless of whether any of the exceptions to reimbursement apply. And it defines a customer as vulnerable if it would not be reasonable to expect them to have protected themselves from the particular scam they fell victim to.

Mr A has mentioned that he was under significant personal and financial pressure at the time and that his mental health and wellbeing was being seriously tested by his circumstances. And I appreciate that this will have been a difficult time for him, and I don't underestimate the impact his situation was having on him. But, based on what Mr A has told us, I don't think his circumstances were such that he was unable to protect himself from this particular scam.

So I don't think Mr C met the definition of vulnerable from the CRM code, and so the exclusions to reimbursement could still apply.

Did Mr A have a reasonable basis for belief when making the payment?

Lloyds has said Mr A didn't have a reasonable basis for belief when making the payment, because he didn't do enough to protect himself from the scam. And while I appreciate that this was a sophisticated scam where the scammers directed Mr A to a genuine government website and spoofed their phone number to appear as if it was coming from a genuine government number, I do think there were a number of things about what was happening and what he was told that should have caused him significant concern.

The person Mr A spoke to doesn't appear to have known any personal information about him, other than his name, and doesn't appear to have gone through any security or identity verification process with him during the call. And I think it's reasonable to expect a legitimate organisation such as HMRC to go through some sort of verification process before discussing such serious and personal information as legal charges and fines for tax evasion.

Apart from checking the phone number he was being called from, as he was directed to do, Mr A doesn't appear to have done any checks to confirm who he was speaking to. And given the seriousness of what he was being told and the amount he was being asked to pay, I think it's reasonable to expect him to have checked this in some way.

During the call, Mr A also asked if he could call back after speaking with his family but was told this wasn't allowed. But this isn't how I would expect a legitimate organisation to behave and, as this was the first Mr A had heard about the amount he owed, I think it's unusual that payment would be so urgent. So I think this should have caused him some concern about whether what he was being told was genuine.

The account Mr A was asked to make the payment to was also a personal account, rather than an HMRC account – which isn't how I would expect a legitimate organisation to operate and so should have caused him significant concern. And despite initially being told he hadn't paid the correct amount of tax, the website he was directed to was for paying court fines and

he was then told he was paying a solicitor for their services. So I think this lack of consistency in what he was being told should also have caused him significant concern.

Mr A was also told not to tell Lloyds the payment was to HMRC, but to say it was for paying an invoice. And I think being told to mislead his bank or give it incorrect or incomplete information in this way should have caused him significant concern.

I sympathise with the position Mr A found himself in. But I think there were a number of things here which should have caused him significant concern. And I don't think he did enough, or that the seemingly genuine information he was given should have been enough, to satisfy those concerns. So I think Lloyds has established that he made the payment without a reasonable basis for belief that it was genuine.

Lloyds has therefore established that one of the exceptions to reimbursement under the CRM code applies here, and it does not have to refund Mr A all the money he lost.

Did Lloyds meet its obligations under the CRM code?

Even though I don't think Mr A had a reasonable basis for belief when making the payment, he may still be entitled to a refund of some of the money he lost if Lloyds didn't meet its obligations under the CRM code – one of which is to provide effective warnings when it identifies a scam risk.

But the payment Mr A made here wasn't for a particularly large amount. Other payments had been made, both in and out of Mr A's account, for similar or larger amounts in the months before he made this payment. And the payment didn't leave the balance of his account at a particularly unusual level.

So I don't think it's unreasonable that Lloyds didn't identify a scam risk here, and I wouldn't have expected it to provide an effective warning or intervene in any other way before allowing the payment to go through. And so I don't think Lloyds has failed to meet its obligations under the CRM code here.

Did Lloyds do enough to recover the money Mr A lost?

We expect banks to take reasonable steps to try to recover the money their customers have lost, once they are made aware of a scam.

Lloyds' evidence shows it contacted the bank the payment was sent to within a reasonable amount of time, to ask for the money to be returned. So it has done all I would expect it to have done. But unfortunately, the bank the payment was sent to could not return any of the money.

Customer Service

Lloyds has accepted that it gave Mr A incorrect information when he initially called it, and that this meant he had to phone again before being able to report the scam. But, based on the evidence I've seen, I think the £30 it has paid him was fair and reasonable compensation for the distress and inconvenience this incorrect information caused him. So I don't think it would be fair to require it to pay anything further.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 4 January 2024.

Alan Millward
Ombudsman