

The complaint

Mrs G and Mrs P (the representatives) complain on behalf of Mrs R that Lloyds Bank PLC (Lloyds) won't refund the money she lost when she fell victim to a scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat them all again here. Instead, I'll summarise the key points, and focus on giving reasons for my decision.

Mrs G and Mrs P have power of attorney for their mother, Mrs R. In late 2021, they established she was the victim of a scam which had started around 2014. An individual (Mr S) moved into a rental property Mrs R owned and, over time, led her to believe he had feelings for her. He claimed to be a pilot whose money was tied up abroad. His story evolved over time – I understand he later claimed he was actually a spy, and said he required money for protection.

Mrs R began giving money to Mr S based on his false explanations. I understand this was largely done by withdrawing cash from her Lloyds accounts and handing it over to him. Some of this was funded by lending she took out. And I understand she also took out, or was at least paying for, hire car agreements for him. This occurred during a period when Mrs R's health was in decline. In total, the payments that are alleged to have been lost to this scam significantly exceed £200,000.

When the representatives found out what had happened, they raised their concerns with Lloyds. They felt it had failed to protect Mrs R, in light of her vulnerabilities, from the scam – such as by invoking the Banking Protocol earlier. They also complained that Lloyds had charged Mrs R numerous fees over the years, which they felt should be refunded given her situation.

Lloyds offered £500 compensation for the time it took to review things. But said it wasn't clear what the cash withdrawals had been used for, so it wouldn't refund them. Although it would review things further on receipt of additional information from the police.

Unhappy with this response, the representatives referred the complaint to our service. Our investigator thought Lloyds should refund two payments – one that fell within the scope of the Lending Standards Board's Contingent Reimbursement Model (CRM) code; and a cash withdrawal that was permitted after the representatives raised their concerns with Lloyds. But she didn't think Lloyds was at fault for failing to prevent most of the payments.

Lloyds has accepted the investigator's outcome, but the representatives have appealed. In summary, they feel Lloyds failed to protect a vulnerable customer; unfairly charged Mrs R; and failed to adequately support the police investigation into Mr S.

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 conclusions reached by the investigator. I'll explain why.

In explain my decision, I'm conscious the representatives have made detailed submissions to us about this complaint. I'd reassure them I've considered everything they (and Lloyds) have submitted carefully. But I won't be responding in similar detail. If I don't mention a particular point or piece of evidence, that's not because I haven't taken it into account. It's just that I don't believe it necessary to reference it to explain my decision, which is focussed on what I consider to be the main issues. This isn't intended as a discourtesy. It's a reflection of the informal nature of our service.

Banks are expected to execute authorised payment instructions without undue delay. It's agreed that Mrs R authorised these payments – albeit tricked by a cruel scam. In line with the Payment Service Regulations 2009 and 2017, the relevant regulations covering these payments, the starting position is that she is liable for them.

However, Lloyds does also have a duty to help protect customers from the risk of fraud and scams. Such as by monitoring for payments that look unusual or meet a known pattern of fraud. It also has a duty of care to help identify, and support, vulnerable customers. Such as being proactive in identifying those at risk from fraud, and taking action to reduce that risk.

If I find Lloyds failed in its duty to identify and respond to indications Mrs R was at risk from fraud, I'll consider what material impact this had. If I think appropriate intervention would have prevented or lessened her loss, it might be fair to expect Lloyds to refund (some of) this. But if I find her loss would likely have been the same, even if Lloyds had responded appropriately, then it wouldn't be fair to hold it liable.

I don't think all the payments made in association with the scam ought to have appeared concerning to Lloyds. But I agree with the investigator that, at a point, it should have identified some of this activity as unusual. In response to this, it should have looked into the circumstances of the payments, to assess the fraud risk and determine whether it needed to take action to protect Mrs R. However, I'm not persuaded that, in doing so, it was likely to have prevented most of her loss.

This was a long-running deception by Mr S which occurred over many years. It's clear Mrs R was deeply under the spell of the scam. The representatives have told us they had concerns prior to realising the scam outright in 2021. For example, they contacted the police in early 2019 – who spoke to Mrs R and told her Mr S wasn't who he claimed to be and didn't have a pilot's licence. I understand Mrs R refused to believe them and was angry about the police being made involved.

Even after the scam was exposed, Mrs R visited branch and was adamant she wasn't being scammed. My expectations on the bank at this point are different, given that it had been notified of the full details of the scam. But it demonstrates the difficulty in unravelling and persuading Mrs R of the scam. Which makes it harder for me to conclude it's likely the bank would have established this if it had questioned her about the payments – or even invoked Banking Protocol – earlier, without input from the representatives.

Alongside this, I am mindful that Mrs R was diagnosed with an illness that will have made her vulnerable. Although I understand she wasn't formally diagnosed until July 2021, it seemingly affected her over a period of three years or so prior. And the representatives have made us, and Lloyds, aware of other factors which made her vulnerable. I've considered how that affects Lloyds' duties here.

There doesn't appear to be much on record to show Lloyds was notified, or otherwise should have been aware, of circumstances that made Mrs R more vulnerable to this scam during most of the period in which it was happening. But I think the wider point here is that, regardless of whether we apply a 'higher' bar on Lloyds due to Mrs R's circumstances, it's agreed that Lloyds didn't do what it should have done. The key issue is that it's unclear whether that failure affected Mrs R's actions – given how taken in she was by the scam.

So while I understand the representatives' concerns and frustrations about what Lloyds did – or perhaps more crucially, didn't do – I'm not persuaded it's fair to expect it to reimburse Mrs R because of her circumstances.

However, I agree that Lloyds should refund the following payments:

- £6,000 transferred to Mr S in March 2020

This payment falls under the scope of the CRM code. As a signatory, Lloyds is expected to refund victims of authorised push payment scams (APP) unless an exception applies.

It's agreed that Mrs R was the victim of a cruel and long-running scam. And the payment date and type mean it's covered by the code. As Lloyds is aware, although it doesn't appear to have been notified at the time, Mrs R was suffering from a health condition that caused her confusion and anxiety, amongst other symptoms. I'm persuaded her condition, coupled with her wider circumstances, means she meets the code's definition of a vulnerable customer. And so, in line with this, it's fair that Lloyds should refund her for this payment.

The remaining disputed payments don't fall within the scope of the code. Many occurred before the code came into force. And it only covers domestic bank transfers made to another person. Which most of the payments weren't; they were predominantly cash withdrawals. So that is why I've instead considered the remaining payments in line with Lloyds' other duties.

- £1,000 cash withdrawal in July 2021

This occurred after the representatives had visited Lloyds to notify it of the scam. I understood they asked for notes to be added on to Mrs R's account – essentially directing staff to invoke Banking Protocol when she next came to branch to withdraw cash.

Lloyds did this when Mrs R visited her branch in August 2021 and was successful in preventing her from making further withdrawals in this way. But when she visited in July 2021, and withdrew £1,000 cash, it allowed her to do so. In the circumstances, I agree Lloyds should have done more to protect Mrs R. And as it was successful when it intervened later on, based on the same information, I consider it likely that better intervention at this point would have succeeded.

I also agree that, in the circumstances, it's likely the money was lost to the scam. Although we can't trace it due to being a cash payment, it clearly matched the pattern of fraud which Lloyds had been warned about. So I consider it fair for Lloyds to refund this amount.

The representatives have also raised concern about the fees and charges added to Mrs R's account over the years. But these seem to have been applied in line with the account terms, as a result of the payments made – which I've not found grounds to persuade me Lloyds is liable for. And it also seems it offered some refunds on several occasions at Mrs R's request. So, in relation to this complaint, I'm not directing Lloyds to refund any further fees.

I understand the representatives are also dissatisfied with how Lloyds have dealt with things since they notified it of the scam. However, it does appear that Lloyds has, for example, provided statements to the police as requested. Our service also can't make (or endorse) awards to third parties; we can only look at the impact on Mrs R directly. It appears that the representatives have largely dealt with this matter on Mrs R's behalf. And Lloyds has issued a cheque for £500 as compensation for the delays.

Given that I've ultimately not found Lloyds to be liable for most payments, I'm not persuaded it should offer further compensation for how it handled the fraud claim. Although I do think it should have refunded some of these payments sooner, I've awarded interest to reflect the loss of use of those funds, thereby addressing the impact of the delay.

Putting things right

Lloyds Bank PLC should refund Mrs R £7,000, comprising of the £6,000 she transferred to Mr S in March 2020, and the £1,000 she withdrew in cash in July 2021. It must pay 8% simple interest per year on this amount from the dates of payment to the date of settlement.

If Lloyds Bank PLC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs R how much it's taken off. It should also give Mrs R a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons given, I uphold this complaint and direct Lloyds Bank PLC to put things right as I've set out above. It must pay this award within 28 days of the date on which we tell it Mrs R accepts my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 19 September 2023.

Rachel Loughlin
Ombudsman