

## **The complaint**

Mr W complains that Lloyds Bank PLC won't refund money he was tricked into sending to a fraudster.

## **What happened**

The background to this complaint has been set out at great length by the investigator, so I won't repeat it all here. The investigator also produced a table of all the transactions which took place from Mr W's account and has shared it with both parties. I'm satisfied that it is an accurate list and, for the avoidance of any doubt, where I've referred to a transaction by a particular number, it is the number given to the transaction on that list that I'm referring to.

In summary, Mr W was contacted by someone claiming that he had an old investment, now valued at about £33,000, which could be cashed in. But, in order to access the funds, he'd need to pay a fee. Following the initial contact, between late July 2020 and mid-February 2021, Mr W made 56 payments to the fraudsters, most were made directly to accounts controlled by the fraudsters, but several were first paid into his wife's account. Each time Mr W made a payment, the fraudster claimed that more money was needed in order to release the funds. In total Mr W lost almost £170,000 to the fraudsters.

During that period Lloyds spoke to Mr W about the payments on five occasions – 24 July 2020 (payment 1), 31 July 2020 (payment 4), 5 August 2020 (payment 6), 6 August 2020 (payment 7) and 25 September 2020 (payment 31). On each occasion, after some limited questioning by the bank, Mr W said that the payments were for home improvements.

Letters from Mr W to the fraudsters in November and December of 2020, show that he had serious doubts about the continued requests for payment. He also expressed his discomfort at having to mislead the bank and explained the significant stress the matter was placing on him and his wife.

After becoming increasingly concerned Mr W reported the matter to Lloyds in late March 2021. It is a signatory of the Lending Standards Board Contingent Reimbursement Model "CRM Code" which requires firms to refund victims of APP scams like this one in all but a limited number of circumstances. In this case, Lloyds said that one such exception applies – that Mr W didn't have a reasonable basis for believing the recipient of his funds to be legitimate. It did, however, manage to recover £2,232.47 from the firms which received Mr W's money.

The matter was referred to our service and one of our investigators upheld it in part. They thought that Lloyds should have done more to protect Mr W from financial harm from fraud from payment 12 onwards as, despite the fact he misled the bank, there were numerous reasons to be concerned about the activity. They noted what Mr W and his representatives had said about a serious medical event that Mr W suffered from in 2019 but didn't think this meant he was 'vulnerable' as defined by the CRM Code. They also agreed with Lloyds that Mr W hadn't met his requisite level of care under the CRM Code and thought he should share liability for what happened. So, they recommended that Lloyds refund 50% of payments 12-56, as well as pay £300 in compensation.

Lloyds said it only agreed in part with the investigator's findings. It argued that Mr W was confident during the calls and it would have had no reason to question the activity further than it did at the stage the investigator suggested. It claimed that there were no payments to new beneficiaries between payments 7 and 31, so there would have been no reason for it to contact Mr W again during that period. However, it acknowledged that it could have done more during the call on 25 September 2020 – particularly as Mr W had previously told it that the home improvements he was undertaking were nearly complete.

So, it offered to refund 50% of payments 31-56, minus any amounts it had recovered, as well as the compensation and interest recommended by the investigator. Mr W rejected the bank's offer and our investigator reiterated that they believed there should have been serious concerns about the activity on Mr W's account from payment 12 onwards.

Lloyds maintained its offer and asked for a final decision. In summary, it said:

- It disputed that the fact the payments went to pre-paid card accounts meant they were more likely to be fraudulent
- The fact payment 12 left Mr W with virtually a nil balance was not particularly relevant as he'd made a large payment to his own savings account
- It did not find it unusual that, during the course of genuine home improvements, payments might be made to various different payees

As no agreement could be reached, the case was 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.

The starting point for my considerations is that, under the Payment Services Regulations 2017 and the terms of his account, Mr W is liable for transactions he's carried out himself. But, that's not the end of my considerations – Lloyds are signatories to the CRM Code and also have a longstanding obligation to be on the lookout for unusual and out of character transactions which might indicate their customer is at risk of financial harm from fraud.

The CRM Code requires a firm to refund customers who are vulnerable to APP scams, regardless of whether any exception to reimbursement might otherwise apply. Under the CRM Code a customer is vulnerable to APP scams if *'it would not be reasonable to expect that Customer to have protected themselves, at the time of becoming victim of an APP scam, against that particular APP scam, to the extent of the impact they suffered.'*

Mr W suffered from a serious medical event, which he says had a significant impact on, among other things, his long-term memory. He cites this as a reason why the fraudsters were able to convince him that he held (but could not recall) the supposed investment. I don't doubt Mr W's inability to recall specific investments he'd held made it easier for the fraudster to convince him. But, having considered the conversations he had with the bank, read his hand-written notes of conversations and his letters to the fraudster, I think that, though his medical condition likely played a role in what happened, I don't think it meant he was unable to protect himself from the scam. He has consistently showed an awareness of the risk and, at times, the possibility he was falling victim to a scam. So, I don't think that Mr W meets the definition of vulnerable set out in the CRM Code. I've gone on to consider whether Mr W had a reasonable basis for believing that the recipient of his funds was legitimate.

It is more straightforward to assess that belief in reverse chronological order. By the final payments Mr W made he appears to have been motivated by the fear of losing his money and desperate hope that the fraudsters were genuine. It's clear in my mind that he did not hold a reasonable basis for belief at this point. It's also apparent that being asked to mislead the bank caused him significant concern and he felt uncomfortable doing so. That happened very early on – in relation to the very first payment he made – and there's no reason to think he wouldn't have had those same doubts, though perhaps not to the same extent, at that stage.

And, there were other things to concern him too – he'd been contacted out of the blue, he couldn't recall (and neither did he have any paperwork in relation to) the alleged original investment and most troubling of all, he was asked to make a payment to release it. Although a reasonably plausible reason was given for this, I think that Mr W (having had some experience of investing) ought to have found this odd.

There was, along the way, convincing looking paperwork, including identity documents and bank statements. I also understand that Mrs W carried out research on the firm the fraudster claimed to represent and though nothing particularly reassuring was found, nothing which would have confirmed the scam was identified either. I certainly don't doubt how persuasive the fraudsters were – dragging Mr W back into the scam whenever his doubts started to arise. And yet, I think the premise of the scam, coupled with the fact he was being asked to lie to the bank about what was allegedly a completely legitimate investment, ought to have caused him significant concern. So, I've concluded Mr W lacked a reasonable basis for belief in making all of the payments.

I've also thought about Lloyds' obligations under the Code as well as what I consider to be good industry practice, as well as what's fair and reasonable in the circumstances of this complaint. The CRM Code requires Lloyds to provide an 'Effective Warning' (that is a warning that meets certain criteria set out in the Code). More generally Lloyds had an obligation to be on the lookout for unusual and out of character transactions in order (among other reasons) to try and protect its customer from financial harm from fraud.

In this case, Lloyds did find a number of the transactions which took place on Mr W's account concerning – sufficient to contact him and discuss their purpose prior to the payments being released. There's no dispute that Mr W misled the bank about the purpose of the payments. Undoubtedly this made it much more difficult for Lloyds to provide an 'Effective Warning' – as required under the Code. It could not, based on the answers Mr W gave, identify that the scam he was falling victim to was an advanced fee fraud about a long lost investment. It did, over the course of the calls, talk about several other common scams and asked some relevant questions in an attempt to rule these out, but it largely had to confine its questions to the situation Mr W claimed was happening.

It also appears that, when instructing Lloyds to make a small number of the later payments Mr W was presented with a written warning based on the reason he gave for the payments, which he chose as 'paying an invoice' or, on one occasion, 'something else'. Because of these choices, he didn't see warnings that were particularly relevant to his circumstances. However, in considering this case, I've taken into account not just the provisions of the CRM Code, but also what I consider to be fair and reasonable in the circumstances. I've decided that, because of the way Mr W answered the questions, it's only fair and reasonable for Lloyds to be held liable for the loss from the point it was no longer reasonable for it to have taken Mr W's responses at face value, specifically when there was an alarming rapidity of payments and significant detriment to his financial position.

Like the investigator, I think payment 12 should have been the point when Lloyds asked further questions of Mr W. At this point he'd sent another £14,000 since the last conversation with Lloyds, most of which went to a payee which hadn't been paid previously. I accept that his balance was only reduced to less than £1,000 because of a sizeable payment to his own savings account (money which would be sent to the fraudsters later), but nonetheless, payment 12 would put his account in a position that was unusual and represented a significant change to how it had previously operated (having held a balance of close to £90,000 throughout the entire previous year).

Had it intervened at payment 12, it's likely that Mr W would have given the same answers as he had done during the previous conversations – that the money was for home improvements. But I think Lloyds should have done more – it had been told during the previous conversation that the works were almost complete and yet, by the time of payment 12, Mr W was attempting to complete a payment which would have brought the total amount of the payments since the last intervention to just over £14,000.

Having reviewed the other calls, it's also apparent that Mr W had, on the whole, only been asked superficial questions about the home improvements he said were being done (and, in one case, virtually no questions at all). Lloyds ought, I think, to have asked some simple, probing questions to try and ensure that what they were being told was likely to be true. It might have questioned the number of different payees, how much the overall work would cost and most importantly, whether he intended to make any further payments.

It's easy to see the importance of the last question – the victim of an advanced fee fraud will almost always believe that the payment they are making will be their last. It's the nature of the scam to surprise the victim with just one more payment request. So, even taking into account the fact Mr W had been given a cover story, I don't see why he wouldn't have answered that question honestly (and said that the payment was his last) during any of the four conversations that took place prior to the twelfth payment. And there was good reason for Lloyds to have asked that question (and others) as they were speaking to him for the fourth time in just a couple of weeks about a seemingly unending series of transactions.

So, I think Lloyds did miss an opportunity here. It's possible that, had any of the conversations that took place prior to payment 12 involved better questioning, the scam would have been prevented at an earlier point. But, I think that by payment 12, there ought to have been sufficient concern to override any reasonable reassurance the bank could have taken from the previous conversations.

In summary, I think Lloyds should have asked better questions of Mr W when it spoke to him on each of the four occasions prior to payment 12, including whether he planned to make any further payments. Had it done so, coupled with the increasingly concerning activity, it would have had serious concerns when the pattern of payments continued. And, had it asked further questions of Mr W when payment 12 was attempted, I don't think he would have been able to give compelling answers. I also don't think it would have been unreasonable for Lloyds to ask for proof of the work being undertaken or to have done simple checks into the limited companies he was apparently paying – most of which seemed to have no obvious link to home improvements at all and had accounts at the same pre-paid card provider. Regardless of whether pre-paid accounts are more likely to be used by fraudsters, it would have surely struck the bank as odd that the numerous payees Mr W paid, all seemed to have accounts with the same, relatively small, payment service provider.

I don't think, on balance, that Mr W would have been able to provide further evidence and I think those simple checks would have caused even more concern.

Had Lloyds taken this action, I think it would have been clear that Mr W was falling victim to a scam and the true circumstances surrounding the payments may have been revealed. Even if they were not, I think there ought to have been sufficient concern here for Lloyds to refuse to make further payments until they were satisfied of those circumstances. In either case, I think it's more likely than not that further loss to Mr W would have been prevented.

But, as I've already concluded that Mr W didn't have a reasonable basis for belief in making the payments, it's clear he had a role to play in what happened. As such, I think there should be a 50% deduction from the amount Lloyds pays him.

Lloyds have already offered £300 compensation in line with the investigator's recommendation. As both sides have agreed to this amount, I don't need to consider it further.

I'm satisfied with the attempts Lloyds made to try and recover Mr W's funds. It contacted the firms which received Mr W's money once it was made aware of the scam (though this was several months after the majority of the payments) and was able to recover a small sum, which was returned to Mr W.

### **Putting things right**

Lloyds should calculate the refund to Mr W as follows:

- The sum total of payments 12 to 56 (including those payments made to Mrs W, before being sent to the fraudster)
- Minus the difference between the amount sent to Mrs W and the amount she sent to the fraudsters - £2,205
- Minus the total credits from the fraudsters and reversed payments during that period - £7,671
- Minus the amount recovered - £2,232.47

This will give Lloyds Mr W's total loss for payments 12 to 56. It should then pay Mr W 50% of that figure.

In relation to interest, there's no suggestion that Mr W intended to spend or use the majority of the lost funds. Prior to the scam this money had been in his current account for some time (an account which does not pay interest on balances over £5,000). During the scam, Mr W moved some of this money from his current account to his savings account, before gradually paying it back to his current account.

Strictly speaking I think that interest on the majority of Mr W's own money should be paid at the current account rate. But, taking into account that some of that money was being used for everyday spending, Lloyds have already agreed to the investigator's recommendation that interest should be paid at the savings account rate on transactions coming from Mr W's own money that it has agreed to refund and considering what is fair and reasonable in the circumstances of this case, I think interest should be paid at Mr W's savings account rate on payments 12 to 34 (the money that appears to have come from Mr W's savings).

After his savings were depleted, he turned to a variety of other sources to fund the payments – credit cards, personal loans, mortgage advances and the sale of assets. There appears to be a mix of interest rates incurred on the borrowing and it would also be difficult, if not impossible, to establish the exact cost to Mr W of being without 50% of these funds since the scam. So, taking that into account and in the interests of being pragmatic, I think that 8%

simple interest per annum should be paid on the refund of the later payments (payments 35-56).

### **My final decision**

I uphold this complaint in part and instruct Lloyds Bank PLC to pay Mr W:

- 50% of the loss from (and including) payments 12 to 56, using the calculation set out above
- Simple interest per annum at Mr W's saving account rate for payments 12 to 34, from the date of each payment to the date of settlement
- 8% simple interest per annum on payments 35-56, from the date of each payment to the date of settlement
- £300 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 8 September 2022.

Rich Drury  
**Ombudsman**