

## **The complaint**

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

## **What happened**

In May 2017, Mr A was befriended on a social media website by a woman, who I'll refer to as B. Mr A says they were talking three times a week via a messaging app, but B was unable to talk over the phone with him or video call him as her phone was damaged. Mr A says they had similar interests as he owns a farm, and B wanted to move to the UK and become a farmer herself. Mr A says they talked about many aspects of their lives and built a friendship.

When B first asked Mr A for some money, he said it didn't feel right and he said no. But when she later asked for a lower amount, she had worn him down, so he sent her some funds via a money transfer service.

Mr A says B told him she was at university in South Africa and was struggling to pay her living costs. Mr A asked B for her birth certificate and passport, so he could confirm her identity – which she sent him.

After sending some small amounts of money for her university costs, B told Mr A that she was having trouble with an inheritance. She said her mother had passed away at an earlier date, but her father had passed away recently and a family member was contesting his will to try and get a share of the inheritance.

Mr A was contacted by a person posing as a solicitor (I'll refer to him as C) who said they were helping B release the inheritance funds. Mr A says he looked C up on a professional networking site and that he seemed genuine.

Mr A received various emails from C, as well as documents purporting to be a police affidavit and a certificate of deposit for a firm I'll refer to as D. The police affidavit said that B was giving 100% of the claiming rights on her inheritance to Mr A. The certificate of deposit from D said they were holding funds of over \$17m USD as well as gold bullion. All of the documents we've been given are dated May 2017.

Mr A says that initially he was asked to send £120,000 but he told B he couldn't access that amount of money. After a few days, B came back with a lower figure of £20,000, which she said would release some of the funds so they could pursue the remaining inheritance balance. Mr A says he couldn't afford to pay the whole £20,000 in one payment, so he made several smaller payments. However, after having transferred over £20,000 he was told that B needed more money in order to release the inheritance. Mr A says he can't remember the different reasons B gave for the additional payments, however, says he found them persuasive and that B kept saying it would just take a little bit more.

After a period of time, Mr A was told that B had fallen out with the solicitor, but she still requested further payments to be made. And, it was at this time, that Mr A realised he'd been the victim of a scam.

In total Mr A sent 105 international payments totalling £151,555 (not including international payment charges) between May 2017 and November 2020 – all from his Lloyds account.

Once he was aware of the scam, Mr A contacted Lloyds and raised a fraud claim.

Lloyds investigated Mr A's fraud claim but declined to refund him any of the payments he'd made. They had concerns Mr A had continued making payments even after he'd sent the £20,000 without seeing any signs of the inheritance funds being released. Lloyds also raised that Mr A hadn't done any checks to verify the person he was communicating with, saying he'd never met them or spoke to them by phone. They also felt the documents Mr A was given were poor quality and the seals and signatures were clearly copied and pasted onto the documents.

Mr A wasn't happy with Lloyds' response, so he brought a complaint to our service.

An investigator looked into Mr A's complaint and upheld it. Ultimately, they felt Lloyds should've intervened by October 2019, due to the pattern of increasing payments which looked suspicious. And, had Lloyds intervened, they thought it was most likely the scam would've been uncovered. However, the investigator also felt Mr A should've had concerns about what he was being told after he'd paid the £20,000 required to release the initial funds from the inheritance. Based on that they recommended that Lloyds refund all the payments in full between 4 October 2017 and 26 January 2018, along with the international payment fees charged. But, Lloyds and Mr A should share the responsibility for the remaining payments made, so Lloyds should refund 50% of the payments between 1 February 2018 and 27 October 2020 – along with 50% of the international payment charges. The investigator also awarded interest at the account interest rate.

Mr A accepted the investigator's recommendation, however Lloyds disagreed.

Lloyds raised the following points:

- Mr A should've had concerns from the start when the scammer said they couldn't call or video call him.
- Getting a birth certificate and passport wasn't enough to prove Mr A was talking to a genuine person, as ID theft is quite common.
- Mr A should've questioned why the scammer needed to borrow any money if her parents were wealthy enough to leave her \$17m USD in inheritance.
- Mr A should've questioned why tax and charges couldn't be deducted from the inheritance value, rather than having to be paid upfront.
- Mr A should've been concerned that the solicitor dropped the amount requested from £120,000 to £20,000.
- The promised return was too good to be true, the affidavit suggested Mr A was due to get the full balance of the inheritance.
- Lloyds had no "duty" to intervene at the time and feel it's unfair to hold them liable for over £90,000.

As Lloyds disagreed the case was passed to me to review.

### **My provisional findings**

On 24 June 2022, I issued a provisional decision explaining I was reaching the same overall outcome as the investigator but with a different redress recommendation. I asked for both

parties to provide any more comments or evidence 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.*

*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 A's instructions. At the time, Mr A wanted to pay B and there was no mistake made as the money was sent to the correct account details.*

*Should Lloyds have prevented Mr A 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 where potential fraud is identified, I would expect Lloyds to intervene and attempt to prevent losses for the customer.*

*Having looked at Mr A's previous account use, he rarely used the Lloyds account. There was a monthly direct debit of around £20 and a monthly transfer to another of his accounts of £50. The largest single payment made out of this account was a few months prior for £1,000. Mr A had never made an international payment out of this account and tended to only have around three to four transactions in total per month.*

*Based on this, I think the first payment he made of £4,150 was significantly out of character and unusual whereby I think Lloyds should've had concerns and intervened. I say this because the payment was significantly higher than any other payment made from his account previously, it was an international payment and it was to a new payee. I think taking into account all of those factors, that Lloyds should've had concerns and got in touch with Mr A prior to processing the payment.*

*And, I think had they got in touch it's most likely the scam would've been uncovered and that the payments wouldn't have been made. I think basic questions around who Mr A was paying, how he knew them, whether he'd met them before, and why he was paying them money would've provided answers that are very commonly seen in a romance scam.*

*Mr A hadn't met B before, and she'd told him that she couldn't talk to him over the phone or video call due to her phone being damaged. He would've said that she befriended him on a social media site – out of the blue. Also, I think it's most likely he would've been honest and told Lloyds that he was sending her money to help release an inheritance of over \$17m USD. If Lloyds had asked to see any paperwork he had as part of those questions, Mr A would've provided the certificate of deposit, police affidavit and letters from B's solicitor. Lloyds have indicated these documents do not appear legitimate and should've raised red flags. Also, Mr A wasn't given a cover story and had no knowledge that romance scams*

*existed, how they operated or that the information he was given mirrors the approach usually taken in romance scams. I think once Mr A was aware of romance scams and how they operate, that he wouldn't have sent the money to B. For Mr A, the money he was sending was substantial and required him to access his pension savings. So, I think the information Lloyds would've given him, combined with his initial concerns, would've prevented him from making any payments to B. On that basis, I think Lloyds should refund Mr A for all of the payments he made as well as the international payment charges associated with them.*

*Lloyds raised a point regarding their duty of care, saying the payments started prior to publication of BSI PAS in October 2017 – which established a code of practice for banks to protect customers from financial harm. However, the publishing of the BSI simply codified what was already good industry practice, so I'm not persuaded that means Lloyds didn't have a duty to protect Mr A from potentially falling victim to a scam prior to its introduction in this particular case.*

*Could Mr A have done more to mitigate his losses?*

*But I've also considered whether Mr A should bear some responsibility by way of contributory negligence.*

*Mr A has told us that when B initially asked him for money, he told her no because it didn't feel right. Mr A says B eventually wore him down and requested a lower amount of money, so he made the first payment to her. He says he asked for photos of her birth certificate and passport so that we could check her identity and she provided the documents. This suggests that Mr A had initial concerns about the legitimacy of B's story or her being who she said she was.*

*Mr A has provided the documents he was sent by B which included a certificate of deposit and a police affidavit. Mr A says B promised him £1m in return for him advancing her the money in order to release her inheritance, however the police affidavit says that B gave Mr A "full capacity the claiming right of her inheritance" – which suggests that he would actually have a claim on the full \$17m USD. This should've raised red flags for Mr A, as it was too good to be true and I'm not persuaded that a reasonable person would've thought this was legitimate. I also note that Mr A searched for the company named as holding the funds in the certificate of deposit. Mr A wasn't able to find any information about the company online, which he thought was due to South African search engines possibly working differently with regards to company information than those in the UK. But I think it's unlikely that any company holding a deposit of \$17m USD and 10 pieces of gold bullion would not have an online profile – regardless of which country they are located in.*

*Mr A also received documents from the solicitor B said would help her release her inheritance. Initially the solicitor asked for £120,000 in order to release the funds, however when Mr A said he couldn't find that amount money – he says B and the solicitor went quiet for a few days. They then came back with a hugely discounted request saying £20,000 would be enough to start releasing the funds. I think this should've concerned Mr A and that he should've asked questions about why the amount they needed dropped so dramatically. Mr A did say that B told him the solicitor was a family friend of her father's and that he was helping her out, but that only concerns me more as to why they initially wanted such a large sum then suddenly could take action on a much lower sum.*

*Overall, I don't think Mr A acted with the appropriate level of care based on the information he was presented with. He was contacted out of the blue by a stranger, who wouldn't talk to him on the phone or video call him. They asked him for sums of money, and when he said he wouldn't give it to them, they continued to push him but for lower sums. The same person then told Mr A that they were entitled to an inheritance of over \$17m USD and said they*

would give him £1m for providing a comparatively small amount of money to help them release that inheritance. They then provided Mr A with a document which suggested he would get 100% rights to the total inheritance value.

I also have concerns about the professionalism and believability of the documents Mr A was given. For the certificate of deposit document, most of the signatures look like they've been copied and pasted to the document as they are blurred and some have a different background colour or tone. The image of the seal and the company's logo are also not as clear and crisp as would be expected for a genuine document. And one of the date stamps is out of alignment and appears to have been pasted over. It's also concerning that Mr A was given a copy of a police report, but not sent the original, which should've been available in the same way the certificate of deposit was. The report is clearly not an original document as it is in black and white.

I'm not satisfied that a reasonable person would've believed this was a genuine situation, or would've proceeded without doing substantive investigation and checks to verify all the information they were given – which would've shown inconsistencies and issues in the information provided.

On that basis, I think it's reasonable for Mr A to share the responsibility with Lloyds and reduce the refund on all of the payments by 50%. Therefore, I intend to recommend that Lloyds refund 50% of all the payments Mr A made from the payment of £4,150 made on 7 August 2017 onwards. Lloyds should also refund all of the international payment charges associated with those payments.

*The interest award on the refund*

The investigator recommended interest be calculated and paid at the account interest rate, however Mr A doesn't earn credit interest on his Lloyds account – so that doesn't feel fair.

Mr A told us that he funded the payments to the scammer from his pension savings. Lloyds have provided a copy of Mr A's pension savings, which appears to have made a return of over 8% per annum for the 2017/2018 year and around 6% for the 2017/2018 year. However, it's unclear if Mr A did take the funds out of his pension savings based on the evidence we've been given.

Having considered all the information we've been given, I think the fairest award is our standard 8% simple interest per year, calculated from the date Mr A made each payment, until the date of settlement.

Having reviewed several lists of transactions that Lloyds have sent us, it appears that some of the transactions are not included on all the lists. So, Lloyds should check Mr A's bank statements and ensure they have a complete list of the payments due to be refunded.

*Putting things right*

To put things right, I intend to ask Lloyds Bank PLC to:

- Refund 50% of all the international payments Mr A made from August 2017 to October 2020 (inclusive).
- Pay interest on that refund at 8% simple interest from the date the payments were made until the date of settlement.
- Refund all of the international payment charges on those payments.

## **Responses to the provisional decision**

Mr A responded saying he accepted my provisional decision. Lloyds responded to say they accepted my provisional decision but had concerns about the interest award I had made.

Lloyds said I'd concluded that the payments were funded by withdrawals from Mr A's pension, which they didn't agree was the case. Lloyds provided further information which showed some payments into Mr A's account from pension withdrawals, but which showed that most of the payments made as part of the scam were funded by cash or cheque deposits, along with a transfer from Mr A's ISA account.

## **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.

Having considered Lloyds' response to my provisional decision, I see no reason to depart from the recommendation made in my provisional decision.

Lloyds raised concerns that the payments Mr A made as part of the scam weren't funded by withdrawals from his pension savings. However, in my provisional decision I said it was unclear how the payments were funded, therefore I felt the fairest award to make was 8% simple interest and Lloyds haven't provided a valid reason why this isn't a fair award.

Also I think it's worth noting that at the time of making these scam payments Mr A has told us that he was experiencing some financial challenges related to his occupation – which he says is why he withdrew funds from his pension savings. So, I think not having the £150,000 he paid to the scammer available for use has negatively impacted him and aren't funds that he had sitting idly in an account. Also, it's unclear what Mr A did with the withdrawals that he made from his pension savings. It's possible that he deposited the funds into another account and then withdrew funds as needed to fund the payments to the scam from his Lloyds account. Ultimately, I have to reach a decision on how I can fairly compensate Mr A for being deprived of these funds. In this case, where there are so many unknowns, I think 8% simple interest is fair and proportionate.

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- Refund all of the international payment charges on those payments.

*\*If Lloyds considers that it's required by HMRC to deduct income tax from that interest, it should tell Mr A how much it's taken off. It should also give Mr A a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if appropriate.*

## **My final decision**

My final decision is that I uphold this complaint against Lloyds Bank PLC and require them to compensate Mr A as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or

reject my decision before 17 August 2022.

Lisa Lowe  
**Ombudsman**