

The complaint

Mrs S is unhappy Lloyds Bank PLC (“Lloyds”) won’t reimburse her for the money she lost when she fell victim to an ‘authorised push payment’ (“APP”) lottery scam.

What happened

Mrs S sadly fell victim to a cruel scam whereby she believed she had won a national lottery abroad. Mrs S made multiple payments from her Lloyds account (and from accounts she held at other banking providers). The payments were for various fees and taxes in order to obtain her winnings which sadly never materialised.

The payments Mrs S made from her Lloyds account happened between 2009 and 2016.

Mrs S says she realised she had fallen victim to a scam having made a payment on 15 March 2016 from her Lloyds account. Mrs S says she reported the matter to Lloyds and her other banking providers at this time. Mrs S has said she was told by all her banking providers at the time that nothing could be done.

Unfortunately, in 2017, Mrs S fell victim to another similar lottery scam and made payments under the belief that they were to obtain her winnings. A payment in June 2018 was declined by Lloyds as it was concerned about the reason Mrs S gave for the payment. Lloyds invited Mrs S into branch to discuss the payment and, as it was still concerned, invoked the ‘Banking Protocol’ and contacted the police. The contact with the police seemingly broke the spell in 2018 and, for a period, Mrs S didn’t make any further payments. Lloyds tried to recover the funds Mrs S had sent (approximately £47,500) but was unsuccessful and advised Mrs S of this in July 2018.

Sadly the scammers remained in contact with Mrs S, and Mrs S, unfortunately made further payments in March and April 2019 to try and obtain her winnings. Mrs S made four payments in this period totalling £14,095 before contacting the police as she hadn’t received her winnings / prize.

The police notified Lloyds. Lloyds contacted the receiving banks to try and recover the funds but were unsuccessful. Lloyds also declined re-imbursing Mrs S for her losses and ultimately Mrs S’s complaint about the payments made in 2017 – 2019 was referred to our service in July 2019.

The complaint about the payments made towards the scam that happened between 2017 and 2019 was considered by our service under a separate reference number.

Our Investigator upheld Mrs S complaint in March 2020. Both Lloyds and Mrs S agreed with the outcome reached and the case was resolved on 7 July 2020. Mrs S was ultimately refunded all of her payments made towards the scam in 2017- 2019 barring the very first payment which the Investigator thought wasn’t remarkable enough to warrant intervention by Lloyds. In total Mrs S was refunded £59,685 plus an additional amount for compensatory interest and an amount was also awarded for distress and inconvenience.

Mrs S revisited matters regarding the payments she had made towards the scam that took place between 2009-2016 and contacted our service on 3 September 2020. Mrs S requested statements from Lloyds on 14 September 2020 and then referred her complaint about Lloyds (and two other banking providers) to our service in October 2020.

Lloyds, after receiving contact from our service, incorrectly considered Mrs S complaint was a duplicate and thought it was in relation to the payments made in 2017-2019.

During the course of investigations into her other complaints about other banking providers, Mrs S confirmed she remained unhappy about the payments she had made from her Lloyds account towards the scam that took place between 2009-2016.

Our Investigator obtained statements from Lloyds covering the period 2009-2016 and went through all the payments Mrs S had made to capture the payments Mrs S had made that were as a result of the scam she had fallen victim to.

After going through the statements and working out what payments Mrs S had made and those which Lloyds weren't aware Mrs S wanted to complain about, our Investigator compiled a list of the payments she was disputing and informed Lloyds. Within the list of payments put to Lloyds there was one payment of £1,000 that Mrs S was sure she had made from her Lloyds account – but wasn't showing on the statements.

Lloyds issued a final response letter to Mrs S on 10 September 2022 declining to refund the payments Mrs S had made between 2009 and 2016. And it also explained that it didn't think the matter could be investigated due to the time that had passed. Lloyds recognised that when the matter was brought to its attention in October 2020 it incorrectly assumed that the complaint was in relation to the scam that had taken place in 2017-2019. For its error it awarded £100 compensation.

Mrs S, unhappy that she hadn't been refunded her losses, asked our Investigator to look into it. Mrs S believed that all the payments she had made between 2009 and 2016 should be looked at and that Lloyds should have done more to protect her. Mrs S considered Lloyds should reimburse her losses.

Our Investigator reviewed the matter. They concluded that on the majority of the payments Mrs S had made, they were brought to us out of time, according to our rules. And our Investigator didn't think that exceptional circumstances had prevented Mrs S from pursuing her complaint within the time limits allowed.

The Investigator concluded that for six of the later payments – made from 26 February 2015 until 15 March 2016 our service did have the power to consider those payments as they were referred to us in time.

And our Investigator concluded that on the six payments that were referred to us in time, Lloyds could have done more for Mrs S and intervened on three of the payments (the last three payments made) – and had it done, the scam would have likely been revealed and the payments would have been prevented. However our Investigator thought Mrs S should share some responsibility for the loss as they were a number of concerning factors that Mrs S should reasonably have questioned. So they thought there was enough going on that Mrs S should reasonably have had a cause for concern before making the payments.

Our Investigator recommended Lloyds refund Mrs S 50% of the last three payments and pay additional compensatory interest on that amount at 8% simple from the date of each payment until the date of settlement.

Lloyds agreed with the Investigator's opinion.

Mrs S disagreed. Mrs S considered that all of the payments made toward the scam from 2009-2016 should be considered. And Mrs S considered she should be reimbursed in full.

As Mrs S disagreed with our Investigators opinion on the payments they considered were out of jurisdiction – because they were brought to our service too late under the rules we have to apply – a separate decision (under a different complaint reference with our service) was issued.

I was the deciding ombudsman and issued a decision whereby I deemed that the payments in question (18 payments Mrs S made from 15 April 2009 up to and including a payment made on 16 June 2014) were referred to our service too late under the time limits and rules we have to apply. So I didn't have the power to consider Mrs S's complaint about the payments she made on 15 April 2009 up to and including a payment made on 16 June 2014.

This complaint reference, and this final decision, focuses on the payments that our service has the power to consider – that being the six payments made toward the scam from – 26 February 2015 until 15 March 2016.

Mrs S considers she should be reimbursed in full for these payments.

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 uphold this complaint in part. I'll explain why.

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 have been good industry practice at the time.

It is the case that Mrs S authorised the transfers in dispute and that's accepted by all parties. And under the Payment Service Regulations 2009 (which are the relevant regulations in place here) that means Mrs S is responsible for them. That remains the case even though Mrs S was the unfortunate victim of a scam.

However, taking into account the law, regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Lloyds 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 payment service providers 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.

Taking the above into consideration, in this case, I need to decide whether Lloyds acted fairly and reasonably in its dealings with Mrs S when she made the transfers, or whether it should have done more than it did.

Did Lloyds act fairly and reasonably in this case?

As I've explained, I consider that as a matter of good practice Lloyds should have been on the lookout for unusual and out of character transactions.

The payments Mrs S made (that I have the power to consider within this complaint) are as follows:

| Date | Transaction | Amount |
|-------------|--------------------|---------------|
| 26/02/2015 | Faster Payment | £450 |
| 27/02/2015 | Faster Payment | £500 |
| 29/05/2015 | Faster Payment | £2,200 |
| 01/02/2016 | Faster Payment | £4,934 |
| 07/03/2016 | Faster Payment | £4,934 |
| 15/03/2016 | Faster Payment | £4,934 |

Having looked at Mrs S's account history – she had made a number of payments in and around the amounts listed above. However, our Investigator thought that as Mrs S didn't use online or mobile banking then it was likely that the payments were completed in branch or through telephone banking. So our Investigator thought the first three payments – weren't so remarkable whereby Lloyds ought to have been concerned that Mrs S was at risk of financial harm. But the later three payments were of a sizeable amount each time and Lloyds ought to have asked some questions about the purpose of the payments to ensure that Mrs S wasn't at risk of financial harm.

Lloyds agreed with the Investigators opinion that it could have intervened and made some additional checks with Mrs S about the last three payments. And having considered this aspect I agree also. I don't think the first three payments would have led Lloyds to have been concerned that Mrs S maybe at risk of financial harm. But when Mrs S was making a larger payment – which was more likely than not either made in branch or over the telephone – then Lloyds had the opportunity to discuss the payments and should have satisfied itself that Mrs S wasn't at risk of financial harm.

Lloyds accepts it could have done more to identify and prevent Mrs S from the risk of financial harm on the last three payments, and it agreed with our Investigator's opinion to refund 50% of those payments.

So, now, all that is left for me to decide is whether Mrs S should bear some responsibility for the loss also.

Having carefully considered this aspect – I think there was enough going on by the time Mrs S was making these payments that she should have had serious concerns about what she was being asked to do and the purpose for the payments. So I think it is fair that Mrs S shares some responsibility for the loss.

I say this because while Mrs S fell victim to a cruel scam – in which she thought she had won the lottery; I am mindful that by the time Mrs S was making payments from

February 2015 and onwards, she had previously made payments from her Lloyds account and from her accounts with other providers between 2009-2015 in order to obtain what she thought was her winnings. And Mrs S had made payments for various fees and taxes and her winnings never materialised over the duration of those years. Mrs S should reasonably have questioned the plausibility of things when making the payments in light of the payments she had made over a number of years previously.

So I think it is reasonable to conclude that by the time Mrs S made these payments (from February 2015 onwards) she should have had serious concerns that all wasn't as it seemed, and that it was likely that she was falling victim to a scam and that she hadn't in fact won the lottery. And given what had happened in previous years Mrs S should have been wary about making any further payments and questioned what she was being asked to do. I think it is reasonable to say that Mrs S should have known that something wasn't right and could have mitigated her losses here. I therefore consider it fair that she shares equal responsibility for the losses incurred.

I've also considered whether Lloyds took reasonable steps to recover Mrs S's funds once it was made aware she was the victim of a scam. Unfortunately, by the time matters were raised, a considerable amount of time had passed. Fraudsters typically move or withdraw the funds on as quickly as they can in case the scam is reported, and an account is blocked / frozen. So I don't think there was any reasonable prospect of Lloyds being able to recover the funds Mrs S had sent years previously. So I can't fairly say Lloyds could have done more here given the time that had passed since the payments had been made.

I note Lloyds awarded Mrs S £100 for the level of service it provided when it incorrectly assumed Mrs S's complaint was a duplicate complaint. I think this is a fair amount in the circumstances as the error was easily avoidable and caused unnecessary confusion and a delay. And I'm glad that Lloyds recognised this also and proactively offered an amount to reflect that the error shouldn't have occurred.

Putting things right

For the reasons given above, I uphold, in part, Mrs S's complaint against Lloyds Bank PLC.

I now direct Lloyds Bank PLC to:

- Refund £7,401 (which is 50% of the three payments Mrs S made from 1 February 2016 until 15 March 2016).
- Pay additional interest on that amount at 8% simple interest. This should be calculated from the date Mrs S made each transfer (the date of the loss) until the date of settlement. †

I consider 8% simple interest to be a pragmatic and fair amount to award as additional compensation. I say this because Mrs S can't recall the source of the funds due to the time that has passed and I'm mindful that, ultimately, she has been deprived of the use of those funds. And I note Lloyds didn't object to this when it agreed with our Investigator's opinion on how this matter should be resolved.

- Pay £100 compensation for the level of service it provided to Mrs S (if this hasn't been paid already)

† HM Revenue & Customs requires Lloyds Bank PLC to take off tax from this interest. Lloyds Bank PLC must give Mrs S a certificate showing how much tax it's taken off if she asks for one.

My final decision

For the reasons given above, my final decision is that I uphold this complaint in part.

I direct Lloyds Bank PLC to pay compensation, as set out above, within 28 days of receiving notification of Mrs S's acceptance of my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 25 May 2023.

Matthew Horner
Ombudsman