DRN-2975439

The complaint

Mrs M complains that Lloyds Bank PLC ("Lloyds") won't refund money she lost after falling victim to fraud.

What happened

From June 2015 to September 2015 Mrs M was the victim of fraud, which resulted in her sending eight payments totalling over £77,000 to fraudsters. The payments Mrs M made were to accounts within the UK and international accounts.

For ease, I've included details of the payments made as part of the scam.

Date	Time	Payment type	Method	Amount
15/6/2015	**12:34**	**Bill payment - new payee**	Online banking	**£9,045**
8/7/2015	**15:37**	**Faster Payment – new payee**	Online banking	**£9,035**
12/8/2015	**10:19**	**Foreign payment – new payee**	Online banking	**£19,600**
17/9/2015	**09:58**	**Foreign payment**	Online banking	**£9,500**
17/9/2015	**10:04**	**Foreign payment**	Online banking	**£9,500**
17/9/2015	**10:07**	**Foreign payment**	Online banking	**£9,500**
18/9/2015	**10:50**	**Foreign payment**	Online banking	**£6,365**
24/9/2015	**08:34**	**Faster Payment – new payee**	Online banking	**£5,000**
			total	**£77,860**

Based on the submissions made by both parties, I understand the fraud occurred as follows.

In June 2015, Mrs M received a call from an individual purporting to be a broker from an investment company. Unbeknown to Mrs M at the time, the individual was a fraudster. The fraudster told Mrs M that the company bought and sold shares for people. He told her they were very successful and could make her a good return on her money. Initially, Mrs M says she told the fraudster she wasn't interested in buying shares.

Mrs M says she continued to receive calls. She's explained she was told a rep would be looking after her and another individual spoke to her on the phone. Again, unbeknown to Mrs M she was speaking with another fraudster. She says she was sent information on businesses he'd carried out for clients. Due to the limited information available, it is not clear whether Mrs M was shown information that related to investments the fraudsters were making for other clients, but Mrs M has said after reading the information she was sent, she decided to invest and was told how much money she should send. Mrs M says she was advised what shares she would be investing in at this stage, but she can't recall what this was.

When recollecting what happened, Mrs M mentioned to us that the fraudsters referred to different events happening in the UK during the conversations with her, such as the Queen visiting, which made them appear genuine to her. But after further thinking Mrs M decided against investing after all.

Mrs M was called by the fraudsters and was told they'd already bought the shares on her behalf and, if she didn't buy the shares, they'd take her to court as they'd be out of pocket and she was responsible.

Mrs M didn't want to go to court so she decided to buy the shares. She was told to transfer around £10,000 and was given the name of a person to transfer the payment to. She was told this was the company secretary and told this is the way the company operates. Mrs M explained to our service she received paperwork showing the shares and the profit she'd receive. She's told us these had an official looking letterhead.

Mrs M says she was carried along by what happened and was also too scared to refuse further payments. Mrs M adds that after the first payment she was given bank account numbers to transfer the payments to.

Mrs M said she wasn't given information about when she'd receive any profits and had assumed that she'd be able to call and obtain the profits when she wanted to. She recalled the last payments she made were shares in a well-known retailer and that she needed to make the payments urgently. The payments were funded by cashing in her premium bonds.

Mrs M became aware she'd been the victim of scam when she was contacted by the police in November 2015 in relation to one of the parties she'd been in contact with - they'd been taken to court.

Mrs M contacted Lloyds to report the scam on 5 November 2015. Lloyds say on being made aware of the scam it contacted the receiving banks. It said only one receiving bank for one of the payments replied and that was to advise no funds remained. Lloyds adds no response was received from the other receiving banks, but it assumes that no funds remained.

Mrs M explained after the shock and worry, she was hospitalised and on leaving hospital she destroyed the paperwork she'd received as part of the scam. She's told us that she didn't want anyone to see what she'd done given how she felt after being scammed.
It was after Mrs M received a letter from HMRC in December 2019 asking for information relating to the international payments she'd made as part of this scam that she then started making enquiries with the police. This then led to Mrs M raising a complaint to Lloyds through our service in December 2020.

Lloyds didn't uphold the complaint. In its final response in February 2021, it said given the dates of the payments made by Mrs M and the type of the payments – some being international payments - the voluntary code known as the Contingent Reimbursement Model (CRM) does not apply here. And so, Mrs M doesn't qualify for a refund under the CRM code. Lloyds in its submission to our service added that it doesn't believe Mrs M did sufficient validation prior to investing such sums of money.

One of our investigators looked into things and she thought Lloyds ought to have done more to prevent the payments and Mrs M's losses.

Lloyds disagreed with our investigator's assessment and asked for the case to be reviewed by an ombudsman. Lloyds in its response reiterate that it doesn't appear Mrs M was completely under the spell of the fraudsters. That she has admitted the payments were made to avoid being taken to court. It doesn't think Mrs M did enough to protect herself and, therefore, doesn't think it is fair for the bank to be expected to refund the money she has lost. It has also questioned why Mrs M didn't raise the complaint earlier than she did.

The complaint has now been passed to me for a final decision.

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 and I'll now explain my reasons why.

At the outset I think it is important to recognise, that due to the time that's passed there is limited information available from both parties. This is not entirely surprising given how long has since passed since 2015. I'm also mindful that over time memories of events can fade. So, where there is a difference in Mrs M's and Lloyds' version of events or limited information available, I will base my findings on what I think is more likely than not to have happened in light of the available evidence and the wider circumstances.

I am also aware Lloyds has asked why Mrs M didn't raise a complaint earlier than she did if she was unhappy after she contacted it in November 2015.I understand Lloyds' reference to this also relates to there now being limited information due to the passage of time. I've thought carefully about this point, but I don't think the delay in raising the complaint is unreasonable in this particular case. I say this because, Mrs M was unwell and hospitalised following the scam and it being brought to light by the police contact. Following this, Mrs M has also indicated that she felt shame at falling victim to a scam and sending the payments, which fed into her destroying the documentation she'd received from the fraudsters. Alongside this, Mrs M also didn't think there was hope of a recovery after Lloyds told her the money was gone and the police told her the case was closed. As explained above, after she received communication from HMRC and she made enquiries with the police, Mrs M then found her way to our service and asked for help. It was at this point; our service referred the complaint to Lloyds.

And had Lloyds felt more information was needed in respect of the scam Mrs M fell victim to, I would've expected it to have requested this information and investigated the matter further when the claim was raised back in 2015. If it now considers there is limited information due to this, then I don't think Mrs M can be held responsible for this.

I also acknowledge that Mrs M has told us she destroyed the paperwork she'd received as part of the scam. I can understand why she destroyed the documents at this time, not as an attempt to hide anything, but more because of how she felt following the effects of the scam. She also didn't think she had prospects for pursuing the loss – as the police told her the case was closed and, because Lloyds had also said the money had gone. Mrs M thought she'd never see the money again.

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 and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

The guidance and best practice available to banks when the events in question transpired about how to spot and help protect customers from fraud were more limited than they are today. But the broad principle, to pay due regard to the interests of customers and treat them fairly, existed. The Payment Services Regulations 2009 (PSRs) were also in place. And overall, I consider Lloyds should, fairly and reasonably;

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.

- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.

- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

Did Lloyds act fairly and reasonably when it processed the payment instruction?

There's no dispute these were 'authorised payments' even though Mrs M was the victim of a sophisticated scam. So, under the Payment Services Regulations 2009, Mrs M is presumed liable for the loss in the first instance.

Lloyds by its own submission recognise the payments Mrs M made as part of this scam were not in line with the usual account activity in 2015. It follows that I think Lloyds ought to have got in touch with Mrs M to discuss the payments she was asking to make from the first payment. Lloyds has said its records indicate it is likely it spoke with Mrs M about the payments. It said having looked at its system reports there is a footprint of staff ID's on Mrs M's account around the time of the scam payments. It adds that on checking the call system it found call details and from these dates, it looks like it spoke with Mrs M before the payments of £9,350 on 8 July 2015 and £19,600 on 12 August 2015. From these call details it also adds it's possible it spoke to Mrs M after the three international payments on 17 September 2015. Although, given the time that's passed there are no call notes relating to these or call recordings. While this is understandable due to the time that's passed, this means I can't be sure about what was said or what was discussed during this contact or indeed safely conclude that the payments in question here were what were spoken about.

I've also taken into account that our investigator asked Mrs M if she recalled speaking with Lloyds about any of the payments. She recollected speaking with NS&I about her premium bonds and she occasionally called the bank if she saw something on her statements that she wanted to check. But she didn't recall any conversation with Lloyds relating to the payments she sent to the fraudsters.

Where there is a lack of information or conflicting information, I must reach my findings based on what I think is more likely than not to have happened. And while I recognise the bank's obligations were somewhat less stringent at the time the payments were made compared to today, I think that if Lloyds had asked Mrs M even basic questions about the payments then the scam would've more likely than not have been uncovered. I say this because Mrs M wasn't coached by the fraudsters about what to say or given a cover story. So if she'd been asked what the payments were for, I think she probably would have said it was for investment/shares. And if asked how the investment came about, I think it's likely she would have shared that she'd been cold-called by the alleged investment company and that they were pressuring her to buy shares and threatening to take her to court if she didn't pay.

I'm also mindful that Mrs M was in her early seventies at the time of the payments, and I think this is a relevant factor here. Mrs M's age profile is one that is disproportionately targeted by fraudsters and this is something that has been recognised by the industry for a long time.

Investment scams weren't uncommon in 2015 and Mrs M's situation shares some of the common tactics and features employed by fraudsters. I think the bank ought to have known about, and picked up, on these warning signs.

Overall, I'm persuaded Lloyds ought fairly and reasonably to have done more here and that had it done so; Mrs M's loss could've been prevented.

Should Mrs M bear some responsibility by way of contributory negligence?

When answering this question, I've thought carefully about what Lloyds obligations were, as set out above. But another key issue is whether Mrs M acted reasonably, taking into account all the circumstances in this particular case.

I've carefully considered everything I've seen and been told by both Mrs M and Lloyds. In particular, I've thought about Lloyds' belief that Mrs M didn't do enough to protect herself and that she doesn't appear to have been completely under the spell of the fraudsters – the bank points out that Mrs M has admitted she made the payments in order to avoid being taken to court. It adds that being under the spell of the fraudsters and thinking the investment opportunity was genuine is different to being scared of being taken to court. Lloyds doesn't think it is possible for Mrs M to hold both beliefs at once. In addition, Lloyds has highlighted that Mrs M was cold-called and the threat of being taken to court ought to have been a 'red flag' to her. It has also mentioned Mrs M ought to have done research before sending the money.

As I've referred to previously within this decision, the 'red flags' Lloyds mention are common tactics and features of investments scams and, I agree these ought to be red flags for a bank. But Mrs M wasn't an experienced investor and I can understand why she didn't see these things as 'red flags'. I'm also mindful that the spell wasn't broken until the police contacted Mrs M about one of the fraudsters after the payments had been made. So overall, I've not seen anything to suggest Mrs M thought, or ought to have thought, what she was being told was implausible.

All things considered, I believe Mrs M was simply the unwitting victim of clever fraudsters and so there was no contributory negligence on this occasion.

Impact on Mrs M

Mrs M has told us that after the scam became known she was hospitalised and was very unwell.

While I recognise the bulk of that impact follows directly from the actions of the fraudsters. I consider that Lloyds could have prevented Mrs M from losing the money she did as a result of the scam and, thereby, significantly reduced the overall impact on Mrs M.

Considering everything, I agree with our investigator's recommendation that Lloyds should pay Mrs M £300 in compensation to recognise the distress and inconvenience she's experienced as a result of their actions.

Paying interest

With the above in mind, I think the bank should pay interest on the money Mrs M has lost as part of this scam. I say this because, the money she lost to this scam otherwise would have remained in her savings accounts/premium bonds and/or would have remained in her current accounts and/or would otherwise have been spent – and so Mrs M has been deprived of the use of this money.

I'm aware the money that was sent to the fraudsters originated from a number of different accounts Mrs M held with Lloyds banking group. And she also withdrew money from her premium bonds which she held with NS&I. In view of this, it has been a little difficult to identify where all the money has originated from, given the number of accounts here – so in my recommendations, I am making a pragmatic award based on the information available to me.

For completeness, when adding up the sums Mrs M paid into her account in order to make the scam payments, I can see there is a £135 difference between the amounts credited and the total amount sent to the fraudsters. In light of this, I have reduced the recommended redress by £135. This is because, on balance, I think it is more likely than not that this £135 remained within Mrs M's Lloyds current account - the account the payments were sent from.

When looking at the payment of £9,045 that was made, I note that Mrs M transferred £5,000 into her account from a saver account she held with Lloyds, prior to sending this payment. To reflect this, I have pragmatically calculated an amount which I think should fairly and reasonably be refunded at that associated saver account interest rate.

In view of my pragmatic recommendations, I have also recommended interest be paid on the £40,000 Mrs M withdraw from her premium bonds for the date they credited her account. I have taken this view, as had the scam been prevented, I'm persuaded on balance, these funds would not have been withdrawn.

My final decision

For the reasons set out above, I uphold Mrs M's complaint. Lloyds Bank PLC should;

- Refund Mrs M the £77,860 she's lost through the scam. Plus pay interest as follows:
    - For £40,000 from 15 September 2015 to the date of the settlement calculate interest at the historic, changing annual premium bond rate as published on NS&I's website - https://www.nsandi.com/historical-interest-rates *†*.
    - For £6,442 from 15 June 2015 to the date of settlement calculate interest at a rate of 8% simple per year. *†*
    - For £2,468 from 15 June 2015 to the date of the settlement calculate interest at the associated Lloyds Standard Saver account rate. †
    - For £9,350 from 8 July 2015 to the date of settlement calculate interest at the associated Halifax Instant Saver account rate. *†*
    - For £19,600 from 12 August 2015 to the date of the settlement calculate interest at the associated Halifax Isa Saver account rate. *†*

- Refund the international charges for the international payments Mrs M made as part of the scam.

- Pay Mrs M £300 for the material distress and inconvenience she experienced.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 23 March 2022.

Staci Rowland
Ombudsman