DRN-3180207

The complaint

Mr K complains that Lloyds Bank PLC won't refund money he lost when he fell victim to a scam.

What happened

In July 2020 Mr K fell victim to a scam.

Both parties are aware of the circumstances of the complaint, so I won't repeat them all in great detail here. But in summary, it's not in dispute that Mr K was contacted by a fraudster, who had intercepted an exchange of emails he'd had with a solicitor, regarding a property Mr K and his wife (Mrs K) were purchasing. The fraudster tricked Mr K into making a payment for £120,000 that he thought was towards the property, but that was actually made to an account controlled by the fraudster.

Mr and Mrs K had been communicating with their solicitor, by email, regarding the purchase of the property. On 9 July 2020, Mr K and his wife received an email requesting payment, along with account details for where the payment should be made. At the time Mr and Mrs K were waiting for a probate certificate and believed it would be 10-12 weeks before this came through. So, on receipt of the email, and before proceeding with the payment, Mrs K entered into an email conversation and asked a number of questions regarding such things as the exchange of contracts, the probate certificate (and whether they could exchange without this), stamp duty relief and surveys on the property. On each occasion Mrs K received a response, from who she thought was the genuine solicitor, but it was the fraudster who was responding to the questions being asked.

Considering the answers they received to be satisfactory and believing everything to be genuine, Mr K proceeded to make the payment. Mr K has said that he initially called Lloyds to make the payment, but was told he would have to visit a branch to make the payment (due to technical issues I've not been able to listen to this call). Mr K went ahead and visited a Lloyds branch on 10 July 2020. He's said at the time of making the payment he was asked to fill out a form with various questions. But believing everything to be genuine, went ahead and made a payment for £120,000.

Lloyds has said that before Mr K made the payment its branch staff completed a High Value Checklist (HVC) with him. It's said that its branch staff read a warning from the checklist and ticked the checklist to confirm it had been read. Alongside this it said, as part of the HVC, it asked a number of further questions and Mr K told it that; the payment was for a house purchase; that he had received the payment details by email and that he had verbally checked with the payee that the details were correct. Lloyds say the answers Mr K gave show that he told it , he had checked verbally and the payment details were correct.

A few days later, on 15 July 2020, Mr and Mrs K were in contact with their genuine solicitor, who told them they hadn't requested payment, at which point the scam came to light.

Mr K raised the matter with Lloyds. Lloyds is a signatory of the Lending Standards Board Contingent Reimbursement Model (CRM Code) which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances.

Lloyds issued its final response in September 2020. It reviewed Mr K's complaint under the CRM code but didn't uphold it. In summary it said this was because; it didn't feel Mr K had a reasonable basis to believe the request he had received was genuine; it had provided relevant warnings before the payment, but these were ignored and it didn't consider Mr K's judgement was impaired at the time he made the payment. Overall, because of this Lloyds didn't consider it was liable to refund Mr K the money he had lost.

Mr K then brought his complaint to our service. In summary, he complained that Lloyds ought to have refunded him as due to his circumstances at the time (which I won't go into detail here), he should be considered as having been vulnerable at the time he made the payment. He added that due to the unusually large sum of money being transferred he would have expected further questions to have been asked, rather than the standard templated questions that were asked from the form (HVC). Mr K has also told us of the impact this scam has had on him and his wife, impacting them both emotionally and impacting both their family and their work life.

Mr K told us that he would like compensation from Lloyds due to this. He said he'd suffered a financial loss that he wanted to be compensated for as, due to the loss, he had not been able to restart monthly contributions to his ISA. Alongside this, Mr K also sought to recover solicitors fee's he had incurred in relation to the scam claim and medical costs, that had been incurred due to the trauma of the loss.

One of our investigators looked into things. Our investigator thought the complaint should be upheld. In summary she thought Mr K had a reasonable basis for belief when making the payment. So she didn't think it was reasonable for Lloyds to choose not to reimburse Mr K under the provisions of the CRM Code. Our investigator also didn't think the warning Lloyds gave in branch went far enough and that it wasn't impactful. She also considered that Lloyds missed an opportunity to prevent the scam when Mr K was in branch.

Our investigator said Lloyds ought to refund Mr K the amount he had lost as a result of the scam. Alongside this our investigator thought Lloyds should reimburse Mr K £456.27 (being the amount Mr K's financial advisor had evidenced was lost through non-payment into his ISA) and pay £750 compensation for the impact the scam had on Mr K. Our investigator didn't consider that Lloyds should be responsible to reimburse Mr K's solicitors costs, as she said it was his choice to instruct a solicitor to pursue the claim on his behalf.

Lloyds didn't agree with our investigator's position. In summary, it said whilst it had every sympathy for Mr K's situation, it did not agree it should be held liable. It said it didn't think it was in question that a HVC had been completed in branch. It said the HVC form states a scam leaflet was provided at the time, although testimony from branch staff states no leaflet was given. But it said, despite this discrepancy, the other questions on the form were asked. Which it says is supported by Mr K not denying that a form was completed.

It said the warnings on the HVC, along with a 'beware of cyber-crime warning' that was displayed on emails from Mr K's genuine solicitor, ought to have been red flags for Mr K to take heed of and to double check the account details were correct before proceeding. It said the questions it had asked Mr K were specific to the situation and if he'd answered them correctly, the scam would have been brought to light. It suggested that Mr K did not take the care or due diligence to examine the email correspondence he was acting on. Alongside this Lloyds, while appreciating Mr K had a number of personal issues around the time, considered he had sufficient knowledge and understanding to make the transaction.

Our investigator re considered things, but she wasn't persuaded she should change her view that Mr K should be refunded. In summary, she said considering the high value of the payment, Lloyds branch staff ought to have been on high alert during the transaction. She said she understood that the member of staff went through the HVC, but it is seemingly in dispute whether every question was asked. But, in any event, our investigator considered the warning and questions set out in the HVC and didn't think it was impactful or effective given the specific situation of the case. She said the HVC covered multiple different scam types before reaching questions that were more relevant to Mr K. She didn't think the questions bought to life what email interception scams truly look or feel like, nor stress the context of the banks concerns and the importance of calling the genuine solicitor. Overall, she considered that more should have been done in branch. Our investigator also maintained that Mr K had a reasonable basis for belief when making the payment.

Our investigator did though make an amendment to the redress she was recommending. She said to put things right Lloyds should; refund the outstanding amount lost from the scam, pay 8% interest on this amount from the date of payment, until settlement and pay £750 compensation.

Lloyds still didn't agree and for broadly the same reasons. In summary, it said it had provided warnings to Mr K and it maintained that it didn't consider Mr K met the requisite level of care required or had a reasonable basis to believe the person he was paying was genuine.

As agreement couldn't be reached the complaint has been passed to me for a 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.

I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

I am aware that Lloyds considers too high a standard has been applied to what is expected of it in terms of obligations to 'question' its customers instructions based on the 'Phillipp judgement' and its implications to 'the Quincecare duty'. Lloyds has now received a large number of final decisions related to APP fraud, published on our website and so I see no reason to go into detail as to all our relevant considerations.

Having considered everything, I'm satisfied that:

- Under the terms of the CRM Code, Lloyds should have refunded Mr K the full amount he lost. And I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case.

- In the circumstances Lloyds should fairly and reasonably refund Mr K the money he has lost.

I have carefully considered Lloyds' representations about the warning it gave and whether the consumer had a reasonable basis for believing the transaction to be genuine. But they do not persuade me to reach a different view. In particular I am not persuaded that Mr K failed to take the requisite level of care required for Lloyds to choose not to reimburse under the terms of the CRM Code. I'll explain why;

Effective Warnings

Under the provisions of the CRM Code, as a minimum, an "effective warning" needs to be understandable, clear, timely, impactful and specific. It must also provide information that gives customers a better chance to protect themselves against being defrauded and should include appropriate actions for customers to take to protect themselves from APP scams.

The CRM Code sets out minimum criteria that a warning must meet to be an 'effective warning'. In very broad terms, it requires that a warning will be capable of countering the typical features of the generic scam type identified during the payment journey. I appreciate that the warning Lloyds gave was, in part, relevant to the type of scam Mr K fell victim to. But I don't think it was impactful enough to affect a customer's decision making in a manner whereby the likelihood of this scam succeeding was reduced.

I am persuaded that there was a discussion about the reasons behind the payment Mr K was making. The bank has provided evidence of a completed HVC. The accuracy of this has however been brought into question, with the banks own testimony highlighting a discrepancy, in that its branch staff have ticked to say that they have provided Mr K with a fraud information leaflet, but have then said that no leaflet was provided. But, in any event, even if I considered the HVC was completed accurately, which as I've mentioned is in doubt, I still don't think the warning met the required criteria of the CRM code. I'll explain why.

Lloyds has provided a copy of the HVC that was completed with Mr K and I can see it provides the following warning, which branch staff are instructed to read to customers;

"I need to advise you that there are a number of different scams some customers are falling victim to for example.

Fraudsters may contact you by telephone, email, knocking on your door or via social media. Often fraudsters claim to be from trusted organisations such as police, HMRC, your broadband company or the banks fraud team.

We also know fraudsters impersonate beneficiaries of payments for such things as a house purchase, by sending them an email which looks to be from the company they have been dealing with providing incorrect payment account details to divert money to an account they control.

It's important that before making this payment we are both happy it is not in relation to a scam. Please be aware that if this transaction is later found to be fraudulent your money could be at risk".

The HVC then goes on to clearly capture, that the purpose of Mr K's payment is for a 'house purchase'. Following which the HVC contains a number of questions and prompts for the bank's employee to go through with the customer. In the circumstances of this case, Lloyds has captured the following answers for those questions;

2. If this is for an investment have you checked the company for example through the FCA website or checked reviews? N/A

3. Is there somebody listening to this conversation from your mobile phone? (only a fraudster would request this) No

4. Have you been told to misadvise the bank about the reason for the payment or told your money is at risk? No

5. Has someone you don't know and/or unexpectedly asked to make this payment? No

6. Where the payment details sent to you via email? (If yes, answer question 6B) Yes

6b.Have you verbally checked with the payee the details are correct? Yes
Fraudsters hack email accounts and change information. If you haven't checked with the payee you need to call them before we proceed

8. Has anybody contacted you to amend the beneficiary details of this payment? No

I'm persuaded the warning attempts to cover email interception scams. It says that fraudsters can impersonate beneficiaries of payments for such things as a house purchase, by sending them an email which looks to be from the company they have been dealing with providing incorrect payment account details to divert money to an account they control. And I'm also mindful that when answering questions it has been captured that Mr K told Lloyds he had received the payment details by email and that he had verbally checked with the payee the details are correct.

But the warning is not specific to the type of scam that Mr K was falling victim to, and that Lloyds ought to have been aware of, given Mr K had told it the payment was for a house purchase. The questions are asked amongst a number of other questions relating to different scam types (such as investment and impersonation scams). Alongside this, the majority of the questions being asked of Mr K were closed questions, which neither gave Mr K an opportunity to expand on his answers, nor gave Lloyds an opportunity to gather information that may have been vital in helping it to establish if their customer was at risk of financial harm. And there is no emphasis or context, at the point Mr K tells Lloyds that he has received payment details by email, of the inherent risk of receiving account details by email – particularly given Lloyds, as the professionals here, would have been aware of the prevalence of this type of scam.

I'm not persuaded the warning goes far enough to make the risk of this specific scam really obvious to customers. It doesn't bring to life what this type of scam looks like, nor does it talk about the prevalence of this type of scam or explain how sophisticated the scams can be. For example – it doesn't explain that fraudster's emails can appear to come from the same email address as the account they've hacked, that they can communicate with their victims on a genuine chain of emails or that fraudulent emails are usually received when a payment request is expected or that fraudster's emails can seem genuine and look the same or very similar to the person's they're impersonating. I am also not persuaded that it did enough to emphasise to Mr K the importance of, and how imperative it was for him, to phone his solicitor to verify the bank details. Confirming account details in person or over the phone is almost always sufficient to expose and prevent this type of scam, so it's crucial that any warning explains this clearly.

I don't underestimate the challenge Lloyds faces in providing warnings strong enough to break the spell in a sophisticated scam such as this. But the difficulty of meeting that challenge does not mean that the warnings given by Lloyds here were sufficient or contained enough clarity to meet the minimum requirements in the CRM Code.

Overall, I'm not satisfied Lloyds' warning, through its HVC, met the requisite criteria here. I don't consider the warning given was an effective warning as defined by the CRM Code. It follows that Lloyds has not established it can fairly apply the exception to reimbursement relating to 'ignoring an effective warning'.

Even though I've concluded the warnings were not effective, I appreciate the warnings did, in part, have some relevance to the scam Mr K fell victim to. So, for completeness, I've gone on to think about whether Mr K reasonably moved past the warnings to proceed with the payment, given the particular circumstances of the fraud that he fell victim to.

Did Mr K have a reasonable basis for belief when making the payments?

I have carefully considered Lloyds representations about whether Mr K had a reasonable basis for believing the transaction to be genuine. But it does not persuade me to reach a different view. In particular I am not persuaded that Mr K failed to take the requisite level of care required for Lloyds to choose not to reimburse under the terms of the CRM Code and I don't consider Mr K lacked a reasonable basis of belief. I say this because;

- Mr K wasn't aware of how email impersonation / intercept scams worked and hadn't previously been a victim to this type of scam. He was expecting to make a payment in regard to the property he and his wife were purchasing. Lloyds has argued that the payment request was received sooner than Mr K and his wife expected. But Mrs K responded to the request for payment, by sending a number of questions to who she thought was the genuine solicitor and received what I'm persuaded were plausible answers. I think it's fair and reasonable that Mr and Mrs K accepted the answers to the questions they received, after all, they thought they were communicating with their genuine solicitor, and had no reason to doubt what they reasonably would have thought was professional advice.

- I have seen a copy of the emails from the genuine solicitor and the fraudster. The email from the scammer providing the account details, in my opinion, is not too dissimilar in tone or style to that of the genuine solicitor, and I don't think it would fairly and reasonably have caused Mr K any concern.

- Lloyds has also pointed to a warning the genuine solicitors provided in a footer of emails it had sent previously, which advised customers to speak to solicitors before transferring money. It's important to note that the fraudsters emails did not contain the disclaimer. I don't think it's unreasonable that Mr K didn't notice the absence of the disclaimer and I don't think the absence is remarkable. It not being present also means that Mr K wouldn't have read the disclaimer just before making the payment. And it seems the fraudster deliberately removed the disclaimer/didn't include the disclaimer in their email to maximise the chance of the scam succeeding. I'm not persuaded the inclusion of the disclaimer, on earlier emails, means that Mr K didn't act reasonably, or made the payments without a reasonable basis for belief that the money was being sent to his genuine solicitor.

- Lloyds has said the account name, to which the payment was sent, was different to the solicitors and was not related to the solicitors in anyway. I'm mindful solicitors and / or businesses often have multiple accounts for a variety of reasons, and the accounts aren't always necessarily in the name of said business and can be called something different. And in the circumstances of this case, the email indicated that the account details were for the solicitor's client care account, which for the reasons given, I think would have been plausible to Mr K.

With all of the above in mind, in light of all the circumstances here, and in line with the requirements of the CRM Code, I'm not satisfied Lloyds has been able to establish that when Mr K sent the payment he did so without a reasonable basis for belief.

Could Lloyds have done anything else to prevent the scam?

I've also thought about the interaction Lloyds had with Mr K, when he made the payment in branch.

Having thought carefully about this and considering what was good industry practice at the time, I think Lloyds could fairly and reasonably have taken further steps in branch, which if it had of done so would more likely than not have prevented the scam.

I say that as I'm satisfied Mr K would have spoken freely when he was speaking to Lloyds agents and it's been captured that Mr K was making the payment for a property purchase and that he'd received the payment details by email. Knowing this, I think it's fair and reasonable that Lloyds should have then been on high alert that Mr K could possibly be at risk of financial harm – given its knowledge of these types of scams and the prevalence of email intercept scams, which can often involve transfers of large sums, as was the case here.

With this, Lloyds could and should have brought to life what an email intercept scam would look and feel like. And to ensure that Mr K wasn't at risk of financial harm, should have emphasised the importance of him checking the bank details verbally with his solicitor on a known number (or in person) to confirm the legitimacy of the bank details he had been provided with. If Lloyds had done this, and then asked Mr K, as I think it ought to have done, if he would like to make a call/visit his solicitors to confirm the details before going ahead with the payments, while emphasising that he was potentially at risk of losing all of this money - I think it more likely than not he would have taken this additional step to protect himself. I think this likelihood is supported given Mrs K had already demonstrated that she and her husband were prepared to carry out checks before proceeding with such a large payment. And I think it more likely than not that he would have taken heed of Lloyds advice and seen them as the professionals in this matter.

It follows that had Mr K contacted his solicitors, I'm persuaded the scam would have come to light and Mr K wouldn't have gone on to make the payment.

For clarity, my findings that Lloyds ought to have prevented Mr K from making the payment have a limited impact on the outcome of this complaint, given I've decided Mr K should've been reimbursed under the provisions of the CRM Code. The impact relates to the interest payable only.

I'm conscious it's the fraudsters, rather than Lloyds, that have ultimately caused the loss. But all things considered and in the circumstances, I think Lloyds ought to have fully refunded Mr K under the provisions of the CRM Code and so it should fairly and reasonably refund the loss now.

I'm very mindful that Mr K, in his submissions, has emphasised that he considers, due to his circumstances, he was vulnerable at the time he made the payment. For all of the reasons I've mentioned above, I've found that Mr K ought to have received a full refund under the CRM code. So, in the specific circumstances of this case, I don't need to go on to make a finding on whether I consider Mr K's circumstances impeded his ability to protect himself against this APP scam.

Lastly, I must consider if any compensation payment is appropriate in the circumstances for the impact caused. I think it's important to highlight that the vast majority of the distress and inconvenience caused by this event was caused by the fraudster. And it isn't reasonable to hold Lloyds liable for that. But its refusal in paying out Mr K's claim—as I find it should have—has exacerbated the impact the loss of the money was causing to him. Mr K has described how the loss impacted his well-being, his family life and his work. I think that £750 is a reasonable amount of compensation to reflect this.

I'm also aware that Mr K also sought to recover the legal costs he incurred, through instructing a solicitor to represent him in pursuing this claim. If Mr K didn't feel able to deal with this himself, he could've asked a family member or friend, or even an organisation like the Citizen's Advice Bureau, to assist him. And this would've been at no cost to himself. It was Mr K's choice to instruct a solicitor to act for him. So, I won't be asking Lloyds to contribute to Mr K's solicitor's costs.

Putting things right

The Code explains that where a customer has met their requisite level of care (which as I've explained, I'm satisfied was the case here) they should be refunded all of the money that was lost. So I think it's fair that Lloyds Bank PLC should;

- refund Mr K the money he lost, being £120,000

- pay 8% interest on this amount, from the date of transaction to the date of settlement

- pay £750 for the distress and inconvenience caused

My final decision

For the reasons set out above, my decision is that I uphold Mr K's complaint against Lloyds Bank PLC and order it to pay the redress I have indicated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 23 June 2022.

Stephen Wise
Ombudsman