DRN-3189140

The complaint

Mr B is unhappy Lloyds Bank PLC hasn't refunded the money he lost to a scam.

Mr B is represented by his brother in bringing this complaint. But for ease of reading, I'll refer to any submission and comments he has made as being made by Mr B himself.

Background

Both parties are aware of the circumstances of the complaint so I won't repeat them in detail here. But briefly, Mr B has explained that in July 2020, someone knocked on his door offering to clean his guttering, which Mr B agreed to. Sadly, unknown to Mr B at that time, this individual was actually a fraudster.

As the fraudster claimed to be working for a roofing company, Mr B also asked for a small leak in his kitchen roof to be investigated. The fraudster recommended Mr B have his kitchen and utility room roof replaced. Following discussions with the fraudster, on the fraudster's recommendation, Mr B also agreed to have his loft boarded and his bathroom refitted. He was quoted £65,000 for the work.

Mr B paid for the work by cash withdrawals, as well as bank transfers. However, as he made payments, the scope of the work escalated. Mr B has explained that walls and ceilings were removed unnecessarily, he was told on a number of occasions that areas of his home were at risk of collapse if he didn't act quickly to remedy different issues, he was left for long periods with no washing facilities and told there were rat infestations. He was also told different pieces of machinery and building supplies were required, which Mr B paid for, but they never materialised. In total, Mr B paid £277,500 to the fraudsters across the following payments:

date	method of payment	value
10/07/2020	branch cash withdrawal	£20,000
14/07/2020	branch cash withdrawal	£20,000
14/07/2020	bank transfer	£25,000
15/07/2020	branch cash withdrawal	£20,000
15/07/2020	branch cash withdrawal	£10,000
15/07/2020	bank transfer	£25,000
16/07/2020	bank transfer	£23,000
23/07/2020	bank transfer	£25,000
27/07/2020	branch cash withdrawal	£10,000
27/07/2020	branch cash withdrawal	£10,000
27/07/2020	bank transfer	£24,500

30/07/2020	bank transfer	£25,000
30/07/2020	branch cash withdrawal	£40,000

Mr B has explained he utilised savings, an ISA and took a mortgage out on his home to keep up with the payment demands. In desperation, after making these payments he called his brother for support. Mr B's brother requested the builders suspend work until a detailed breakdown of costs could be provided. The builders didn't return after this point and Mr B realised he'd been the victim of a scam.

Mr B contacted Trading Standards who confirmed the company name given to Mr B by the fraudsters was not for a registered company and not linked to the address Mr B was given, that several Trading Standards departments were investigating this same company and that the Police were treating the matter as fraud. Mr B subsequently had the damage corrected and the work completed for £12,000 by a reputable builder.

Mr B has said he was pressured by the builders into getting money up front, being told it was needed critically for remedial work that day and even at times being driven to the bank by the fraudsters to collect the money. He said that he was working from home while his house was a building site and felt isolated by the Covid 19 pandemic.

Lloyds investigated Mr B's fraud claim and considered its obligations to provide Mr B with a refund. Lloyds said on 15 July 2020, it discussed the large cash withdrawals Mr B was making and Mr B said he was having extensive building work done. It says it discussed common scam scenarios and the risk of paying by cash. Lloyds said Mr B told it he was receiving a discount for paying by cash and was happy to proceed with the work.

Lloyds considered that as the builders had started the work, this would be considered a civil dispute and not a scam, so didn't consider it was liable to provide a refund. Lloyds later offered Mr B £50 for the delays in responding to him.

Mr B disagreed with Lloyds' outcome so brought the complaint to our service. An investigator considered the complaint and disagreed that this was a civil dispute. She considered Trading Standards' review of the company, the police fraud investigation and actions of the fraudster were indicative that the fraudsters intended from the outset to defraud Mr B, rather than provide a service.

The investigator therefore considered the complaint under the Lending Standards Board Contingent Reimbursement Model (CRM) Code, which Lloyds is a signatory of. This code requires firms to reimburse customers who have been the victim of APP scams like this, where payments are made to the fraudster by bank transfer, in all but a limited number of circumstances. The investigator initially recommended informally that Lloyds fully refund Mr B, but having reviewed Lloyds' response, determined both Lloyds and Mr B should split liability equally.

The investigator thought that Lloyds didn't do enough to assure itself that Mr B wasn't at risk of financial harm, based on the out of character transactions he was making. However she also thought Mr B didn't complete enough checks to assure himself that he was paying a legitimate company. The investigator also awarded £300 in compensation for the additional stress and delays caused by Lloyds not treating the claim as a scam.

Mr B considered 50:50 liability wasn't a fair outcome and that Lloyds should be held more responsible than him. Lloyds didn't respond to the investigator's view, so the complaint has been referred to me to reach a final decision.

Since the complaint has been referred to me, Lloyds has agreed to treat the complaint as a scam, but considers Mr B should be held liable for his losses. To summarise, Lloyds has said:

- Mr B received no written contract for the work being completed

- The bank transfers he made went to an account that appears to be linked to a motoring business, which should've caused Mr B to stop and question this further.

- Mr B's brother appears to have connections to the building trade. Lloyds questions why Mr B didn't contact him, Trading Standards, or Action Fraud sooner.

- Lloyds advised Mr B of common scams and the risks of using cash, but Mr B chose not to tell the bank what was happening.

- The circumstances presented by Mr B appear inconsistent and unusual. Mr B was sadly scammed a second time following the events mentioned above and Lloyds considers that the amount Mr B has paid out is implausible for the work agreed to.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In deciding what's fair and reasonable, 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 be good industry practice at the time.

In broad terms, the starting position at 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 consumer 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 consumer even though they authorised it.

In this case, Mr B made some payments via online banking transfers, which are covered by the CRM Code that Lloyds is a signatory of. The Code requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this, in all but a limited number of circumstances and it is for Lloyds to establish that a customer failed to meet their requisite level of care under one of the listed exceptions set out in the CRM Code.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that*:

- The customer ignored what the CRM Code refers to as an "Effective Warning" by failing to take appropriate action in response to such an effective warning

- The customer made payments without having a reasonable basis for believing that: the payee was the person the Customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate

**Further exceptions outlined in the CRM Code do not apply to this case.*

While the cash withdrawals Mr B made aren't covered by the CRM Code, I consider Lloyds should still 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 made 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.

As different considerations apply to the bank transfers and cash withdrawals Mr B made, I'll consider Mr B and Lloyds' liability for each payment method separately.

Bank transfer payments

I think Lloyds has been able to establish that it may choose not to fully reimburse Mr B under the terms of the CRM Code. I'm persuaded one of the listed exceptions to reimbursement under the provisions of the CRM Code applies.

Did Mr B have a reasonable basis for believing the payments he made were genuine?

Taking into account all of the circumstances of this case, including the characteristics of the customer and the complexity of the scam, I think the concerns Lloyds has raised about the legitimacy of the transactions Mr B was making are enough to support its position that he failed to meet his requisite level of care under the CRM Code for the payments he made. I don't think Mr B had a reasonable basis for believing the person he transacted with was legitimate. I'll explain why.

Mr B has explained the fraudster in question got in contact with him by doorstep knocking - so Mr B hadn't requested his services. The initial quote was £65,000 which seems an excessive amount for the work Mr B had agreed to. This is supported by the remedial work being completed by a legitimate builder for £12,000. The first bank transfer Mr B made was for £25,000 and by this time he'd already provided £40,000 in cash in the previous five days. This means the full agreed price had been paid, despite the works not having been completed. The account details provided by the fraudster were also for a motor company. Mr B says he was told the account belonged to a family member, but wasn't given a reason for the fraudster not using his own account.

Mr B has acknowledged he didn't complete any checks on the company before agreeing for works to be completed, or conduct any research on whether the price was realistic. With all of these points in mind, in the particular circumstances of this case, I consider that Mr B ought to have had concerns about the legitimacy of the builder he had contact with and that, in turn, ought to have led to a greater degree of checking on Mr B's part. In not carrying out sufficient checks I don't find he had a reasonable basis for believing the builder was offering a genuine service and so fell below the level of care expected of him under the CRM Code.

Did Lloyds provide an effective warning to Mr B?

The CRM Code says that where firms identify APP scam risks in a payment journey, they should provide Effective Warnings to their customers. The Code also says that the assessment of whether a firm has met a standard or not should involve consideration of whether compliance with that standard would have had a material effect on preventing the scam.

Lloyds hasn't provided any evidence to be considered on whether it provided an effective warning to Mr B when he was making payments online. It's for Lloyds to demonstrate that it met the provisions of the Code and did enough to protect Mr B from financial harm. In the circumstances of this case, I don't think Lloyds has evidenced this.

Lloyds did provide some form of warning to Mr B when he attended a branch on 15 July 2020, but as these were relating to the cash withdrawals and not covered by the Code, I'm not considering whether these warnings were 'effective'. The context of the conversation in branch is also important here – by the time Mr B spoke to the advisor, he'd already completed prior bank transfers and cash withdrawals, seemingly without any warning or intervention.

Even when Lloyds were made aware that Mr B was having building work done, I don't think this negates the requirement for Lloyds to provide an effective warning, as Lloyds would've been aware of the prevalence of rogue trader scams and so there was still an identifiable risk here.

For the reasons I've explained, I think both Lloyds and Mr B share some responsibility for the losses Mr B incurred when making the bank transfers and I therefore think they should share liability 50:50. I'll now consider the cash withdrawals Mr B made in branch.

Cash withdrawals

As explained above, I've thought about whether Lloyds should've identified the cash withdrawals Mr B made as out of character or unusual.

Lloyds has said it spoke to Mr B about his cash withdrawals on 15 July 2020, although I think Lloyds should've questioned Mr B from the first cash withdrawal he made. I say this because the withdrawal was unusual for Mr B's account, being the largest in the previous 12 months.

Lloyds' notes suggest Mr B advised he was having extensive building work done which he was paying for in cash. The notes also state Mr B was provided with information on common scam scenarios and warned against the risks of using cash. From the information provided I don't think Lloyds went far enough to protect Mr B here from financial harm, particularly considering that by the time Lloyds did intervene, Mr B had already spent £65,000 in just a few days. Similarly, by the time Lloyds next intervened, Mr B had made payments totalling £143,000, requiring a re-mortgage of his home, in a timeframe of just over two weeks

While Mr B had said the money was for building work, rogue trader scams are prevalent and well known to banks. Had Lloyds had a meaningful conversation with Mr B, I think the circumstances surrounding Mr B's building work would've alerted Lloyds that he may be at risk and had the common features of such scams been highlighted to Mr B, I think he would've looked further into this before making payments and ultimately, wouldn't have gone ahead.

Lloyds has said Mr B chose not to tell it what was happening, but I disagree with this. I also disagree that there have been inconsistencies in Mr B's testimony and have been fully persuaded by the legitimacy of his testimony throughout his correspondence. He told Lloyds he was having building work done and that he'd been asked to pay in cash. I see no reason why, had Lloyds asked additional questions, Mr B wouldn't have been honest.

I appreciate Lloyds' comments that Mr B fell for a similar scam some months after this one – but arguably had Lloyds acted sooner from the outset, before Mr B was under the pressured 'spell' of the fraudsters, the outcome of conversations could have been very different.

I've also thought about whether, in all the circumstances of the case, Mr B should bear some responsibility for the losses incurred from his cash withdrawals. For similar reasons as I've mentioned above, I think he should. As I've explained, I think Mr B should also have completed more research into the company he was paying and the works he was having completed before proceeding with payments. I therefore think again that a 50:50 liability is a fair outcome in the circumstances.

Redress

I'm satisfied that Lloyds should refund Mr B 50% of the money he sent to the fraudster, totalling £138,750.

I also think the £300 recommended by the investigator is fair compensation to acknowledge the delays caused to Mr B's complaint. I think there was strong evidence from Trading Standards and the Police from the outset that this wasn't a civil dispute. Rogue trader scams are well known to banks and it's a common hallmark of fraudsters to start some work to draw victims into making additional payments. I therefore don't think Lloyds should've decided the matter was a civil dispute on this basis alone and I think that decision caused further, unnecessary distress to Mr B.

I understand that Mr B used funds from several sources to make payments to the fraudster, including his current and savings accounts, ISAs and a home re-mortgage. So, in this case, I think Lloyds should pay interest on the money Mr B lost at a rate of 8% for loss of use of money as a pragmatic solution in the particular circumstances of this case.

My final decision

For the reasons I’ve explained, my final decision is that I partially uphold Mr B’s complaint against Lloyds Bank PLC. I required Lloyds Bank PLC to:

- Refund Mr B 50% of the money he lost to the scam, totalling £138,750
- Pay 8% simple interest, from the date the payments were made to the date of settlement
- Pay £300 to Mr B in compensation

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 2 March 2022.

Kirsty Upton
Ombudsman