

The complaint

A company, which I'll refer to as M, complains that Lloyds Bank PLC won't refund money it lost to a scam.

Mrs M, who is a director of M, brings the complaint on M's behalf.

Background

I issued a provisional decision on this case on 5 October 2022. I've copied the content of that document below.

Mrs M has explained that in October 2021 she received a text message which appeared to come from a delivery service, asking Mrs M to make a payment for a delivery. Mrs M has explained she provided her details for a credit card held with another banking provider, as well as her Lloyds bank account details. Mrs M has explained she was also asked for additional information such as her date of birth, which she thought was excessive for a parcel redelivery. She therefore rang the parcel company to provide her thoughts, at which point she was informed she'd been the victim of a scam.

Mrs M rang her credit card provider immediately to report the scam, but while on the call, received another call from an individual purporting to be from Lloyds' fraud department. Unfortunately, unknown to Mrs M at the time, this individual was in fact a fraudster, who had obtained Mrs M's details through the prior parcel scam.

The fraudster told Mrs M that two attempted payments had been made on her account, totalling over £15,000. Mrs M questioned why she hadn't received texts confirming the new payees had been set up and was advised that the fraud was probably being committed by someone internally at Lloyds. He said this would also explain how the payments were able to bypass usual authorisation requirements in place. The fraudster told her that as there appeared to be a security breach, he would take her banking account offline. Mrs M then received text messages confirming the apparent fraudulent payments made had been reversed.

Having already fallen victim to the parcel scam, Mrs M has acknowledged she was anxious and so checked the number she was being called and text from online. This confirmed the number was Lloyds' fraud department, which reassured her she was speaking to a genuine advisor.

The fraudster asked if Mrs M would help them catch the individual that was committing fraud internally, which she agreed to. The fraudster said he wanted to try and prompt Lloyds to call Mrs M, so they could identify who the caller was as this would likely be the individual involved in the internal fraud. Mrs M was therefore asked to make a number of 'test' payments, to accounts she believed were falsified by Lloyds. Mrs M made the following payments from her business account, all within around two hours of each other:

Value of payment	Payee number	Did Lloyds intervene?
£24,578.12	1	no
£23,740.87	2	no

£24,980.00	3	Yes – phone call between Lloyds and Mrs M
£17,500.00	2	no
£16,400.00	2	no

Following these transactions, Mrs M obtained a loan from her personal account under the fraudster's instruction and made two further payments, the first from her personal account, the second again from her business account. When making the first of these payments, Lloyds called Mrs M again to query this. However, it acknowledged there were red flags during this call – as at one point Mrs M can be heard saying to the fraudster “You're making me really nervous about this because you are telling me what to do, and I have to say, giving you're supposed to be Lloyds, it really, really is making me anxious”. Lloyds has acknowledged that it shouldn't have allowed these payments to be processed and has refunded them.

After each payment from Mrs M's business account, Mrs M would receive a text message, again from Lloyds' fraud number, confirming the payment had been reversed, reassuring her that these were test payments. Mrs M questioned why she couldn't see these payment reversals on her account and was advised it was due to her account having been taken offline. Mrs M has also explained when making payments four and five, she questioned who to make the payments to, and recalls the fraudster being quite flippant about which account to send the money to, again reinforcing her perspective that these were fake accounts she was sending funds to.

Lloyds stopped payment three and requested Mrs M call to verify the payment, which she did. The fraudster told Mrs M not to disclose the real nature of the transactions and to let them listen in to the call, so as to detect who was involved internally. During the call, the advisor explained he's going to talk through a 'bit of scripting', before explaining fraudsters can claim to be from the bank, the Police, IT companies and utility companies. The advisor then asked the nature of the payment, which Mrs M confirmed was for building work and that no one had contacted her and asked her to make these payments. Following some further questions, the payment was released.

Mrs M can't recall why she continued making payments after this call – she believes she was most likely told to identify whether the internal fraudster was acting alone or as part of a team. After making the last payment from her personal account to the fraudster, the line went dead. Mrs M called Lloyds back on their fraud department number, at which point she realised she'd been the victim of a scam and raised a fraud claim.

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 has said Mrs M didn't have a reasonable basis for believing she was making a legitimate payment transfer. It doesn't consider she took sufficient care to ensure she was speaking to her genuine bank. Lloyds also considers it provided sufficient warnings on its calls with Mrs M, but that she ultimately ignored the warnings provided and wasn't truthful about the circumstances of the transactions. It did however award £100 in compensation to acknowledge it had initially made an incorrect decision on her claim. Lloyds also contacted the beneficiary banks of the fraudulent payments and recovered a total of £26,736.83 – meaning her current outstanding losses are £80,462.16.

Mrs M disagreed with Lloyds' review of her claim so brought the complaint to our service. One of our investigators considered the complaint and didn't uphold it. She considered Mrs M ought to have had concerns about the legitimacy of the call she received and made further

checks before making the payments. As Mrs M didn't agree with the investigator's opinion, the complaint has been referred to me for a final decision.

My provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so I intend to uphold it. I am satisfied that:

- Under the terms of the CRM Code, Lloyds should have refunded the money M lost. I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case.*
- Lloyds should in any event have intervened after the first payment Mrs M made as the payment was unusual and out of character for M. While Lloyds did intervene on payment three, I don't think its questioning to protect Mrs M from financial harm went far enough. Had further questions been asked, and key features of these scams been highlighted to Mrs M, I am satisfied the fraud would have come to light and the loss prevented.*
- In the circumstances Lloyds should fairly and reasonably refund the money M lost.*
- The money was taken from M's business account. It is not clear how M would have used the money if Lloyds had refunded it when it should have done, so Lloyds should also pay interest on the money it should have refunded at 8% simple per year from the date the payments were made, to the date of reimbursement.*

I have carefully considered Lloyds' representations about whether Mrs M had a reasonable basis for believing the transactions to be genuine and whether the warning it provided was effective. But they do not persuade me to reach a different view. In particular I am not persuaded that Mrs M failed to take the requisite level of care required for Lloyds to choose not to reimburse under the terms of the CRM Code.

In this case I'm satisfied that the requirements of the effective warning exception were not met. Mrs M didn't receive warnings on transactions except for the third, when intervention was made via a call. Having listened to the call, while the advisor does mention fraudsters impersonating banks, I don't think the call went far enough in explaining the key features of these scams – it didn't mention number spoofing, which I think was key here for Mrs M believing the fraudster was from Lloyds. It also didn't go into detail about how fraudsters may suggest fraud is being committed internally. The warning was also initiated by the advisor confirming he was going to go through some scripting, which I think also impacted the effectiveness of the message provided, reducing its apparent importance. Overall I don't think the warning was specific or impactful enough in the circumstances of this complaint. Therefore I don't consider the warning to be effective under the requirements of the CRM Code.

I'm also satisfied that Lloyds has not shown that Mrs M lacked a reasonable basis of belief when making the transfers because:

- When Mrs M received the call from the fraudster, she had already become aware that she had fallen victim to a parcel service scam and was therefore already on alert that her details were compromised. I can understand why, in the moment, this led Mrs M to be more susceptible to believing her accounts could be at risk.*
- Mrs M checked the phone number she was being called from while on the phone to the fraudster and saw it was a genuine Lloyds fraud department number. I think it's important not to underestimate the impact this would have had on Mrs M's decision*

making going forwards and why other red flags may have been overlooked, given this reassurance she was genuinely speaking to her bank. Mrs M wasn't advised throughout this scam that fraudsters can spoof genuine phone numbers.

- Lloyds has suggested Mrs M ought to have done more to check the validity of the caller, suggesting Mrs M wasn't provided with details about her account. However it's common practice for banks to ask their customers to verify themselves at the beginning of calls - and not vice versa - due to data protection, so I don't think Mrs M acted unreasonably by proceeding without doing so. By this point, Mrs M had been called by an individual claiming to be from a banking provider she banks with, seemingly from their genuine telephone number and with an apparent awareness of what accounts she held with them. I don't think it's therefore unreasonable that Mrs M accepted from this that she was speaking to her bank.*
- I've thought about the later call Mrs M had with Lloyds when discussing the transfer on her personal account, and it's clear that by this point, Mrs M was starting to have concerns about the legitimacy of the fraudster. Mrs M has explained she doesn't recall specifically when she began to have concerns, but there's no evidence to suggest she had real doubts when making these first five payments from her business account. As Mrs M seems alarmed that the fraudster was telling her what to do, and that this call came after Mrs M had been told to apply for a loan, I think it's more likely than not that these concerns became heightened after these payments on her business account had already taken place. I therefore don't think Mrs M made the payments listed above in spite of genuine concerns about the legitimacy of the call.*

In summary, I'm not persuaded that Lloyds has shown Mrs M didn't have a reasonable basis for believing she was making genuine payments, or that she ignored an effective warning. I therefore consider Lloyds should provide a full refund to M of its outstanding losses.

I've also considered the compensation award Lloyds made to M to acknowledge the mistakes it made during the claims process. As payments were made from M's account, I can only consider the impact Lloyds' mistakes has had on M as a business entity, and not Mrs M as an individual. Based on the evidence I've seen I therefore think the £100 already awarded by Lloyds is fair compensation to reflect any additional inconvenience this caused to M.

My provisional decision

My provisional decision is to uphold this complaint and for Lloyds Bank PLC to refund M:

- Its outstanding losses from the scam, totaling £80,462.16.*
- 8% simple interest on M's losses, from the date the payments were made until the date of settlement.*

Both parties have now had the chance to respond to the provisional decision. M accepted the decision. Lloyds raised some further points for consideration. To summarise, these were:

- The provisional decision set out that an important reason for why this fraud was successful was that the fraudsters spoofed Lloyds' number and that number spoofing was not raised with Mrs M when Lloyds made a call to her, prior to processing her third payment. Lloyds has provided two examples of emails its Relationship Manager had sent to customers including M prior to the scam, which included relevant warnings about fraud.*

One, sent in March 2020, explained fraudsters' abilities to number spoof, as well as send text messages in a similarly spoofed format.

Another, sent in October 2020, also provided information on how to protect yourself from potential number spoofing scams by, for example, calling a trusted telephone number back using a different phone line. Lloyds has argued Mrs M knew to do this, as after ending the call with the fraudster, she immediately called Lloyds back on its legitimate number.

Lloyds also invited M to a cyber crime fraud seminar in July 2021, although it can't confirm if M attended.

- Lloyds' call handler asked a specific question relating to the scam M fell victim to: *"If you've been asked to do this, please do not proceed. Have you been contacted by anyone and been asked to make the payment?"* Lloyds considers this should've been a red flag for M and that M ultimately ignored this effective warning. Lloyds doesn't consider the provisional decision gives sufficient attention to the fact that Mrs M provided untruthful responses to questions, which impacted its ability to provide further impactful warnings.
- Lloyds requires a further expansion on why the versions of events the fraudster conveyed were reasonable. Lloyds emphasised it would never inform customers that internal staff were committing fraud, ask customers to use their own accounts to entrap fraudsters, or ask them to make payments to other accounts held outside of the Bank.

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 done so my overall findings on the case haven't changed and I'm upholding M's complaint on the same grounds. I have thought about what Lloyds has said since the provisional decision, but it doesn't persuade me to reach a different outcome.

In reference to the emails Lloyds had previously sent to M, these were sent around a year or more before the scam occurred. The March 2020 email advice was included within a fraud brochure around 20 pages long, which listed numerous types of scams being seen, and the October 2020 email also covered a number of different scams and ways to protect yourself. While it's positive to see Lloyds providing proactive fraud advice to its customers, I've considered that these emails were sent a significant period before the scam occurred, were in no way tailored to M, but sent to a number of Lloyds customers and covered a number of scams within its communication.

I therefore don't think a customer could be considered as acting unreasonably by not following guidance provided within these emails. There was no emphasis or requirement for Mrs M to even read these emails and even if I assume she did, I don't think it's unreasonable that a year later, she didn't recall information contained within them.

I also disagree that Mrs M's actions after the scam demonstrate she was aware of how to protect herself from number spoofing. Mrs M has explained that after making the final scam payment, the line with the fraudster went dead, which is why she called the genuine Lloyds number back (as this was the number she believed she'd been called from). Regardless of number spoofing awareness, this would be the action I would have expected most customers to have made at this point to re-establish lost contact.

In relation to Mrs M providing untruthful responses to Lloyds' questions, I completely appreciate that this makes it more difficult for Lloyds to provide an effective warning. However, I've also considered that Lloyds would be aware of the scam M fell victim to and

that victims of this scam will usually be told to lie to the bank, due to the 'internal fraud' being committed. Therefore it's important that when questioning customers to protect them from this scam, advisors provide context to its customers on how these types of scams can feel, as well as explaining their key hallmarks, to bring these scams to life and 'break the spell' the fraudster has already built by this point.

In this case, I've also considered that Mrs M didn't provide misleading information to Lloyds out of carelessness or negligence – she did so under the instruction of the fraudster, who had convinced her to trust them in ways I've set out in my provisional decision. Had Lloyds further explained these types of scams, I think it's more likely than not that this would've impacted what Mrs M decided to tell Lloyds, and the level of trust she held with the fraudster.

On Lloyds' point about why the fraudster's version of events should be considered reasonable, I've already set out in some detail why I think Mrs M acted reasonably by believing what she was told by the fraudster. However to cover Lloyds' specific points, I appreciate Lloyds is aware that it would never ask its customers to assist on fraud investigations as Mrs M was led to believe – and I'm sure, in hindsight, Mrs M would've also seen flaws in the story she'd been told – but clearly when Mrs M received this call, she wasn't aware of these points Lloyds has raised. I've also considered that Mrs M would've been acting against a backdrop of being told her money was at risk, after receiving calls and texts from what realistically looked like genuine Lloyds contact. For these reasons I maintain my position that Mrs M acted reasonably in the particular circumstances of this complaint.

For these reasons I remain of the view that Lloyds should be held liable for M's losses, as set out in my provisional decision.

My final decision

My final decision is that I uphold this complaint and require Lloyds Bank PLC to refund M:

- Its outstanding losses from the scam, totaling £80,462.16.
- 8% simple interest on M's losses, from the date the payments were made until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 1 December 2022.

Kirsty Upton
Ombudsman