

## The complaint

Mrs W complains that Lloyds Bank PLC (Lloyds) did not reimburse the money she transferred to a fraudster.

## What happened

### *What Mrs W says*

Mrs W provided some details, including her sort code and account number, and paid for a Covid passport in response to a phishing text scam she thought was from the NHS. Soon after she received a call from a man who said he was from Lloyds' security team who instructed her to move money to a safe account. Mrs W was told that there was an ongoing fraud investigation in relation to employee fraud at a different branch of Lloyds. Although Mrs W didn't know at the time, the caller was a scammer.

The scammer persuaded Mrs W he was genuine because he sent her some text messages to her during the conversation, sounded professional and had an understanding of Lloyds' procedures. He also knew some personal details including Mrs W's account number (which she'd provided in response to the earlier phishing email) and the fact she'd paid for a Covid passport. The scammer explained to Mrs W that she'd been scammed into paying for a Covid passport.

Mrs W made the following payments to the scammer:

| Date   | Amount            | Payee | Payment reason              | Payment method       |
|--|-------------------|-------|-----------------------------|----------------------|
| 29/10/21   | £24,758.29        | 1     | Invoice                     | Online               |
| 29/10/21   | £9,500            | 1     | Attempted payment - invoice | Online and then call |
| 30/10/21   | £24,500           | 1     | Building work               | Telephone            |
| 30/10/21   | £10,000           | 2     | Electrical work             | Online               |
| Total  | £59,258.29        |       |                             |                      |
| <b>Total loss (after 50% refund of third and fourth payments and amount recovered)</b> | <b>£41,556.90</b> |       |                             |                      |

Mrs W selected paying an invoice as the payment reason when she made payments online. Most of the payments were flagged by Lloyds' security systems and so Lloyds spoke to Mrs W about them. She has explained that during these calls the scammer was on the line and told her what to say.

When the scammer didn't call Mrs W back to explain how her money would be returned as he'd promised, she called Lloyds and asked to speak to him. During this call Mrs W was told she'd been the victim of a scam.

Lloyds contacted the two banks that received Mrs W's funds but was only able to recover a total of £451.39 – which has been credited to Mrs W's account. It agreed to refund 50% of the second and third payments only. It said the first payment wasn't unusual and so wasn't flagged. Lloyds blocked the second payment and completed checks but Mrs W gave a persuasive cover story about paying a builder, meaning that the warning it gave was geared to this payment reason. Lloyds also flagged the third payment and spoke to Mrs W, but she gave a cover story about paying an electrician for a complete rewire and other work.

Lloyds also referred to a call Mrs W made to it in December 2020 when she said she'd given out personal details in response to a text. During the call Lloyds gave Mrs W general scam advice including not to click on links and to put the phone down if she received a call asking her to move money to a different account.

Mrs W was unhappy with Lloyds' response and brought a complaint to this service.

### *Our investigation so far*

The investigator who considered Mrs W's complaint recommended that it be upheld in full. She said the warnings Lloyds provided to Mrs W at the time she made the payments (and in the call in December 2020) weren't effective under the CRM Code. The investigator also said Mrs W had a reasonable basis for believing Lloyds asked her to move her money to a safe account. She said this for a number of reasons including the fact the caller knew Mrs W had bought a Covid passport, although it was unclear if Mrs W went through a verification process it's likely the scammer knew a lot of information about her from the previous phishing scam and also that the scammer built trust over time. The investigator noted there were some concerning factors like the fact Mrs W was told to pay two random people, and some funds were left in her account overnight. But on balance the investigator felt Mrs W was under a lot of pressure to keep her money safe.

In its response to the investigator's view Lloyds agreed to refund 50% of all the transactions Mrs W made on the basis its warnings didn't go far enough. But Lloyds maintained that Mrs W didn't meet the standard required of her under the CRM Code. I have summarised Lloyds' key reasons below:

- The original phishing scam was well publicised and it wasn't reasonable for Mrs W to think she needed to make a payment for a Covid passport.
- Mrs W contacted Lloyds in December 2020 as she thought she might be the victim of a scam after a phishing scam, so it's surprising the call from the scammer in this case didn't cause her concern. In December 2020 Mrs W was told to put the phone down if she was asked to move her money.
- When Mrs W received the call to say her account was at risk she took no steps to verify what she'd been told. The scammer only knew information Mrs W provided in response to the phishing scam.
- Mrs W didn't have any information about where her funds were going or how her funds would be returned.
- Although the investigator said Mrs W was under pressure to transfer her funds this wasn't the case. Funds were left in her Lloyds account overnight, so Mrs W had the opportunity to consider what the scammer told her and complete some checks.
- The scammer claimed to be from Mrs W's bank but was unable to protect some of her funds overnight which should have caused Mrs W concern.
- There were enough red flags to prompt Mrs W to be honest with Lloyds in the conversations she had with it when she was contacted by the genuine fraud team.

Mrs W should have had concerns about being asked to pay funds to a third party when her genuine bank was telling her payments couldn't be processed because of concerns about them.

- Finally, Lloyds questioned the investigator's finding that it had the opportunity to identify the scam sooner. It said Mrs W misled Lloyds and what she said was believable.

The complaint was brought to me to consider. I issued my provisional decision on 10 August 2022 and recommended that Lloyds reimburse 50% of Mrs W's loss plus interest. In the "What I've provisionally decided and why" section I said,

*I've considered all the evidence and arguments to decide what is fair and reasonable in all the circumstances of the complaint.*

*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 be good industry practice at the time.*

*When thinking about what is fair and reasonable in this case, I've considered whether Barclays should have reimbursed Mrs W under the provisions of the CRM Code and whether it ought to have done more to protect her from the possibility of financial harm from fraud.*

*There's no dispute here that Mrs W was tricked into making the payments. But this isn't enough for her to receive a full refund of the money under the CRM Code. The Code places a level of care on Mrs W too.*

*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.*

*\*There are further exceptions outlined in the CRM Code that do not apply to this case.*

*Like the investigator, I don't consider the warnings Lloyds gave Mrs W were effective under the CRM Code. I don't need to go into any detail though, as Lloyds has now offered to refund 50% of all the payments Mrs W made which is what I'd award.*

*Did Mrs W have a reasonable basis for believing what the scammer told her?*

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

*Mrs W hasn't agreed to discuss what happened and what she thought at the time with the investigator, so I've had to base my decision on the written evidence available. As I'm sending a provisional decision Mrs W has the opportunity to correct me if I've misinterpreted anything.*

*In reaching this conclusion I've taken the following into account:*

- *Although it seems Mrs W received a call from a spoofed number she didn't check this at the time, so it didn't influence her decision to trust the caller.*

- *It's hard to see how an investigation into another branch of Lloyds meant Mrs W's funds were at risk and needed to be moved to a safe account. I consider Mrs W should have had concerns about how plausible the scammer's story was and taken additional steps before making the payments.*
- *Mrs W paid two individuals, neither of whom had accounts with Lloyds. I believe this should reasonably have been a red flag that something wasn't right. I've not seen any evidence to suggest Mrs W questioned this and was given a plausible explanation for it.*
- *Mrs W thought an agent of Lloyds told her she needed to transfer funds to a 'safe account'. But she didn't question why daily transfer limits couldn't be overridden by the bank meaning she needed to make transfers over two days to the 'safe account'.*
- *Mrs W moved her funds because she believed they were at risk. But not all of her funds were moved on the day the scammer first contacted her, meaning that nearly £38,000 was still at risk until the following day. I consider this should reasonably have caused Mrs W concern and led her to take additional steps to verify what she'd been told before making further payments. By the time she made the transfers on 30 October 2021, Mrs W had time to reflect on what she'd been told and verify the information.*
- *Even after the transfers were made on 30 October 2021 Mrs W's Lloyds account still had a balance of over £3,000. If her funds were at risk, then this balance would also be at risk. This is another factor that ought reasonably to have concerned Mrs W and led her to question what she'd been told.*
- *The only information Mrs W had about the return of her funds was that the caller would call back to discuss this.*
- *Although the warning provided to Mrs W in December 2020 wasn't effective under the CRM Code as it was given around ten months before the scam, it is relevant to Mrs W's reasonable basis for belief. During the call Mrs W was advised,*  
*"The exact same thing applies if you receive any phone call asking you to move money to a different account to protect your money. Simply don't do it. Put the phone down and don't disclose any information whatsoever."*

*So Mrs W was given advice about the same circumstances and so I think it would be reasonable for her to be suspicious about what the scammer told her in October 2021.*

- *I appreciate that Mrs W thought that her funds were at risk, but I believe she should reasonably have had concerns about why she was repeatedly told to lie to Lloyds' fraud department and why the scammer needed to be on the line during her calls with the real Lloyds.*

*The text messages Mrs W received from the scammer (but that she thought were from the individual she was speaking to in Lloyds' fraud department) didn't say 'Lloyds' at the top in the usual way. Instead, the text messages showed the telephone number of the caller. But I can understand why Mrs W didn't notice this, at least to begin with.*

*It's important to note that it's the combination of the factors I have listed above that have led me to the conclusion that Mrs W didn't meet the standard required of her by the CRM Code to receive a full refund.*

*This means that Lloyds isn't responsible for the remaining 50% of Mrs W's loss under the CRM Code.*

### *Could Lloyds have done more to protect Mrs W*

*In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. And I have taken that into account when looking into what is fair and reasonable in this case. But a bank also has to be on the lookout for, and help to prevent payments, that could involve fraud or be the result of a scam.*

*I agree with the investigator that the first payment Mrs W made (for £24,758.29) was unusual and out of character and so Lloyds should have had a conversation with Mrs W about it. The conversation should have covered things like the reason for the payment. On balance I think that had Lloyds asked this question Mrs W would have given the response she gave when asked the reason for the next payment – that it was for building work. Given this, I'd have expected Lloyds to go on to ask whether the work was satisfactorily completed and how Mrs W received the payment details (as there are a number of potential scams in respect of building work).*

*Whilst I can't say exactly how the conversation would have gone, I consider it would have been very similar to the subsequent conversation Lloyds had with Mrs W about the next payment. In this call Mrs W gave confident answers about the reason for the payment and the extent of the work that was being completed. In the circumstances, I think it's fair to say she would have given similar answers if Lloyds had questioned her about this first payment. I don't think there would have been anything concerning to Lloyds and I'm persuaded that the payment would have been made.*

*I think the situation was different when Mrs W made the second payment though. Mrs W wanted to pay a further significant sum to the same builder, meaning that over two days she'd be paying him almost £50,000. She had tried to make a £9,500 payment the previous day but had been unable to do so because of daily limits and was now asking to pay a much greater amount. The transaction roughly halved her balance and Mrs W wasn't able to provide a clear answer in response to a question about the total invoice she received. The Lloyds advisor also asked Mrs W a series of closed questions which required yes/no answers meaning that she lost the opportunity to probe Mrs W and get to the bottom of what was going on. For example, the advisor asked,*

*"You haven't been advised by anybody to lie to us about the reasons for your transfer, no?"*

*Lloyds will be aware that it is common for scammers to provide victims with cover stories with varying degrees of detail and so the answers they are given can't always be accepted at face value.*

*But I'm persuaded that even if Lloyds didn't go far enough Mrs W shouldn't receive any more than 50% of all transactions, which Lloyds has already offered. I say this because any award should be reduced by 50% to reflect Mrs W's contribution to her loss (for similar reasons to those set out above in respect of Mrs W's reasonable basis for belief). This means that the offer Lloyds has made to Mrs W already exceeds any award I would make because I think Lloyds could have prevented the scam sooner (as Lloyds has agreed to refund 50% of the first payment but I don't believe Lloyds should have prevented this payment from being made).*

Lloyds responded to my provisional decision and said it had nothing further to add. Mrs W didn't agree with my provisional findings. I have summarised the main points below:

- There has been a large rise in the number of APP scams and huge sums have been lost. The CRM Code is ineffective, and banks should have more impactful policies and procedures in place to combat fraud.

- There is a significant imbalance in scam experience between banks and their customers, but banks focus on blaming customers.
- Lloyds ask customers to give away personal details when they call. Mrs W asked me to listen to a call her husband took on her behalf in which Lloyds asked for such details.
- Scammers are skilled at creating panic and placing victims under stress by making them feel their money isn't safe. They are very knowledgeable about banking processes and procedures. In the circumstances, it's not possible to think reasonably.
- My provisional decision fails to take into account the fact that on a good day a customer may put the phone down but when there are other things going on in the background relating to things like bereavements, financial or relationship difficulties the response might be different.

### **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.

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.

After careful consideration I've reached the same outcome I set out in my provisional decision (and reproduced above) and for the same reasons.

I appreciate Mrs W has been the victim of a cruel scam and that the scammer was persuasive and knowledgeable. I also know my decision will come as a disappointment to Mrs W. But taking the overall circumstances into account I don't think she should be reimbursed in full, for the reasons already given.

Mrs W has raised general points about the increase in APP scams, how effective the CRM Code is and her belief that banks should have more impactful policies and procedures in place. Mrs W has also referred to Lloyds' telephone security procedures. I can't comment on these general points though. My role is to consider the individual circumstances of Mrs W's case and whether Lloyds acted fairly and reasonably. As Lloyds is signed up to the CRM Code, I've considered Lloyds' responsibilities under it and have also thought about whether there are any other reasons why Lloyds should reimburse Mrs W in full.

I understand Mrs W's point about a person's propensity to fall victim to a scam varying depending on what is going on in their lives at the time. The CRM Code takes this into account too. It says that a customer is vulnerable to APP scams if it would not be reasonable to expect that customer to have protected themselves against that scam at the time it happened. Vulnerability is considered on a case by case basis and is dynamic. It takes into account things like personal circumstances and the capacity of the customer to protect themselves. Where a customer is vulnerable under the CRM Code banks should award a full refund without considering whether any exceptions apply under the CRM Code.

Mrs W hasn't suggested in her submissions to this service or when asked by the investigator that there were any factors that made her unable to protect herself from the safe account scam she fell victim to though. So I don't consider it would be fair to award a full refund on this basis.

Overall, whilst I'm sorry to hear of Mrs W's loss, I'm persuaded that Lloyds should refund half of Mrs W's loss plus interest, as set out below.

## **My final decision**

I require Lloyds Bank PLC to:

- Refund 50% of Mrs W's outstanding loss - £11,927.76 (50% of £24,758.29 less £451.39 already recovered and returned to Mrs W):
- Pay interest on the above amount at account rate from the date Lloyds made its decision under the CRM Code to the date of settlement (less tax if properly deductible).
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Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 29 September 2022.

Jay Hadfield  
**Ombudsman**