

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, in July 2020, Mr B fell victim to a rogue trader scam, whereby he lost £277,500 to fraudsters who led Mr B to believe they were fixing his roof. Having realised he had been scammed, Mr B paid for a reputable builder to put things right, at the cost of £12,000.

However, some months later, another individual knocked on Mr B's door, also claiming to be a builder. The individual told Mr B that the previous work on his roof had been poorly completed and that he could put it right. Unfortunately, this individual was also a fraudster and it is the subsequent payments that make up this scam that I'll be considering in this decision.

The fraudster claimed to be working for a roofing company and provided the business name, company number and website, which Mr B checked. Mr B explains the builder convinced him he was genuine by showing him examples of where the roof was substandard, such as taking some of the tiles off to demonstrate. However, as some work was carried out the scope of the job kept increasing. By the end of the scam, Mr B had paid £422,690 to the scammers, by bank transfers to multiple payees as well as through cash payments withdrawn in Lloyds branches. From reviewing Mr B's statements, I can see the scam payments were funded by his current account, as well as savings, an ISA and loans.

As the scam escalated, Mr B called Trading Standards in desperation, who had helped him when he'd previously been a scam victim and from there it came to light that Mr B had sadly fallen victim to a similar scam.

Lloyds investigated Mr B's fraud claim and considered its obligations to provide Mr B with a refund. Lloyds is 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. Lloyds says one or more of those exceptions applies in this case.

Lloyds considers Mr B didn't have a reasonable basis for believing he was dealing with a legitimate building firm and therefore making legitimate payments. It considers Mr B ought to have conducted more checks before proceeding with the works, particularly as Mr B had recently fallen victim to the same scam and therefore had an awareness of them. It also considers it provided relevant effective warnings at appropriate times during the scam. Lloyds has said it spoke with Mr B on two occasions to question the payments he was making and that both times, Mr B wasn't honest in some of the answers he gave, making it more difficult for Lloyds to protect him. It considers if intervention had taken place sooner, Mr

B would've provided the same answers as he did in later calls and therefore it would've been difficult for Lloyds to identify the scam. It said when in branch making cash withdrawals, Mr B was spoken to in a private room about the payments he was making and was given scam advice, although it hasn't been able to provide evidence of what was specifically discussed.

Lloyds has also demonstrated that for two new payees Mr B made transfers to, he received the following online warnings:

Warning one – 'invoice or bill' selected

- *[customer name], have you been sent a new invoice or bill*
- *Call the person or company*
- *Use a phone number you trust, not one from an email or invoice*
- *Double-check the account number, sort code and name*

Warning two – 'something else' selected

- *[customer name], we'll never call you and tell you to move your money.*
- *If you get a call like this it's a scam.*
- *Fraudsters can even copy our telephone number.*
- *Don't believe them hang up the phone.*

Mr B disagreed with Lloyds' outcome so brought the complaint to our service. An investigator considered the complaint – he agreed that Mr B didn't have a reasonable basis for belief when making the payments to the fraudster. However he also considered Lloyds could've done more to protect Mr B from fraud from the point Mr B made the fourth payment transfer to the fraudster. The investigator therefore recommended Lloyds should be 50% liable for the fourth payment transfer and all subsequent transfers and cash withdrawals made towards the scam.

Lloyds disagreed with the investigator's outcome. It considered that as Mr B hadn't been open and honest in other calls it had with him, further questioning on its part wouldn't have uncovered the scam as Mr B was concealing it. As Lloyds has disagreed, the complaint has been referred to me for a final decision.

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, 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 had sadly fallen victim to a scam almost identical to this one less than a year before this scam took place. I think it's therefore reasonable to conclude that he had an awareness of how these scams were presented and developed, so that when approached the second time, he ought to have proceeded with greater caution – particularly as Mr B had already paid for remedial work on his roof since the previous scam and hasn't mentioned any concerns he had himself with the work.

Despite this, Mr B paid significant amounts up front for work, without conducting other checks I'd have considered reasonable in the circumstances, such as obtaining other quotes/opinions, more extensive research on the company, or paying the builder by more

protected methods. 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 do enough to protect Mr B from financial harm from fraud?

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.

Having reviewed the online warnings Mr B saw, I don't think either of them can be deemed 'effective' under the terms of the Code, as neither sets out the key hallmarks of a rogue trader scam, or how Mr B could have better protected himself.

When Mr B made the third payment transfer of £25,000, he was required to speak to Lloyds' fraud team before the payment was processed. During the call Mr B explained the payment was for materials for his roof that needed rebuilding. The advisor explained other payment methods that are safer, to which Mr B responded he wished he'd been told this seven months ago when he was the victim of a scam. Mr B confirms with the advisor that materials for the build had arrived and Mr B also advised the payment details were provided on an invoice.

Lloyds has said it didn't intervene on the first two payment transfers Mr B made, as Mr B had made other large payments that year – however from reviewing Mr B's banks statements I can see the transfers Lloyds are referring to are those that formed part of the previous scam. I therefore don't think it's fair to consider these when deciding what Mr B's usual account activity was and that the second payment Mr B made to the scammers should have been the point where intervention occurred. However, had this happened, I think Mr B would've provided similar answers to Lloyds as he did when they spoke to him for payment three – and I don't think there was anything particularly suspicious within this call that ought to have concerned Lloyds that Mr B had fallen victim to another scam.

However, during this call, Mr B also said he would be making occasional further payments, around £1,000 to £2,000 each month over the next ten months, but "not anymore payments". Three days later, Mr B made another payment for a further £25,000 to the same payee (payment four), without intervention from Lloyds. I think at this point Mr B had made Lloyds aware of his intentions for future payments and the subsequent account activity clearly didn't match. Lloyds has questioned whether further intervention would've made a difference, as it argues Mr B wasn't honest when he said he'd received building materials and an invoice. However, I think it's fair to say that had Lloyds called Mr B to question this request, there would have been enough for Lloyds to have been concerned, even if Mr B had maintained these points. I say that because by this point, Mr B had requested payments totalling £60,000 within the space of just a week – which is a significant amount to have paid for a roof, even in full. Even if a builder had provided invoices and provided materials, I think Lloyds ought to be aware that this alone isn't enough to be assured that a builder is genuine and that fraudsters often start jobs, or cause some damage to properties in order to continue receiving further payments. Had Lloyds asked more questions, such as how contact was made, what progress had been made, why further payments had already been required or what the total build cost was likely to be, it would've raised further concerns that Mr B may be at risk of financial harm.

Considering Mr B had recently been the victim of a similar scam, which Lloyds was aware of, I think it ought to have done more to assure itself that Mr B hadn't been targeted again at this

point. I think it's important to note that Mr B hadn't been entirely evasive with Lloyds when questioned – he'd been honest that payments he was making were towards building work, that he hadn't used the company before and that he'd previously been the victim of a scam. In later calls with Lloyds as well, the majority of the information Mr B provided was accurate, with him raising concerns himself about whether he's falling victim to another scam. Lloyds has referred to one later call with Mr B where he was dishonest with Lloyds about why he was making some payments. However, this was further down the line of the scam and Mr B has provided evidence that at this point, the fraudster was telling Mr B what to say to the bank. Had Lloyds contacted Mr B when he made the fourth payment transfer to question why another large value payment was being made, I think it's more likely than not Mr B would've confirmed this was for further works that were being completed on his home. Based on the value of payments Mr B would've already sent at this point, and having previously been a scam victim, I think Lloyds ought to have been on alert at this point that Mr B may be at risk of fraud and taken further steps to protect him, such as asking further questions and requesting further evidence of the build and its cost before allowing further payments to be made.

Had Lloyds done so, I think this would've further validated any concerns Lloyds ought to have had and the scam could've been uncovered.

Cash withdrawals

As well as bank transfers, Mr B also made over 20 cash withdrawals over the course of the scam, ranging in value between £200 and £10,700. Lloyds has referred to conversations it had with Mr B in branch where it discussed cash withdrawals Mr B was making, however no notes have been kept. Therefore it's difficult to know whether any of these conversations went far enough to identify if Mr B was at risk of financial harm, or if key indicators were missed. From later telephone calls I've listened to between Lloyds and Mr B for bank transfers, it's clear Mr B is concerned about the payments he's making and that he's worried about fraudsters contacting him. I therefore think Mr B would've been open to Lloyds advice and intervention in branch, had it been clear enough that it had genuine concerns.

Therefore, as I think Lloyds could've done more to protect Mr B, but as explained, Mr B also could've done more to protect himself, I think a 50:50 liability split again between Mr B and Lloyds, for all bank withdrawals made after Mr B's fourth bank transfer, is a fair outcome to acknowledge that both parties could've done more in the circumstances from this point.

Putting things right

I'm satisfied that Lloyds should refund Mr B 50% of the money he sent to the fraudster, from the fourth bank transfer onwards, totalling £193,845.

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 loan. Mr B has provided evidence for the loan interest rates that show for two of them, the interest he is repaying is under 8%, for one it's over 8%. Mr B doesn't know what interest he would've received on his stocks and shares ISA as there wasn't a guaranteed pay-out value for this. I think Lloyds should pay interest on the money Mr B lost from his current account, ISA and through his loans at a rate of 8% simple interest, from the date payments were made until the date of settlement, as a pragmatic solution in the particular circumstances of this case. For payments made via Mr B's savings account, Lloyds should apply interest at the savings account rate, again from the date of payment until the date of settlement.

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 require Lloyds Bank PLC to:

- Refund Mr B 50% of the money he lost to the scam, from the fourth bank transfer onwards, totalling £193,845.
- Pay 8% simple interest on funds lost from Mr B's current account, or payments funded by Mr B's ISA or loans, from the date the payments were made to the date of settlement.
- Pay interest at the account rate for payments funded by Mr B's savings account, from the date the payments were made to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 5 September 2022.

Kirsty Upton
Ombudsman