DRN-2940752

The complaint

Mrs S is unhappy Yorkshire Building Society ("YBS") won't reimburse her for two transfers she made totalling £39,000 from her e-savings account, after she fell victim to an authorised push payment ("APP") impersonation scam.

What happened

In early December 2019, Mrs S – who was 80 years old at the time – received a call from what she believed was her bank (a third-party bank and not YBS). Mrs S was led to believe her accounts - one with her third-party bank and one with YBS, were at risk. Mrs S was told that all monies had to be removed from the accounts in stages to secure / protect them. The number Mrs S had been contacted on had been spoofed – so Mrs S wasn't talking to her third-party bank and had in fact fallen victim to cruel impersonation scam.

Mrs S was led to believe that bank employees were involved, and she would be assisting in helping catch the employees involved and that the police were also aware of the ongoing investigation.

On 2 December 2019, Mrs S made an online transfer for £19,500 from her YBS e-savings account to the account details provided by the scammer. Mrs S, unable to make another transfer was then advised by the fraudster to go into branch and make the transfer. The fraudster advised that Mrs S would be monitored throughout.

On 3 December 2019, Mrs S attended a branch and attempted to make a further transfer of £25,000. Mrs S, having been coached by the scammer as to what to say explained that the transfer was for the purchase of a caravan. YBS's branch staff had concerns about the payment and that Mrs S may be falling victim of a scam, so Mrs S was taken into a private room and the purpose for the transfer was discussed.

Mrs S explained that the caravan was for her daughter and son-in-law and her son-in-law had seen the caravan in person. The branch staff, as they still had concerns, referred the matter to its fraud team and a member of the team spoke to Mrs S over the phone while she was in branch. The adviser concerned about the transfer, given that it was a large amount of money asked questions about the caravan; where had the son-in-law seen the advert for the caravan, had the son-in-law seen it and whether it was a private sale? The adviser explained that YBS had seen a large increase in scams where customers pay the money but when they go to pick up the vehicle it doesn't exist.

The adviser went on to explain that as it was a large amount of money going to a third-party unknown to Mrs S, it would be reluctant to authorise the request. The adviser asked Mrs S to speak with her son-in-law to find out where he saw the advert. Mrs S explained that her son-in-law was clued up on these sorts of things – but the adviser explained that YBS's duty of care was to her and not to her son-in-law and it has a duty of care to protect Mrs S' money. The adviser explained that Mrs S could transfer the money to her son-in-law or write him a cheque but reiterated that it was concerned because the money was going to a third-party. The adviser explained that once that money had gone and if there wasn't a caravan – there would be no way of getting the money back.

The first payment of £19,500 that Mrs S had made the previous day was then discussed as Mrs S said she didn't realise YBS' faster payments timescales wasn't within the same day and took until the end of the next working day. The adviser then clarified if the £25,000 Mrs S was attempting to make was going to the same person – and was for the purchase of the caravan, which Mrs S confirmed was the case. The adviser placed Mrs S on hold for a short period and then confirmed to Mrs S that the £19,500 (from the previous day) had already been released and had probably been credited to the receiving account. The adviser then explained to Mrs S that before she made the second transfer of £25,000 (for the presumed outstanding balance) she should contact her son-in-law to get him to contact the buyer before the remaining money was paid. Mrs S confirmed she would. The adviser confirmed to Mrs S that she should contact her son-in-law and get him to chase this up to ensure that it was legitimate. The call was passed to back to the branch staff – and the member of the fraud team explained that they had asked Mrs S to find out more information and that when Mrs S did look to make the transfer to ensure that they were contacted again.

Mrs S subsequently returned home and attempted to make a further online transfer of £19,500 to the same account details as she had used the previous day. The payment was flagged by YBS, and the next day Mrs S subsequently spoke to the same member of YBS' fraud team she had spoken with in branch the previous day.

When the fraud adviser spoke with Mrs S – they asked why Mrs S hadn't got in contact prior to making the transfer. Mrs S explained that she had gone home and made the transfer as planned. The adviser corrected Mrs S and explained that when she had left the branch, she had agreed that she would go home and speak to her son-in-law about where he had seen the advert and about the first payment – with Mrs S agreeing that she hadn't got in touch with YBS as she said she would. The adviser asked whether Mrs S had spoken with her son-in-law and Mrs S said *"…yes and he was satisfied – I didn't ask, I forgot to ask questions…"* Mrs S then questioned why a further £7,000 transfer she had also made from YBS account to her third-party bank hadn't gone through – with the adviser explaining that it was because the £19,500 had been flagged so the other £7,000 had flagged also and this was for further additional security checks to be carried out. The adviser then explained to Mrs S that if she was insistent on making the payment, then if it was a scam, she wouldn't be covered and there would be no way of recovering the funds and Mrs S would be taking full responsibility for amount. The adviser then asks if Mrs S is happy to go along with that and that she doesn't want to do any further checking. There is a pause and then Mrs S says *"no"*. The adviser explained that this was Mrs S's decision but that they had tried to raise the concerns about scams and that they will get the transfer released.

On 5 December Mrs S made another payment for £13,500. This was subsequently cancelled and returned to her YBS account as YBS obtained information from the receiving bank that raised concerns that the account the transfer was going to was being used fraudulently. Mrs S contacted YBS to see why the transfer hadn't gone through and it advised her of the information it had found out and that because of this, the funds had been recredited to her YBS account. The adviser explained to Mrs S that her account had been restricted and she could only make fast payments to accounts in her own name. Mrs S then asked for the amount to be transferred to her other third-party bank account which YBS obliged.

Ultimately, having liaised with her daughter, the scam Mrs S had fallen victim to was uncovered. Mrs S contacted YBS on 30 December 2019 to report the matter.

YBS looked into Mrs S's concerns and considered it hadn't done anything wrong and didn't consider it was liable for Mrs S's loss as she had willingly made the transfers. It advised it had contacted the receiving bank to try and recover any funds but hadn't heard from it.

Mrs S, unhappy with YBS's response to the matter, referred her complaint to our service for an independent review.

The complaint was looked into by one of our investigator's. They concluded that Mrs S's complaint should be upheld. In short, our investigator thought the scam could have been prevented. And Mrs S had lost out as a result.

Our investigator concluded that YBS should refund the money Mrs S lost as a result of the scam and pay simple interest set at 8% on this amount, from the date of the loss to the date of the settlement.

YBS disagreed, it remained of the opinion that it had taken the necessary steps to prevent Mrs S from falling victim to a scam.

As the matter, wasn't resolved, it was passed for an ombudsman's review and decision.

In preparing the case for an ombudsman's review, the investigator reviewed the compensation that they had awarded.

The investigator, upon reflection, considered that in returning Mrs S to the position she would have been in had things not gone wrong, then as the funds had originated from Mrs S's e-savings account, fair compensation would be for the return of the outstanding amount lost, plus additional compensation at the applicable savings account rate as opposed to 8% simple interest. The investigator considered this would put Mrs S back into the position, as far as is possible, had things not gone wrong.

Mrs S responded agreeing to the amended compensation. YBS also acknowledged the amendment.

The matter has now been passed to me to decide.

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 uphold this complaint. I'll explain why.

First, I would like to clarify that within this decision I am looking at the two transfers of £19,500 Mrs S made. The payments Mrs S made from her other third-party bank account have been looked at, and resolved, separately.

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 have been good industry practice at the time.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account. That was the case in December 2019, and remains so now, and I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story:

- Regulated firms like YBS are also required to conduct their 'business with due skill, care and diligence' (FCA Principle for Businesses 2) and to 'pay due regard to the interests of its customers' (Principle 6).

- Firms also have a longstanding regulatory duty *'to take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime'* (SYSC 3.2.6R, which has applied since 2001). And over the years, the FSA and its successor the FCA have published a series of papers setting out non-exhaustive examples of good and poor practice found when reviewing measures taken by banks to counter financial crime.

- Firms are required to comply with legal and regulatory anti-money laundering and countering the financing of terrorism requirements. In December 2019 those requirements included maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage money laundering risk – for example through customer due diligence measures and the ongoing monitoring of the business relationship (including through the scrutiny of transactions undertaken throughout the course of the relationship).

In addition, as a matter of good industry practice in December 2019, I consider firms should in any event have taken proactive steps to:

- identify and assist vulnerable consumers and consumers in vulnerable circumstances, including those at risk of financial exploitation (something also recognised by the FCA in recent years and by the British Bankers Association's February 2016 report 'improving outcomes for customers in vulnerable circumstances');

- look to identify and help prevent transactions – particularly unusual or out of character transactions – that could involve fraud or be the result of a scam.

- in relation to branch transactions – follow the Banking Protocol when available.

So, Banks (and building societies) have had longstanding obligations to look out for their customers best interests and to be alert to instances of fraud. This means that there are circumstances, irrespective of the payment channel used, where a bank or building society should, in my opinion, fairly and reasonably take additional steps, or make additional checks, before processing a payment, or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm.

This is particularly so, in light of the environment created by the increase in sophisticated fraud and scams in recent years – which banks and building Societies are generally more familiar with than the average customer.

In this case, I need to decide whether YBS acted fairly and reasonably in its dealings with Mrs S when she made the two transfers of £19,500 to a new payee, or whether it should have done more than it did.

Did YBS act fairly and reasonably in this case?

As I've explained, I consider that as a matter of good practice YBS should have been on the lookout for unusual and out of character transactions.

The first transfer Mrs S made for £19,500 didn't flag on YBS's fraud detection system.

I've thought carefully about whether the payment made to the scammer was out of character and unusual for Mrs S. Having looked at Mrs S's e-savings account usage, I'm satisfied it was. I say this because Mrs S, making a transfer for £19,500 to a new payee, was unusual and out of character when considering and looking at the accounts typical usage.

Given I'm persuaded this transfer was unusual and out of character, I think YBS ought fairly and reasonably, and as a matter of good practice, to have made enquiries about the purpose of the payment before it processed it.

I can't see YBS carried out any additional checks with Mrs S at the time she attempted to make the £19,500 transfer. How YBS chooses to configure its fraud detection systems is for it to decide. But the question I need to answer here is: based on all the circumstances of this complaint, whether YBS ought fairly and reasonably to have done more in Mrs S's case – whether its fraud prevention systems detected the payment or not. And taking all of the above into account, I think YBS should reasonably have taken additional steps and made additional checks before processing the payment.

I've thought carefully about what would've happened had YBS made enquiries with Mrs S before processing the transfer. Of course I can't know for sure what would've happened, so I've thought about what is more likely than not to have been the case.

In order to do this, I think it is fair and reasonable to look at what happened when YBS did intervene when Mrs S attempted to make the second transfer the next day in branch – which was flagged and questioned. In essence, what happened when it did intervene and whether I consider it did enough – can equate to what would likely have happened as it should have intervened with the first transfer.

With the second transfer – YBS had real concern that Mrs S was at risk of financial harm. It took Mrs S aside into a private room and having concerns about the purpose of the transfer – for a caravan, it also referred the matter to its fraud team with Mrs S speaking with an adviser of the fraud team over the phone.

I have to say at this point, that I do think YBS took the correct steps here – and from listening to the calls over the course of 3 and 4 December 2019 – I can see that it was genuinely concerned about the transfer and tried to intervene. But, and importantly, I don't think it went far enough and more could and should have been done which I think would have prevented the losses.

Mrs S was 80 years of age at the time, and while age itself isn't an automatic indicator of vulnerability – it is common knowledge that elderly people are targeted by scammers. And YBS would have been aware of this. So its customer making an out of character large payment from their savings account to a new payee should have given YBS cause for concern and – as the fraud adviser explained – it had a duty of care to protect Mrs S.

Listening to the call the adviser had with Mrs S, it is clear that they have serious concerns about the legitimacy of the caravan. So at this point, the adviser is – based on the information available to them – considering that it could be a false advert and there was no caravan. Given the purpose of the transfer I think it was correct for the adviser to explore that possibility. But I am also mindful that banks and building societies are aware that consumers are often given cover stories for payment purposes. And it is the additional probing that can lead to a scam being uncovered. Here, Mrs S didn't really have any information about the caravan other than her son-in-law had seen it. The adviser concerned that it may be a fake advert asked for Mrs S to go away and ask her son about the caravan and gather some further information, such as what advert had he seen. And I think that was the right thing to do. And it prevented the transfer from being made. I can see that a note / flag was added to Mrs S's account which meant Mrs S wouldn't have been able to make the transfer online – should she attempt it later on.

Again, I think this was the correct thing to do – and again it prevented Mrs S from making the transfer which she did attempt later on the same day after leaving the branch and going home.

The attempted further transfer Mrs S made later that day, after leaving the branch, meant that Mrs S had to call in and had to speak with the same adviser that she had spoken with the day before. And the adviser at the start of the call, when Mrs S explained that she had gone home and made the transfer as planned, corrected Mrs S. The adviser explained that when Mrs S had left the branch, she had agreed that she would go home and speak to her son-in-law about where he had seen the advert for the caravan and about the first payment. Mrs S agreed that the adviser was right and that she hadn't got in touch with YBS. I think this should have flagged as a warning to the adviser that there may be something untoward going on.

The adviser asked whether Mrs S had spoken with her son-in-law and Mrs S says:

> *"…yes and he was satisfied – I didn't ask, I forgot to ask questions…"*

Given that the adviser wanted Mrs S to obtain some information to ensure the legitimacy of the caravan purchase – Mrs S saying she hadn't asked any questions should have also raised concerns – in essence no further detail about the caravan had been obtained.

I think there was also a question over the amount Mrs S was requesting to transfer. The day before, Mrs S had said the transfer (having already paid £19,500) was for £25,000 – and after leaving the branch she went home and attempted to transfer £19,500 – so a difference of £5,500.

Mrs S then questioned why a further £7,000 she had made from YBS to her third-party bank hadn't gone through. So Mrs S, aside from the £19,500, was also requesting a further £7,000 to go to her third-party bank account. While it was going to her own third-party bank account – Mrs S had made a payment of £19,500 the day before, then attempted a further £19,500 and then a further £7,000 to one of her own accounts. Given her account history and given the concerns they had about the purpose of the transfer this activity should have alerted YBS that Mrs S was more than possibly at risk of financial harm – there were serious indications that she was.

The adviser, despite requesting information about the caravan the day before, and Mrs S confirming she hadn't asked, and the amount changing from £25,000 to £19,500 and alongside the additional request of £7,000 to her third-party bank account – released the transfers. The adviser explained to Mrs S that if she was insistent on making the payment then if it was a scam, she wouldn't be covered and there would be no way of recovering the funds and Mrs S would be taking full responsibility for amount. The adviser then asks if Mrs S is happy to go along with that and that she doesn't want to do any further checking. There was a considerable pause at this point with Mrs S then saying *"no"*. The adviser explained that this was Mrs S's decision but that they had tried to raise the concerns about scams and that they will get the transfers released.

So while I think YBS took a number of correct steps and asked some probing questions – it didn't receive any satisfactory answers and released the transfers when, if anything more concerns had arisen. And I think it failed in its 'duty of care' here. It clearly had concerns, and while it hadn't given consideration to the fact Mrs S may be being coached as to what to say, it wasn't to my mind satisfied with the information it had obtained in relation to it being a genuine caravan purchase.

I accept that a bank / building society does have a duty under the Payment Service Regulations not to delay payments or transfers unduly. But it is not an unfettered duty to execute – and reasonable checks are also required as part of the broad regulatory landscape to treat customers fairly and to safeguard against the risk of fraud or financial harm. I accept there's a limit as to what a bank can reasonably do; and I still expect consumers to take responsibility for their own decisions – and possibly even bear a reduction in compensation if there is clear evidence of blame on their own part (see below). But when plain triggers of unusual or uncharacteristic account activity exist, such as in this case, it's not unreasonable to expect a bank's fraud alerts to respond proportionately. And I don't think YBS's response was proportionate given the serious concerns it had. I'll explain why.

Having listened to the calls, I do consider there were opportunities for further listening and questioning to take place. The calls overall feel brief in nature given the genuine concerns YBS had. While the adviser asked some good questions such as where had the son-in-law seen the advert, they could have allowed Mrs S to talk about the transfer and its purpose and then asked things like; How much is the caravan costing in total? Has the daughter and son-in-law contributed to the cost? Was it a present or gift? Would the son-in-law be prepared to speak to YBS? Has Mrs S always intended on buying the caravan for her daughter and son-in-law? Why had she made the transfer in two amounts – not one?

As Mrs S was given a cover story that it was for a caravan for her son-in-law, she didn't have too much detail. And YBS had clearly identified the lack of information and had genuine concern. So when it asked Mrs S to obtain further information and Mrs S didn't obtain any further information and paused for a considerable time when deciding to go ahead with the transfer, it should have taken the opportunity to take the time and go into more detail about why it needed this information and why it wasn't satisfied. It should have been mindful that a common feature of scam related transactions is that customers are persuaded not to tell the truth. YBS should have also given a consideration that it was likely that the lack of information could be as a result of Mrs S being given a cover story. And it could have explained how 'safe account' and 'impersonation scams' look and feel.

I don't think YBS went far enough given the concerns it had. Had more been done to obtain information about the caravan or a more detailed explanation of the other likely scam of moving money (under pretence of a cover story) I do think it would have been too much for Mrs S and the scam would have come to light and Mrs S wouldn't have proceeded with the transfer.

Given the above, I'm satisfied that the interaction that occurred with the second transfer, should have occurred with the first transfer Mrs S made on 2 December 2019. And had it done, I'm satisfied Mrs S's overall losses of £39,000 would have been prevented.

In reaching my conclusions about what is fair and reasonable in this case, I have also considered whether Mrs S should bear some responsibility for her loss. But it wasn't until Mrs S had spoken with her daughter some time later that she realised it was a scam. Up until that point, she was totally duped into considering that she was keeping her money safe and was also helping catch fraudsters. All things considered Mrs S was the unfortunate victim of a sophisticated scam and I am satisfied she didn't foresee the risk of this sort of harm and was not partly to blame for what happened. So, on the particular facts of this individual case, I am satisfied there was no contributory negligence on this occasion. Mrs S was simply the unwitting and blameless victim of a clever fraudster.

In the circumstances I am satisfied YBS should fairly and reasonably reimburse Mrs S for the loss she suffered without any reduction together with interest to compensate her for being deprived of the money she lost.

Putting things right

For the reasons given above, I uphold Mrs S's complaint against Yorkshire Building Society.

I do not think it was fair and reasonable for Yorkshire Building Society not to refund the amount Mrs S lost though becoming a victim of a scam.

I now direct Yorkshire Building Society to:

- Refund Mrs S for the total of £39,000 she lost; less any sums recovered and already refunded.

- Pay the applicable interest rate of the savings account at the time on the £39,000 – as this was where these funds originated. This should be paid from the date of the loss to the date of the settlement. †

† If Yorkshire Building Society is legally required to deduct tax from the savings interest, it should send Mrs S a tax deduction certificate so she can claim it back from HM Revenue & Customs if appropriate.

My final decision

For the reasons given above, I uphold Mrs S's complaint against Yorkshire Building Society.

I do not think it was fair and reasonable for Yorkshire Building Society not to refund the amount Mrs S lost though becoming a victim of a scam.

Yorkshire Building Society should calculate and pay compensation as I have set out above within 28 days of receiving notification of Mrs S's acceptance of my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 15 October 2021.

Matthew Horner
Ombudsman