

## **The complaint**

Mr G complains that Lloyds Bank PLC (Lloyds) won't refund payments he made after falling victim to a scam.

Mr G's complaint was brought to us by representatives acting on his behalf. As the account is held in Mr G's name, I'll mainly refer to Mr G throughout the decision.

## **What happened**

In February 2020, Mr G made three payments to repay a third party's mortgage that I'll refer to as A.

What Mr G's representatives say:

- Since 2019, Mr G has been vulnerable due to physical injuries he suffered as the result of an accident. They say these injuries were physically visible and that the branch staff at his local Lloyds branch were both aware of the accident and had noticed a change in his behaviour since the accident.
- They believe the branch staff had found Mr G to be aggressive, confrontational and demanding when he went into the branch and as a result red flags were placed on his bank account.
- In November 2019 one of the representatives registered a Power of Attorney (POA) with Lloyds which gave the representatives authority to make decisions on Mr G's behalf in relation to his property and finances. They feel that Lloyds were on notice at this point that Mr G had vulnerabilities - if they hadn't been previously.
- The POA was taken out as it wasn't clear after Mr G's accident what the impact of his injuries would be long term or how they would impact his capacity to handle his own affairs.
- Around November 2019 Mr G made people in his local area aware that he was coming into a large sum of money, and at that time was befriended by A.
- In December 2019, some of the representatives became aware of Mr G's relationship with A. They say that A was taking Mr G to some regular appointments and that Mr G was very vocal about his feelings for A - saying that he intended to marry her.
- Between December 2019 and February 2020 Mr G spent large sums of money to improve A's property. The representatives say they asked Mr G why he was spending the money on her property and were told by Mr G he was doing it to prove his love for her.
- In February 2020 Mr G and A attended the bank where she held her mortgage – not Lloyds. Mr G attempted to use his Lloyds card to repay A's mortgage, but was unable to do so. The representatives suggest this was because of Mr G's demeanour at the time and it may've been obvious he was under the control of substances.
- As a result of being unable to make the payments at A's bank, Mr G and A attended Mr G's local Lloyds branch and made the three payments. The payments were all

made on the same day in quick succession. The first payment was just over £23,000, the second payment was just under £3,000 and the final payment was just over £117,000.

The representatives raised a complaint with Lloyds, saying Mr G was the victim of a scam perpetrated by A and that she'd taken advantage of him. They asked Lloyds to refund Mr G for the three payments.

Lloyds considered their claim and declined to refund Mr G.

What Lloyds have told us:

- In November 2019 when the POA was registered with them, they were told by the representative that it was important Mr G retained access to his accounts. Therefore, they had to note on their records that Mr G had mental capacity which they told the representative.
- The branch staff at Mr G's local branch knew about his accident. But when Mr G attended their branch in February 2020, he was acting normally and introduced A as his fiancée. He told them that he wanted to pay A's mortgage off before moving in with her. The branch staff commented that Mr G didn't appear to be under duress or unstable, and that he seemed chatty and normal.
- As the third payment of just over £117,000 was unusual and out of character for Mr G's previous account use, they completed a High Value Checklist (HVC) and a fraud script was read out to Mr G.

As Lloyds wouldn't refund the payments, Mr G's representatives brought a complaint to our service.

An investigator looked into Mr G's complaint and upheld it. They reached this answer based on agreeing that Mr G was the victim of a scam, and therefore his payments were covered by the Contingent Reimbursement Model (the CRM Code). Under the CRM Code consumers who meet the definition of vulnerable are entitled to a full refund on payments made as part of a scam, and the investigator was satisfied that Mr G met that definition of vulnerability. Therefore, the investigator recommended a full refund of all three payments.

Lloyds disagreed with the investigator's opinion, saying they didn't believe Mr G was the victim of a scam and therefore his complaint didn't fall under the CRM Code. On that basis, they didn't agree that Mr G was entitled to a refund and asked for the case to be reviewed by an ombudsman.

### *My provisional findings*

On 27 April 2022, I issued a provisional decision due to reaching a different outcome on the case than our investigator had. I asked for both parties to provide any more comments or evidence that they wanted to be considered before issuing my final decision.

*In my provisional decision I said:*

*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 in 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. Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.*

*Having done so, I'm not persuaded that I can fairly require Lloyds to refund Mr G and I'll explain why.*

*Was Mr G the victim of a scam?*

*In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that its customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. When Lloyds made the payments, it was complying with Mr G's instructions. At the time, Mr G wanted to pay A and there was no mistake made as the money was sent to the correct account details.*

*Mr G's representatives have told us that Mr G was very vocal about his feelings for A and that in his mind he was going to marry her. This coincides with what the branch staff have said about the discussions they had with Mr G when he attended the branch in February 2020 to make the payments. They say A was introduced as Mr G's fiancée and he told them he was repaying her mortgage to move in with her. The representatives also told us that A attended regular appointments with Mr G.*

*It's worth noting that there is a lack of clear evidence here to say what the relationship was between Mr G and A, and what A's intentions or motivations may've been. So, I have to reach an answer based on the information I do have. From what I've seen, I'm not satisfied that I can safely conclude that it's more likely than not Mr G was the victim of a scam, as opposed to this possibly being a failed relationship or a civil dispute. So, I've gone on to consider what that means with regards to what action Lloyds should've taken and whether I can fairly ask Lloyds to refund Mr G.*

*Is Mr G entitled to a refund under the CRM Code?*

*Lloyds is a signatory to the Lending Standards Board's Contingent Reimbursement Code (the CRM Code). The Code requires Lloyds to refund customers who have been the victims of a scam, with some limited exceptions.*

*The Code covers Authorised Push Payments, which is the payment method Mr G used, and it says:*

*DS1(2)*

- (a) APP scam – Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a customer in accordance with regulation 67 of the PSRs where*
  - (i) The customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
  - (ii) The customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent*

*There are further definitions provided in the Code, but I've included the section that is specifically relevant to Mr G's case.*

*The Code is quite clear that it does not apply to payments that weren't made as the result of a scam or fraud. And as I can't safely conclude that Mr G was the victim of a scam, I can't apply the Code in this case or ask Lloyds to refund Mr G under the Code. But I have gone on to consider whether Lloyds could've or should've done more to prevent the payments being made in the first place.*

*Should Lloyds have prevented Mr G from making the payments?*

*There is an obligation on Lloyds to be on the lookout for, and to protect its customers from, potentially falling victim to fraud or scams. This includes monitoring accounts and identifying suspicious activity that appears unusual and out of character. In situations when potential fraud is identified, I would expect Lloyds to intervene and attempt to prevent losses for the customer.*

*The first two payments that Mr G made, weren't particularly unusual or out of character based on his previous account use. However, the third payment was particularly large at just over £117,000 and was also the third payment made in quick succession, taking the total transferred to just over £143,000. Therefore, Lloyds should've had concerns and taken steps to identify if Mr G was potentially the victim of a scam – which they did.*

*Due to the size of the last payment, Lloyds completed a High Value Checklist (HVC) and asked Mr G questions about the payment. It's not clear exactly what the full discussion was, although there are some set questions on the HVC which Mr G is likely to have been asked. The HVC required the staff member to read a scam script to Mr G and to ask some yes/no questions about the purpose of the payment, with the purpose of the payment indicated as "mortgage payment". Lloyds have also told us that during the discussion Mr G introduced A to them as his fiancée and told them he was paying off her mortgage before moving in with her. What Lloyds have told us about the conversation, seems to be in line with what Mr G's representatives were told when they asked Mr G about why he was spending money on improving or renovating A's property.*

*Having carefully considered what both parties have told us, I'm not persuaded that there was anything said or presented during that discussion that would've suggested to Lloyds' staff that Mr G was potentially the victim of a scam – whereby I would've expected Lloyds to intervene. On that basis, I don't think Lloyds acted unreasonably in processing Mr G's payments, and I wouldn't have expected them to intervene further or prevent Mr G from making the payments.*

*Should Lloyds have done more to protect Mr G*

*The representatives say Mr G was vulnerable and that his vulnerabilities were obvious to Lloyds.*

*Having listened to the call when the representative rang Lloyds to register the POA, they chose to have Mr G noted as having mental capacity and specifically told Lloyds they wanted him to retain access to his accounts. So, I'm not satisfied the registering of the POA meant that Lloyds should've taken additional steps to protect Mr G in these circumstances. Mr G gave a plausible reason for the payment and Lloyds didn't identify any particular concerns in his demeanour or his behaviour.*

*Also, while the representatives say that Lloyds had seen a change in Mr G's behaviours in prior months and added a red flag to his account – I haven't seen any evidence that this was the case. The contact notes provided by Lloyds record the registration of the POA, but there are no comments in the 12 months prior that indicate any recorded concerns about Mr G's*

*behaviour while in the branch. Therefore, I'm not persuaded that Lloyds should've acted differently or not followed Mr G's instructions.*

*I appreciate that Mr G will be very disappointed, but having very carefully considered everything presented by all parties involved in the case, I can't fairly ask Lloyds to refund Mr G.*

## **Responses to the provisional decision**

Mr G's representatives provided a lengthy response to the provisional decision. They raised many different points and provided extensive documentation. I'd like to reassure them that I have read their full submission but will summarise the main points that I need to address in reaching my decision. This includes:

- One of the representatives says they attended a Lloyds branch in January 2020 and told them that Mr G was not able to function normally and was unable to manage his financial affairs. They say they told branch staff that the representatives named in the POA needed access and control of his accounts. The representative says that during this meeting they were told the branch staff held notes about Mr G being aggressive and chaotic when he had contacted Lloyds' telephone banking team.
- When the second representative called Lloyds in Jan 2020 to register his position under the POA, he was asked if Mr G had mental capacity and he told Lloyds "no".
- Both representatives named on the POA say that when they attended the local Lloyds branch, as part of the POA registration process, that they told the branch staff Mr G didn't have capacity. Also, the in-branch discussion negates the November 2019 call when they told Lloyds Mr G did have mental capacity.
- Lloyds had a duty to tell them about Mr G making the payments they're disputing, and if they had they would've stopped the payments from being made.
- The representatives weren't aware of Mr G's relationship with A, only a friendship with her. They feel the comment made by the branch staff about Mr G introducing A as his fiancé is conjecture.
- Mr G disputes being asked any questions when he made the transfers and disputes being read a scam script.

## **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.

As I set out in my provisional decision, where there is a dispute about what happened and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

I've listened to the additional call that Mr G's representatives referred to, where the second representative registered their authority under the POA. In the call the representative is asked directly by the Lloyds staff if Mr G has mental capacity and the representative says "yes he does". Both of Mr G's representatives say they told Lloyds Mr G didn't have mental capacity when they called to register the POA, but this isn't what is actually said in both calls – which is that Mr G does have mental capacity.

The representatives have also referred to conversations they held with branch staff when they attended branch to complete the POA registration. However, the contact notes provided by Lloyds have no record of these discussions being held or any reference being made to Mr G not having mental capacity and being unable to manage his accounts.

I considered the point Mr G's representatives made about Lloyds not meeting their obligations regarding protecting vulnerable consumers. However, as I set out in the provisional decision, I'm not satisfied that the registering of the POA meant Lloyds should've taken additional steps to protect Mr G in these particular circumstances.

I say this because Lloyds were told Mr G had mental capacity and it appears that Mr G was operating his account on a day to day basis - often for multiple transactions per day between November 2019 when the POA was first registered and February 2020 when the disputed payments were made. And I think it's worth noting that a few weeks prior to the disputed transactions, Mr G had made several transfers and payments out of his account in excess of £10,000 each (the highest of which being £30,000) – which the representatives haven't raised any concerns about.

Also, Mr G gave a plausible reason for the disputed payments when asked by Lloyds and Lloyds say they didn't identify anything concerning in his demeanour or his behaviour. Therefore, I wouldn't have expected Lloyds to contact the representatives when Mr G was making the payments in February 2021.

I have also considered the comments the representatives made about Mr G's relationship with A and what he remembers from when he made the payments in branch. However, the notes Lloyds have provided are quite clear about the discussion held with Mr G, the questions they say were asked and the responses they say they received from Mr G. I haven't seen anything that suggests that these notes can't be relied on or that they aren't representative of the discussion held with Mr G.

However, regardless of that, Mr G's representatives haven't provided any new or additional information that allows me to fairly conclude that Mr G was the victim of a scam, or that Lloyds should've refused to follow Mr G's payment instructions for the three payments in question.

I realise that Mr G is going to be extremely disappointed but having considered everything provided by the representatives, I see no reason to depart from the answer I reached in my provisional decision. Therefore, I can't fairly ask Lloyds to refund him.

### **My final decision**

My final decision is that I don't uphold this complaint against Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 4 August 2022.

Lisa Lowe  
**Ombudsman**