

The complaint

Miss W complains that Lloyds Bank PLC hasn't refunded her the money she lost as the result of a scam.

What happened

Miss W was the victim of a scam when she was tricked into taking out a Lloyds personal loan and then making a Faster Payment transfer for £22,500 from her Lloyds current account.

Miss W took these steps in the belief that her Lloyds account was at risk, and that she was assisting the bank's internal fraud team to catch bank staff who were defrauding customers. This belief was based on a telephone call she'd received, purportedly from Lloyds.

She received this call on 29 June 2022. Miss W explains that very close to this time, she was under pressure due to serious concerns about the wellbeing of her daughter. She explains she was not able to think as sharply as she might usually have been able to.

The caller claimed to be from Lloyds' fraud team. Miss W says she asked how she could check she was speaking with her bank. The caller told her to check the caller ID number shown on her phone against the numbers in her mobile banking app. Miss W did so and verified that the number matched.

In reality, the call did not originate with Lloyds. This suggests the scammers used a technique known as number spoofing - by which the caller can appear to be ringing from a number other than their own.

At the time, Miss W was reassured by this apparent validation of the caller's identity. She was then contacted about a high value loan supposedly applied for in her name at a nearby branch. Miss W confirmed this wasn't her, and the caller told her she appeared to be the target of an internal fraud involving some of Lloyds' staff in branch and on the bank's customer helpline.

She was asked if she'd responded to a text message from a delivery company – Miss W recalled she had recently done so. The caller explained to Miss W that this was how the fraudsters had obtained the details they need to impersonate her in the branch.

Her Lloyds account would be taken 'offline' by the fraud team. She would follow the steps of applying for a loan herself which she should then transfer to a dummy account. She was told this would allow the fraud team to establish who was involved in the supposed internal fraud by tracking who viewed the payment. She was told that because her account had been taken 'offline' this would not be a real loan or payment, although it would appear as such.

Miss W was told what details to input for the loan and given the beneficiary account details to use for the subsequent payment. She followed these instructions.

Miss W then received a (genuine) text message from Lloyds to say the payment had been flagged for security checks and she'd need to call to approve it. The caller told Miss W this was what they had anticipated - anyone she then spoke to would be part of the internal fraud. Miss W should ring the call centre from her landline so the caller could listen in simultaneously on the current mobile call and advise her what to say. Miss W was told the questions she'd be asked and she was coached on the responses she must give.

When Miss W spoke to Lloyds about the payment, she gave the answers she was instructed to by the caller and the payment was made. She used a cover story that the payment was for building work.

The caller said they would block her card and would call back to update Miss W on the investigation. When this didn't happen Miss W called Lloyds. At this point, the scam came to light.

This type of scam is known as an Authorised Push Payment scam (an APP scam). Lloyds is a signatory of the Lending Standards Board's Contingent Reimbursement Model (the CRM Code). The CRM Code requires firms to reimburse customers who have been the victims of APP scams in all but a limited number of circumstances.

However, Lloyds declined to reimburse Miss W. It said one or more exceptions to reimbursement applied in this case. It had provided scam warnings to Miss W and relevant scam information when she'd made the payment. And it said Miss W had made the payment without having a reasonable basis for believing what she did at the time.

Lloyds contacted the beneficiary bank in an attempt to recover the funds, but ultimately the other bank responded to say no funds remained. Lloyds said it was holding Miss W liable for the loan as she had taken this out. This left Miss W significantly out of pocket as a result of the scam, liable for the capital and interest due on the loan.

One of our Investigators looked into Miss W's complaint and thought it should be upheld. The Investigator didn't think Lloyds had fairly assessed Miss W's claim under the CRM Code. She didn't agree that Lloyds had been able to establish Miss W made the payment without a reasonable basis for believing what she did, or that she'd ignored an effective warning. Lloyds should allow Miss W to unwind the loan agreement and remove any impact on Miss W's credit file.

Lloyds didn't agree to the Investigator's recommendations, so I have been asked to reach a final decision on the matter.

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.

In deciding what's fair and reasonable in all the circumstances of a complaint, 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.

Here, Miss W took out the loan agreement with Lloyds. She did so only due to the deceit of the scammer, but as a starting point Miss W is liable for the resulting debt.

The subsequent payment Miss W made was an 'authorised payment' even though Miss W was again only making the payment as the result of deception. Miss W made the payment

herself. So, although Miss W did not realise what was really happening and did not intend the money to go to a fraudster, under the Payment Services Regulations 2017, and the terms and conditions of his account, Miss W is presumed liable for the loss in the first instance.

Of relevance to the question of what is fair and reasonable in this case is the Lending Standards Board's voluntary Contingent Reimbursement Model (the CRM Code), to which Lloyds is a signatory. As noted above, the code can require that firms should reimburse the victims of scams.

Lloyds seeks to rely on two of the possible exceptions to reimbursement under the CRM Code:

- In all the circumstances at the time of the payment, in particular the characteristics of the Customer and the complexity and sophistication of the APP scam, the Customer made the payment without a reasonable basis for believing that: (i) the payee was the person the Customer was expecting to pay; (ii) the payment was for genuine goods or services; and/or (iii) the person or business with whom they transacted was legitimate.
- The Customer ignored Effective Warnings [...] by failing to take appropriate action in response.

In order to rely on an exception to reimbursement, the CRM Code says Lloyds needs to establish that either one or both applies.

The 'Effective Warning' exception to reimbursement

I've firstly considered whether Lloyds has been able to establish that Miss W ignored an Effective Warning when making the payment. I've considered the evidence Lloyds has provided about what Miss W was shown and what she was told during a call about the payment.

Having done so, I am not satisfied that Lloyds delivered an Effective Warning as defined in the CRM Code. Specifically, the code requires that a warning must as a minimum be impactful, but the cumulative 'warning' here did not meet this threshold.

And while the cover story Miss W was told to use by the scammer meant that the relevant scam risk wasn't identified by the bank, the warning was not one that would meet the minimum standard set by the CRM Code regardless. I don't consider what she was shown or told would have helped her to understand the key risks of an APP Scam, what such a scam might look like and how she could protect herself.

It follows that Lloyds did not give Miss W an Effective Warning. And as a consequence, Miss W did not ignore an Effective Warning given by Lloyds in compliance with the CRM Code (no Effective Warning being given). So, Lloyds cannot rely on that exception to reimbursement.

The 'Reasonable Basis for Belief' exception to reimbursement

I have gone on to consider whether Lloyds has been able to establish that Miss W made the payment without holding a reasonable basis for believing what she did at the time.

The CRM Code specifies that all the circumstances at the time need to be taken into account in considering whether this can be established. That includes the sophistication of the scam

as well as the individual customer's circumstances or characteristics. Miss W has explained about the impact a serious family matter was having on her at around the date of the scam call. She explains how this impacted her ability to protect herself against this scam, as well as she otherwise might have in different circumstances.

I consider this factor was relevant here. The CRM Code contains provision for vulnerability to a given scam, which includes temporary and dynamic vulnerability due to personal circumstances. While I don't think Miss W's circumstances at the time had such an impact on her that she'd meet the definition of vulnerability under the CRM Code, Lloyds needed to take the broad effect of this situation into account when considering Miss W's reasonable basis for belief.

And furthermore, I find the scam here was relatively sophisticated and persuasive. Based on the available evidence it appears to have involved an initial phishing attack, likely used as a way to gather personal information that was later used in the main scam call. That call used phone number 'spoofing' to mimic the bank's real phone number. Number spoofing is a technique that can have considerable power in persuading a victim that they are speaking to a legitimate caller.

Taking everything into account, I'm persuaded that Miss W had a reasonable basis for believing she was speaking with her bank's fraud team. So while Lloyds argues Miss W used a cover story and so she didn't tell its representative the correct answers when it questioned her, I am persuaded that she did so in the belief that she was being asked to do so by the bank itself. Again, I don't think that belief was unreasonable in the sense meant by the CRM Code.

While Lloyds has pointed to factors it considers perhaps should have caused Miss W concern, I am not persuaded that these would have been sufficient to have broken the scammer's spell over her at the time. In relation, for example, to the payee's name being that of a cleaning company, the scammer had provided a not implausible explanation for this.

Throughout, the scammer's deceit appears to have been carefully planned to persuade and backed by justifications that to someone unfamiliar with the internal operations of the banking system could readily have been accepted as valid. I don't find Miss W was to blame.

Based on the specific facts of this case, I am not satisfied Lloyds has established that it can rely on the 'reasonable basis for belief' exception to reimbursement.

Reimbursement decision under the CRM Code

In summary, I find Lloyds has not established that it can rely on any of the exception to full reimbursement under the CRM Code. It follows that Lloyds should have reimbursed this payment.

The loan

Lloyds explains that, prior to making the payment, Miss W entered into a loan agreement and is bound by it - despite the circumstances that led her to do this.

The loan value was £1,000 higher than the payment amount. Miss W has confirmed she retains the excess of the loan amount over the payment. She agrees she will repay this sum to clear the loan when combined with a refund of the payment.

As I've explained above, I recognise that that as a starting point Miss W is liable for the loan. However, in considering the complaint I'm required to reach a decision based on what is fair

and reasonable in all of the circumstances.

Thinking about the impact of what happened here on Miss W, Lloyds's role in this, and the overall circumstances of this complaint, I consider it would be fair and reasonable that Miss W's loan should be unwound as part of the settlement of this matter, leaving her with no outstanding liability for capital, interest, or other costs.

Having done so I also consider it fair and reasonable that Lloyds should take the appropriate steps to remove the record of the loan from Miss W's credit records with the relevant credit agencies.

Overall, I consider this outcome is the one that most closely approximates the position Miss W would now be in had Lloyds reached the reimbursement decision I believe it should have when she first alerted the bank to the APP scam.

Distress and inconvenience

Miss W has detailed the impact the whole matter has had on her. While of course much of the distress caused was due to the criminal actions of the scammer, I consider that Lloyds' subsequent decision not to reimburse Miss W has exacerbated the impact. I also consider it fair and reasonable in the circumstances to award Miss W the sum of £150 in respect of the additional distress and inconvenience she has been caused.

Putting things right

For the reasons given above, I find it fair and reasonable in all the circumstances of this complaint that Lloyds needs to take the following steps to put things right. Within 28 days of receiving confirmation of Miss W's acceptance of this decision Lloyds should:

- unwind the loan taken out by Miss W, refunding any payments made to the loan with 8% simple interest per year on each payment from the date of payment to the date of settlement. Miss W agrees to repay £1,000 to the loan as part of this settlement. However, if Lloyds additionally requires Miss W to enter an undertaking to repay that £1,000 then Lloyds should bear any costs associated with the drafting of that undertaking;
- write off the balance of the loan, including any sums relating to fees charges or interest;
- arrange for the removal of all credit file information relating to the loan; and,
- pay Miss W the sum of £150 in respect of the additional distress and inconvenience caused.

If Lloyds considers that it's required by HM Revenue & Customs to deduct income tax from the interest award, it should tell Miss W how much it's taken off. It should also give a tax deduction certificate if asked for one, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

My final decision

I uphold Miss W's complaint against Lloyds Bank PLC as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 5 March 2024.

Stephen Dickie
Ombudsman