

The complaint

Ms C is seeking to recover approximately £30,000 from Yorkshire Building Society trading as Chelsea Building Society ('CBS') which she lost from her account as the result of a third-party scam.

CBS says it is not liable for the loss because Ms C unwittingly authorised the payments herself – and it could not have reasonably further intervened.

What happened

The details of this case have been clearly set out by our investigator when they wrote to the Ms C and CBS recommending that Ms C's complaint be upheld. As such, the facts are well-known to both parties, so I don't need to repeat them at length here. In summary, Ms C has been the victim of a scam. She was tricked into sending nearly £30,000 as she believed her bank account had been compromised and was told this would be used to rectify the situation before being refunded to her.

Ms C was contacted out of the blue by someone claiming to work for an online retailer saying that purchases had been made on her account. She explained she did not even have an account with the retailer. She was told that her bank account had been compromised and so was at risk. The person she was speaking with told her that they could help her secure her account and catch the scammer. Though it is not entirely clear how, the person gained remote access to Ms C's computer and attempted to set up online banking for her CBS account. When this failed to work, Ms C went into branch to make payments under the person's instructions and to account details they have provided. Later in the same month, she was contacted her another bank she banked with and during discussions with them, she realised she had fallen victim to a scam.

On the following dates, she made the following payments:

- 3 November 2020 - £10,000
- 4 November 2020 - £9,900
- 6 November 2020 - £10,000

Ms C made the payments herself in branch but said that CBS should have exercised their duty of care to her as their customer. In particular, she felt that CBS should have asked more questions before processing the payments to the scammer in line with the relevant regulations. So, she complained to CBS.

CBS said that they were not liable to refund Ms C because she had unwittingly authorised the transactions herself. They had simply followed her payment instructions based on the account details and sums she provided when in branch.

One of our investigators looked into what happened and recommended that Ms C's complaint be upheld. They thought that the transactions were unusual and out of character when compared to Ms C's usual account activity. And they felt that CBS had missed their opportunity to discuss the payment Ms C was making in more detail. They believed that had they done so, the scam could have been uncovered and Ms C's losses prevented.

CBS didn't agree. In summary, they said:

- As a building society, CBS is not 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. But they felt our investigator's response had been heavily driven by it.
- The payments were authorised by Ms C and there was no evidence of third party involvement in the payment process, so they were simply following her payment instructions and did not need to refund her for them. Their primary responsibility is to execute valid payment instructions.
- They did not think the transactions were unusual or out of character. They took place in branch, as they would expect. The instant access savings account was also earning a very low rate of interest at the time so it would not be unusual for her to remove funds from the account. As CBS only offer savings and mortgage accounts, it is not unusual for customers to make one off large payments for things like home improvements – which is what Ms C said these payments were for.
- The disputed activity took place in Ms C's local branch, and she was asked questions about the payments as this was their standard process when someone makes payments in branch. It was not because they saw any reason for concern.
- When in branch and subjected to rigorous questioning, Ms C chose to disguise the true nature of the reason for the payments she was making. On each occasion, she was asked whether she was under pressure to send these payments, which provided her with the opportunity to advise CBS of the real situation she was in.
- Ms C was provided with a leaflet each time she went into branch which provided education on fraud and scams, including the specific scam she fell victim to. She was advised to read it.
- It would not be standard procedure for them to ask for additional supporting documentation when a customer was withdrawing from their account – this would only happen if they thought a transaction was suspect, which they did not think applied in this case. They were not persuaded that further questioning would have made a difference anyway – Ms C was under the spell of the scammers and had been coached with what to say in response to their questions.
- With regards to the Banking Protocol, they would only invoke this if they thought that their customer was at immediate financial risk from a third party. They did not think this was true in this case so they had no need to invoke the protocol.
- They did not think Ms C had fallen victim to a sophisticated scam – they thought that she should have seen the red flags in conversation she was allegedly having with the online merchant – a company she had no links to. She failed to recognise these red flags and this failure led directly to the fraud occurring.

As no agreement could be reached, the case has 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.

It is not in dispute that these were 'authorised payments' even though Ms C was the victim of a scam. Ms C went into branch and followed the form and process to send the three payments to the account number and sort code provided by the scammer. Whilst she did so

under deception, under the Payment Service Regulations and the terms and conditions of the account, Ms C is presumed liable for the loss in the first instance.

However, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Barclays 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 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.
- For branch transactions, those steps may include following the Banking Protocol where appropriate.

So, I consider that as a matter of good practice, CBS should have been on the lookout for unusual and out of character transactions. I've looked at the activity that took place on Ms C's account and a payment of £10,000 was, in my opinion, an unusual and uncharacteristic payment – particularly so given that it went to a new payee. There were no recent comparable payments. And for completeness, I think the second and third payments would stand out too due to the value of the payments and the proximity to the payment or two before them. I do appreciate what CBS have argued – that the nature of the products they offer means they often see large one-off payments leaving their customer's accounts. But I don't think that this negates their responsibility to their customers to pick up on transactions that are unusual. And because these transactions were made in branch, their branch staff had the opportunity before them to find out more about each of these transactions. And so, I am persuaded that CBS staff should have been concerned about the possibility of fraud here and that CBS should have asked some questions about the payment and warning Ms C about the potential of fraud and scams.

Due to the unusual nature of the payment, the relevant law, regulations and good industry practice (not including the CRM as CBS are not signed up to this voluntary code) required CBS to question Ms C about the transactions and the reasons for making them before they agreed to process them on her behalf. And there is an arrangement between the banks and the Police called the Banking Protocol which means that if a bank or building society is concerned or suspicious about an out of character transaction it can refuse to process the transaction and contact the police. It also provides steps for banks to take beforehand where there is a risk of fraud such as taking the customer into a private room, asking further questions and notifying more senior branch staff.

CBS have shown that they did question Ms C when she was making the payments, and in summary they said:

- Ms C was asked about the purpose of the first payment and she said it was to pay a builder for new central heating throughout her home. She said the builder had started work and she was happy with the quality of the work to date. They said they had made her aware of frauds and scams and she was happy to proceed with the payment.
- Ms C then returned to make the second payment – when questioned by CBS she said it was to pay a builder for home improvements. CBS said they asked her if she

was comfortable with the transaction and she confirmed she was, telling them the builder had been recommended by a friend and was trustworthy. CBS said they discussed fraud and scams with her and gave her a leaflet about fraud and scams.

- She returned to branch before the third payment, intending to make a payment but she had forgotten the account details for the payee account. CBS said she told them that the payment was going to be for kitchen and bathroom renovations. They said they took the opportunity to make her aware of fraud and scams.
- When she made the third payment, she said she was paying for the kitchen and bathroom renovations. CBS said they had another discussion with her about fraud and scams and gave her a related leaflet.
- She went into branch a fifth time and wanted to transfer a further £10k which she said was for her nephew. She was given the opportunity to call her nephew but she declined. CBS said she assured branch staff that everything was fine. But CBS said as she had three consecutive transactions, under the account terms and conditions, she could not make any further transactions within the account year so it was declined. Their notes also say that the cashier had reservations on this occasion and so decided not to go ahead with it.

In my judgement, CBS could and should have done more here, particularly given that good industry practice from the time encourages staff to ask questions about potentially fraudulent payments in order to test the purpose and legitimacy of the payment. I say this because I don't think the branch staff did enough to satisfy themselves that Ms C was not at risk of financial harm. Because I am satisfied they should have asked more probing questions before processing the payment, I have to consider whether any further intervention would ultimately have made a difference or not.

It is impossible for me to say exactly how any conversation between Ms C and CBS would have unfolded. And so, I must base my decision on what I think is *most likely* to have happened had CBS intervened further. I've done this by thinking about the kinds of questions that I would expect CBS to have asked, alongside what Ms C has told us about the circumstances that led to her making the transfers. Having done so, I do think further intervention would most likely have prevented the first payment from taking place. I will explain why.

I have thought about the kind of questions I would have expected branch staff to have asked about the first payment. Ms C had told them it was for a new central heating system. So I think CBS should have asked questions such as, though not limited to, the following:

- What the exact nature of the work being done was
- How she had satisfied herself this was a fair price for the work being done
- Whether she had any written quotes or documentation from the "builder"
- How she had chosen the builder in question, and whether she had done any independent checks on them
- Whether she had been put under any pressure to make the payment or have the work done, or whether she had been told to lie to CBS

Ms C had been given a cover story by the scammers, and we do know that she was willing to provide false answers to the CBS as she thought she was helping uncover a fraud. But there is no evidence I have seen that suggests to me that it was a very detailed cover story. And because CBS did not ask more questions at the time, we cannot say for sure how detailed Ms C could have been in answer to those questions. So, I think on balance it is likely that she would have had to come up with some of the answers to the reasonable interventions by the building society on the spot. These answers would likely have been far less convincing in their detail or their delivery. I say this because she would not likely know

what a fair price was for a new central heating system, or the details of checks on the builder such as looking for reviews online, nor would she be able to provide CBS with any paperwork or even emails or texts in support of her story. I think it also would have been appropriate to ask if she had been put under any pressure, or asked to lie to them by anyone. I say this because there are a number of scam types in which a victim may be told to provide a cover story to the bank – including the type of scam Ms C fell victim to – that would have been well-known to CBS at the time. I think if CBS had explained that some scammers will tell you not to be honest with the bank because your account is at risk, for example, and then explained how these kind of scams unfold, Ms C could have realised she had fallen victim to a scam.

At this point, had Ms C not realised what was going on, I think it would have been reasonable for CBS to have had concerns that she was at risk of fraud or financial harm. And so I think in line with the banking protocol, it would have been appropriate for further detailed questioning to take place, in a private room, and I think this likely would have led to either Ms C deciding not to make the payment here, or CBS realising it sounded suspicious and declining to make the transaction. If it were the latter, I think it may have been reasonable to also contact the police. As a trusted organisation, Ms C would likely have let them in on what she thought she was doing – and they would be able to very clearly instruct her that this was a scam.

In other words, I believe that but for CBS' failure to probe, the scam probably would not have succeeded and Ms C wouldn't have gone on to make the payment at all.

Should Ms C bear some responsibility by way of contributory negligence?

As I have explained, I think CBS could have prevented the loss here. But I also have to consider whether Ms C ought to bear any responsibility for the losses she has incurred too. And, in the particular circumstances of this case, I think she should.

Whilst I understand scammers can use the pressure of an allegedly urgent situation to confuse and alarm their victims, I think there were some clear red flags here that ought to have given Ms C reason to question what was going on. Ms C believed she had been called by an online retailer totally out of the blue, with whom she did not have an account. So, it would seem highly unusual that they were contacting her, and when she informed them she was not their customer it would seem unusual that they were then able to tell her that her bank account was at risk. It is unclear why the online retailer would have any dealings with, or knowledge of, her building society or account with them. And I think the fact she was advised to lie to them should have served as another red flag. Given this, I think it would have been reasonable to have asked the scammers to verify some personal data they would know about her, or to do some independent checks such as looking online or speaking to a trusted organisation or person about the kind of scenario was unfolding. This is particularly so given the large sums of money she was being asked to send. Unfortunately, Ms C took what she was being told on face value and proceeded with the payments.

Having taken into account all of the circumstances of this complaint, I think a fair and reasonable deduction would amount to 50% of the total losses. I feel that this deduction takes into account that CBS ought to have done more to be satisfied that Ms C was not at risk of financial harm from fraud, but at the same time, takes into account Ms C's own actions and the role they played in the success of the scam.

Putting things right

I think fairly and reasonably CBS should:

- Refund 50% of the losses to Ms C, which amounts to £14,950; and
- Pay 8% simple interest from the dates of the losses until the date of the settlement.

My final decision

For the reasons set out above, my decision is that I partially uphold Ms C's complaint against Yorkshire Building Society trading as Chelsea Building Society and order it to pay the redress I have indicated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 10 November 2022.

Katherine Jones
Ombudsman