

The complaint

Mr S and Mrs K complain that Yorkshire Building Society (“YBS”) won’t reimburse them after they fell victim to an Authorised Push Payment (‘APP’) scam.

What happened

The background to what happened is well known to all parties and was well documented by our Investigator in their view, so I’ll only briefly summarise events here.

In March 2021, Mr S received a call from someone impersonating a member of staff at a bank he held another account with, but unfortunately the caller was a fraudster. The fraudster convinced Mr S his money, which he held across a number of accounts with different banks, was at risk.

Mr S has said he told the fraudster he had difficulty understanding them, due to English not being his first language, so the fraudster passed him to a different person who spoke to Mr S in his native tongue. The fraudster asked Mr S to help him investigate fraud whilst also ensuring his money was kept safe. Mr S recalls the fraudster knew his name, date of birth, account details and address. This added a further air of legitimacy to the situation and contributed towards Mr S having considerable trust in what the caller said.

Believing he was speaking to his genuine bank and in the belief that he needed to follow the fraudsters instructions to help with an investigation and to keep his money safe, Mr S went ahead and made numerous payments from various accounts held with different banks. But it is important to note that this decision only focuses on the payments made from Mr S and Mrs K’s YBS account.

On 26 March 2021, Mr S attended a YBS branch and made a CHAPS payment for £48,000, to what he believed to be a ‘safe’ account’. Following this, on 14 April 2021, he made a cash withdrawal for £4,500, which the fraudsters instructed him to send to various addresses (Mr S being told this was part of the investigation, so that the ‘bank’ could ascertain whether counterfeit notes were being used by the branch). Lastly, on 12 May 2021, Mr S made a further CHAPS payment, for £42,000 to a different payee, also believing this money was being sent to a ‘safe account’.

Throughout, Mr S was told by the fraudsters that this was to keep his money safe and that the amounts of the cash withdrawals would be returned to him. He’s said the fraudsters told him that he shouldn’t tell anybody about the investigation he was helping with, as well as this they told him what he should say to the staff in branch, when making the transactions. In mid-June, Mrs K spoke to their son because she was worried about Mr S. Their son spoke to Mr S and the scam was exposed, with Mr S and Mrs K having lost a significant sum of money, which included transactions from his and Mrs K’s YBS joint account totalling £94,500.

Mr S and Mrs K raised the matter with YBS. It looked into things and issued its final response to Mr S and Mrs K on 4 August 2021 not upholding their complaint. In summary, it didn’t agree it had made an error or acted unfairly. It said on both occasions the CHAPS

payments were made, its representatives queried the transfers, but that Mr S had misled it, by saying the payments were going to a family member. So it didn't agree it should have highlighted the transactions as potentially fraudulent. It added that its branch staff had also provided Mr S with copies of its leaflets about fraud. YBS did reach out to the beneficiary banks (the banks to which the payments were made), to try and recover the money that was lost. But it was only able to recover £3.43, which was refunded to Mr S and Mrs K's account on 27 July 2021.

Mr S and Mrs K, unhappy with YBS's response, referred their complaint to our service. One of our Investigator's looked into their complaint and upheld it. In summary, although she recognised YBS had provided scam warnings in branch, she thought YBS ought to have done more to protect Mr S and Mrs K. It was her view that, had it done so, the losses would've been prevented. So she considered YBS should refund the money Mr S and Mrs K lost, along with interest and £150 compensation to recognise its role in the loss.

YBS disagreed with our Investigator's view. In summary, it said although it sympathised with Mr S and Mrs K, it maintained the scam was difficult to prove as Mr S had misled it. It added that it felt the Investigator's expectations were disproportionate and likened the suggestions she'd made to interrogation. It also considered that Mr S was responsible by way of contributory negligence, it said this because when he was told by the fraudsters he could check if the money had been received into the safe account, by contacting the beneficiary bank, he had been told by the supposed beneficiary bank, that the account didn't exist.

As agreement couldn't be reached the complaint has been passed to me for a 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.

Having done so, I've decided to uphold Mr S and Mrs K's complaint for broadly the same reasons as the Investigator.

I'm aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

It's not in dispute that these were 'authorised payments' even though Mr S and Mrs K were the victims of a sophisticated scam. Mr S requested for the payments/withdrawals to be made, so although he did not intend the money to go to a fraudster, under the Payment Services Regulations 2017, and the terms and conditions of their account, Mr S and Mrs K are presumed liable for the loss in the first instance.

However, taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider YBS should 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.
- For branch transactions like this, those steps may include following the Banking Protocol where appropriate.

In this case, I need to decide whether YBS acted fairly and reasonably in its dealings with Mr S when he carried out these transactions to a fraudster, or whether it should have done more than it did.

I've first thought about whether I think YBS should have intervened. YBS has a difficult balance to strike in how it configures its systems to detect unusual activity or activity that might otherwise indicate a higher than usual risk of fraud. But having reviewed the first payment Mr S made, I'm persuaded that it wasn't typical of how the account was usually run and so, I think it ought to have caused YBS to be concerned that Mr S might have been at risk of financial harm.

I say that as, having reviewed Mr S and Mrs K's statements, for the 12-month period leading up to the scam, throughout that period, there are no other withdrawals, with the most recent transaction being a cash withdrawal for £350 in December 2019. So I'm satisfied that a withdrawal for nearly £50,000, which clears over 86% of the account balance ought reasonably to have alerted YBS.

I would add that I don't think this is in dispute, as YBS did recognise this payment was out of character and I can see that it did intervene. Its notes indicate that this was a 'high risk' transaction. YBS has said it completed a CHAPS transfer activity check list and has said that Mr S was educated about a variety of different scams. Unfortunately a copy of the completed CHAPS form isn't available, but YBS has provided a copy of the form that would have been used, to demonstrate the questions that would have been asked. Based on this, I think YBS did ask about the purpose of the payment to some extent.

But having looked at the check list, I've seen it indicates that YBS merely asked Mr S a number of mainly closed questions covering a number of different scam scenarios. In my judgment, considering Mr S was making an unusual value transfer, to a new payee, which was clearing the vast majority of the account balance, I'm persuaded it should have done more to satisfy itself that he wasn't at risk of financial harm.

In any event, it's very difficult to know how much of these questions were either understood or resonated with Mr S. Mr S says he doesn't recall information about scams being relayed to him. But I think it's also quite clear, based on the evidence I've seen and listened to, that Mr S does have some difficulty communicating in English as it is not his first language. This is something I think ought to have been evident to branch staff at the time. Alongside this, branch staff say Mr S was also given a leaflet about scams which they saw Mr S read but Mr S says he wasn't able to as the print was too small.

YBS has argued that our Investigator's expectations on the questions it ought to have asked, would have amounted an interrogation. It also didn't consider it feasible to invoke the

Banking Protocol, which is an initiative between the Police, financial sector and Trading Standards to identify and prevent fraud from happening. And it has argued that Mr S had misled it regarding the purpose of the payment.

However, the Banking Protocol sets out that branch staff should ask discreet questions as to the nature and purpose of the transaction when a transaction is deemed unusual and out of character (while keeping in mind that their customer may have been told that they are helping to catch corrupt bank staff or having been provided with a cover story, as was the case here). And I think there were enough red flags here to have reasonably prompted additional action from YBS.

But it appears that Mr S's answers to the questions posed in branch were essentially taken at face-value - despite the Banking Protocol setting out that scam victims may not always be willing to tell branch staff the whole truth when initially questioned. I'm also mindful that, while the Banking Protocol isn't limited to elderly or vulnerable customers, crime data analysis has identified that those aged over 70 are at a greater risk of falling victim to a fraud.

This was a particularly common type of scam, and it should be something branch staff are encouraged to look out for, particularly where payments are of a high value and are being sent to new payees and are clearing all/or a large proportion of an account balance, which is a common feature of this type of scam. And the story Mr S had put forward, that he was paying a family member is a common cover-story that fraudsters encourage their victims to use in order to try and navigate through a bank's fraud detection. This is something that I'm satisfied YBS is aware of, as sending funds to a family and friend is something that is detailed on YBS's own checklist as something to look out for. With all of this in mind, I'm persuaded YBS ought to have asked Mr S more probing questions about the purpose of the payment while he was in branch, and had it done so, for reasons I'll explain later, I think it would have made a difference and prevented this and the subsequent payments from being made.

But in any event, the CHAPS payment wasn't processed at this point in branch as further checks were required. Some of these checks resulted in a phone call to Mr S where he was asked a number of questions about the recipient of the funds. The call handler explained to Mr S that she needed to do some checks related to money laundering. The call handler asked Mr S a number of questions about his 'brother-in-law' (the person Mr S had told the bank he was paying) which Mr S was generally unable to answer satisfactorily. At times the call handler sounds concerned on the phone, yet offers answers to Mr S rather than challenge further. For example, Mr S says he doesn't know who his brother-in-law lives with, his nationality, his date of birth, how long he's lived in the UK or his previous address. Not knowing the answer to one of these questions could be overlooked, but not knowing so many ought to have been cause for concern for YBS. I'm also mindful that the reason for the payment changes here too, in that Mr S is saying this is a loan he is making to his brother-in-law, rather than to invest in a property, which is what he'd told branch staff.

With regards to this call, YBS has said that liability sits with when the activity was performed (which was in branch) and at that point the advisor performing the transaction was not concerned. It added the purpose of this call was to carry out checks in line with its Anti Money laundering obligations and not to verify the transaction due to any fraud indicators. As well as this, it says the colleague who made this call, was not in a fraud specialist role.

I take it to mean that what YBS is suggesting here, is that as it was satisfied with things in branch, it or its staff wouldn't have been expected to be on the lookout for fraud during this later call and that this wasn't the purpose of the call. I don't agree with the position YBS has taken here, I think it's fair and reasonable for a bank, as professionals in these matters, to be

alert to the risk of fraud regardless of what stage a payment is at within its journey. And not withstanding that, from listening to the call, the call handler seems to have their own concerns and has asked Mr S if he is completely happy with the transaction and clarified that she was asking questions to make sure YBS were also happy with the transaction. This suggests to me the call is going further than just carrying out checks on the beneficiary of the funds and that there were concerns about what Mr S was telling YBS.

Despite Mr S being unable to answer the questions, ultimately the payment was processed, which led to two further withdrawals. At this point I think YBS ought to have had real concerns Mr S had fallen victim to a scam. Given YBS are the professionals here, I'd expect a bank to know better, than to allow this first payment and then further payments to be made.

I'm persuaded that what this call supports, is that had the branch staff probed Mr S further about the purpose of this first payment, which as I've found and explained earlier, I think it ought to have done, then I don't think it's more likely than not, he would have been able to provide plausible and credible answers, that would have satisfied YBS of the concerns it reasonably ought to have had.

For the avoidance of doubt, I'm not suggesting in any way that YBS would have needed to interrogate Mr S here. In the circumstances of the case I don't think it would have taken much scrutiny for it to have become clearly suspicious of the risk. I think if it had asked questions such as, but not limited to; what was the address of property that was being purchased, what was the agreed sale price, did he have any paperwork for it, did he know the details of the solicitors his brother-in-law was intended to pay, I don't think it more likely than not Mr S would have been able to give credible and plausible answers. Which again, I think is supported by what happened during the subsequent call, where, when probed, he was unable to answer quite basic questions about a supposed family member. It follows that I think his cover story wouldn't have stood up to further questioning and the scam would have come to light.

So, whilst I accept Mr S didn't tell branch staff the whole truth about the reasons he was making the transfer in branch, I'm not persuaded that this is what led to the success of the scam. Based on what I've seen I'm satisfied that, as the professionals in these matters, YBS ought to have had serious concerns that Mr S was at significant risk of financial harm and had it had it asked further probing questions, in line with its obligations under the Banking Protocol, the scam could've been prevented – despite Mr S's cover story. It follows that Mr S wouldn't have gone on to make this first payment, or the subsequent payments.

Should Mr S and Mrs K bear some responsibility for their loss?

I have thought about whether Mr S and Mrs K should bear some responsibility for the money they lost by way of contributory negligence. The consideration of contributory negligence is an objective test but in considering what's fair and reasonable I've factored in the sophistication of the scam and Mr S and Mrs K's wider circumstances.

It wasn't until Mr S spoke with his son, that he realised this was a scam. Up until that point, he was convinced he was working to keep his money safe and also helping to catch fraudsters. Mr S and Mrs K were the victim of a sophisticated scam and I am satisfied Mr S didn't foresee the risk of this sort of harm.

Of course, there is more Mr S could've done with the benefit of hindsight to protect himself and I've thought about YBS's comments that Mr S moved passed another bank telling him that a beneficiary account didn't exist. But I understand that the nature of these scams, can often have a negative effect on a person's thought process and make them take steps that,

in the cold light of day they might not otherwise take. And by this point, over the course of a number of weeks the fraudster had gained Mr S trust, to the point where he almost considered them a friend. He thought they were helping him protect his money.

It is also not lost on me that at the time Mr S was caring for his wife, who was unfortunately in poor health. He's told us he was in a constant state of worry and pressure, with dealing with doctor's appointments. When the fraudsters had told Mr S the risks for not keeping his money safe, such as losing his home and becoming bankrupt, Mr S believed he had to follow the advice, as he was fearful of the consequences of not doing so.

The combination of these high-pressure tactics, the fraudster's persuasiveness and Mr S's and Mrs K's personal circumstances satisfy me that Mr S and Mrs K were simply the unwitting victims of an experienced fraudster. So, on the particular facts of this individual case, I am satisfied there was no contributory negligence on this occasion.

Impact on Mr S and Mrs K

Mr S has told us this situation has caused considerable stress and worry, he and his wife lost their life savings and had no income or assets to live off.

Although most of this distress or inconvenience can be attributed to the criminal acts of the fraudsters, I think YBS could have done more to protect him from the impact of this. The scam has had a profound impact on Mr S and it has caused an immense amount of stress and anxiety, some of which could have been avoided.

I therefore consider £150 compensation to be appropriate for the distress and inconvenience Mr S and Mrs K experienced as a result of its actions.

Putting things right

For the reasons explained Yorkshire Building Society should now;

- Refund Mr S and Mrs K the full amount of the money they lost from their YBS account (being £94,500, less any money recovered and refunded).
- Pay interest on this amount, at the savings account rate from the account from which the payments were made. Calculated from the date of the transactions to the date settlement.
- Refund the associated fees for the two CHAPS payment.
- Pay £150 for the distress and inconvenience caused.

My final decision

My final decision is that I uphold this complaint against Yorkshire Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K and Mr S to accept or reject my decision before 28 April 2023.

Stephen Wise
Ombudsman