

The complaint

The estate of Mr B complains that Lloyds Bank PLC (Lloyds) won't refund the money he lost when Mrs B, acting with authority for Mr B, fell victim to a scam.

What happened

The details of this complaint are well known to both parties. So rather than repeat them all again here, I'll briefly summarise the key points.

Mr B held a bank account with Lloyds. His wife, Mrs B, had authority on the account. Sadly, since the events of this complaint, Mr B has died. Mrs B is the executor of Mr B's estate.

Around September 2019, Mrs B was contacted by who she believed to be the Financial Conduct Authority. They said that she'd been scammed by the Ministry of Justice and was due a refund. This was followed up with correspondence allegedly from Action Fraud, the High Court of Justice and the British Bankers' Association, citing different amounts that she was due as a refund, for various reasons. Unfortunately, this was a scam.

Mrs B withdrew cash from Mr B's account. I understand that, on the scammers' instructions, she posted this cash to them. I appreciate there has been some confusion over exactly which payments were in dispute. But based on what Mrs B and her representatives have told us, which I've checked against Lloyds' records, these are the cash withdrawals that were made as part of the scam:

Date	Amount	Type
14/09/2019	£3,000	In branch cash withdrawal
16/09/2019	£1,000	In branch cash withdrawal
27/09/2019	£5,000	In branch cash withdrawal
01/10/2019	£250	ATM cash withdrawal
03/10/2019	£2,500	In branch cash withdrawal
05/10/2019	£250	ATM cash withdrawal
07/10/2019	£250	ATM cash withdrawal
08/10/2019	£250	ATM cash withdrawal
14/10/2019	£3,000	In branch cash withdrawal
14/10/2019	£250	ATM cash withdrawal
Total	£15,750	

Mr and Mrs B's family then found out what was happening and realised she had been scammed. Lloyds was notified – but it didn't agree to refund the payments. It said Mrs B would have been questioned in branch and that she said the funds were for a new kitchen. And so it hadn't done anything wrong by allowing her access to the funds she'd requested, in line with her authority on the account.

Unhappy with this response, the estate referred this complaint to our service. Our investigator didn't uphold it. She thought it was reasonable for Lloyds to have processed the payment requests in line with Mrs B's instructions, without suspecting – based on her responses – that she was at risk of a scam. The estate disagreed so the case was escalated to me.

I issued my provisional decision in December 2022 explaining I was minded to uphold the complaint and direct Lloyds to refund £5,875 plus interest. I invited both parties to submit any further comments or evidence in response. The estate has confirmed it has nothing further to submit, and Lloyds has confirmed that it will agree to the award I proposed. So I can now proceed to finalise my 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.

As I've not received any new information in response to my provisional findings, I've decided to uphold this complaint and direct Lloyds to refund half of the estate's loss from the third payment onwards, for the same reasons given in my provisional decision. I'll set out my reasons again here.

In line with the Payment Services Regulations in force at the time, Lloyds is expected to execute authorised payment instructions without undue delay. It's not in dispute that Mrs B was scammed. But nor is it in dispute that she authorised the payments. So the starting position is that it's fair to hold the account holder, rather than the bank, liable.

But there are some situations where we believe that banks – taking into account relevant rules, codes and best practice – ought to have identified a fraud risk, so should have looked at the wider circumstances surrounding the transaction before making the payment. If Lloyds failed to do so, and that failure led to a fraudulent loss, it might be fair to hold it liable.

I can understand why Lloyds simply processed the payment instructions for the first few payments without completing many, if any, additional checks. It's not particularly suspicious for customers to occasionally withdraw larger amounts. But by the time of the £5,000 payment, I do think Lloyds had reason to be concerned. It was the third cash withdrawal, in the £1,000s, in less than two weeks. That pattern, as well as the individual payment, was a significant departure from how the account was usually operated.

Lloyds says cash withdrawals of this size are subject to a high value checklist. I've seen a copy of this, which shows what questions should be asked – such as the reason for the payment. It also prompts the staff member to review the consumer's account for unusual activity, such as unusual withdrawal patterns.

It seems Lloyds hasn't retained a copy of the checklist that ought to have been completed at the time – so I don't have a record of exactly what was discussed. Based on the bank's procedure, as well as Mrs B's recollections, I think she would have been questioned about the payment. However, I can't see anything to support that she told Lloyds the payments were for a new kitchen. This may relate to payments from another account, involving a separate firm (within the same banking group) that is the subject of a separate complaint. Mrs B can't recall what exactly she was asked, or what her response was.

Where information is incomplete, I have to decide what's more likely to have happened. I'm ultimately considering whether it's likely Lloyds did enough to satisfy itself about the fraud risk before allowing the payment. Based on the available evidence, I'm not satisfied Lloyds did enough.

If questioned, I don't think Mrs B would have been upfront about what she was doing. The correspondence she had received said that she wasn't to seek advice or discuss the matter with anyone. And I've seen evidence from another bank suggesting she was told to give a false reason for a payment that formed part of this scam. So I think it's likely Mrs B would have done the same with Lloyds. But as Lloyds will know, it's relatively common for cover stories to be given in scams. I'd still expect it to consider whether the reason given is plausible and rational.

If adequately questioned, I'm not persuaded that a cover story given by Mrs B would have held up to scrutiny. Particularly as I would have expected such questioning to have picked up on the withdrawals of £3,000 and £1,000 within the previous two weeks - in line with Lloyds' own policy. I'm not persuaded Mrs B was likely to have given a satisfactory explanation for these as well as for the £5,000 payment. She may have had one cover story; I consider it unlikely she had three.

And so, had Lloyds followed its policy for high value withdrawals such as this, I think it would have had reason to be concerned about Mrs B's request. I consider it likely the scam could have been uncovered at this point – preventing the further loss from this account. However, I have also considered whether Mrs B should fairly be held partly responsible for what happened by way of contributory negligence. The starting point for this is considering what a reasonable person would be expected to have done in the circumstances. And having reviewed the correspondence Mrs B received which persuaded her that the scam was legitimate, I'm not persuaded it was reasonable to rely on this. There were lots of grammatical errors, and the reasoning for – and amounts of – the refunds Mrs B was allegedly due were inconsistent. Nor did they seem to match Mrs B's circumstances. For example, the first letter said she had been scammed by the Ministry of Justice 'the previous month'. And there doesn't appear to have been anything which had happened the previous month which Mrs B would reasonably have thought that could refer to.

I'm mindful there may have been vulnerabilities affecting Mrs B at the time. She was in her late seventies and her husband was unwell in a care home. However, it does seem that, until this occurred, her family didn't have concerns and thought she was able to manage the finances on behalf of Mr B. And she was able to take some action – such as looking up the organisations who had allegedly contacted her to check if they were real/legitimate. Albeit she didn't complete further checks to ensure that's who had actually contacted her. Lloyds hadn't been notified of any vulnerabilities or needs such that it should have known to take additional steps to protect Mrs B.

Taking all of this into account, I consider it fair to reduce the compensation by 50% due to contributory negligence.

Putting things right

Lloyds Bank PLC should refund the estate of Mr B £5,875 - comprising 50% of his loss from the third payment (for £5,000) onwards. For ease, here is a table breaking this down:

Date	Amount	Type	Amount Lloyds should refund
14/09/2019	£3,000	In branch cash withdrawal	£0
16/09/2019	£1,000	In branch cash withdrawal	£0
27/09/2019	£5,000	In branch cash withdrawal	£2,500
01/10/2019	£250	ATM cash withdrawal	£125
03/10/2019	£2,500	In branch cash withdrawal	£1,250
05/10/2019	£250	ATM cash withdrawal	£125
07/10/2019	£250	ATM cash withdrawal	£125
08/10/2019	£250	ATM cash withdrawal	£125
14/10/2019	£3,000	In branch cash withdrawal	£1,500
14/10/2019	£250	ATM cash withdrawal	£125
Total	£15,750		£5,875

Lloyds Bank PLC should also pay 8% simple interest per year on this amount, accruing from the dates of payment to the date of settlement. This is to compensate Mr B, and now his estate, for the time he/they have been deprived of these funds.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. I direct Lloyds Bank PLC to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr B to accept or reject my decision before 2 February 2023.

Rachel Loughlin
Ombudsman