The complaint

Mr C has complained about the actions of Lloyds Bank Plc after he fell victim of an authorised push payment (APP) scam.

What happened

Mr C wished to purchase a new vehicle. He found the car on a reputable site, which he had used before. The listing showed several images, inside and outside of the vehicle which were all consistent and displayed the vehicle well. Mr C also says that the starting price was also in the range he was expecting to pay for a car that age. However, he completed further checks which showed the owners of the vehicle, and that name matched the name of the seller. He says the scammer advised he would have five days to test drive the car before any payment would be accepted.

On 26 March 2019, Mr C set up a new payee as instructed and sent £6,500 via faster payment to what he thought was a holding account owned by the site advertising the car. He says he never received any warning from Lloyds regarding the transfer or regarding setting up a new payee. Mr C says he received convincing emails, which he thought were from the site. However, Mr C became concerned, and he contacted Lloyds. But he says Lloyds was dismissive, and he was told to attempt to pick the car up to see if it was a scam.

So, Mr C travelled to the address he was provided by the scammer to pick the car up and as expected there wasn't anyone who lived at the address with that name. Mr C raised a complaint with Lloyds who attempted to recover the funds but was unsuccessful.

Mr C says he thinks the transfer ought to have triggered Lloyds to contact him as it was amount of money and inconsistent to his usual spending. And there was a new payee set up on the account. He says he wasn't provided with a cover story, so if Lloyds had intervened and probed further, it is likely Lloyds would have established it was a scam and he wouldn't have proceeded to make the payment. As such Mr C wants Lloyds to refund him £6,500 and pay 8% compensatory interest.

Lloyds looked into the complaint and issued a final response letter to Mr C. It said, while the payment was higher than normal, it wasn't considered unusual as it was a one-off purchase and funds had been moved into his account the same day to cover the payment with the reference 'new car'. And therefore, there was no reason for it to intervene. Lloyds accepted that Mr C set up a new payee, but due to the passage of time it is unable to confirm if warnings were provided. Overall, Lloyds didn't think it had acted unfairly.
Mr C remained unhappy and referred the complaint to our service. Our investigator looked into the complaint but didn't recommend it be upheld. Therefore, Mr C asked for the complaint to be passed to an ombudsman to be considered.

I issued my provisional findings on 17 August 2023. This is what I said:

"It's not in dispute that Mr C authorised the payment in question. He sent £6,500 via faster payment to a new payee which he set up. While I understand that Mr C didn't intend for his

money to go to the potential scammer, under the Payment Service Regulations 2017 Mr C is presumed liable for the loss in the first instance as the payments were authorised by him. This remains the position unless there is sufficient evidence that Lloyds should have fairly and reasonably done more to protect him.

To put it another way, Lloyds has a responsibility to monitor accounts and payments and one of the reasons for this it to prevent fraud and scams. Pursuant to industry expectations, Lloyds need to have systems in place to look out for unusual transactions or other signs that might indicate its consumers are at risk of fraud (amongst other things). Accordingly, I've considered whether Lloyds ought to have considered this payment as being so unusual or uncharacteristic that it should have given the bank sufficient grounds to suspecting fraud.

So, with all this in mind, I have considered the position carefully. I've reviewed Mr C's account statements leading up to the payment. And overall and in the context of Mr C's normal spending and account usage, I'm satisfied the payment of £6,500 on 26 March 2019 should have appeared unusual or suspicious to Lloyds. Therefore, I think it is reasonable to conclude Lloyds ought to have suspected Mr C was at risk of financial harm.

I say this because, the only other comparable payments showing on Mr C's statements in the months leading up to the transaction in question were £4,698.14 and £8,505.45 both made to the same government body via debit card (the UK tax office). Therefore, these payments were made via debit card opposed to faster payment and were made to an official government body opposed to an unknown individual. As such, I am satisfied that the payment in question marked a significant deviation from Mr C's usual spending on the account – both on account of the payment method and recognised payee.

I have to bear in mind that a card payment (which can be otherwise referred to as a pull' payment) affords the bank a more informed position as to the nature of business of the beneficiary, alongside other information. The point being, I accept there were comparable transactions in Mr C's recent account history, but it's my understanding that Lloyds' systems had the ability to detect these were both going to the UK tax office – which is of course a well known government office. Whereas, when Mr C instructed this faster payment, often known as a 'push' payment, the bank did not receive such intel about the transaction. Hence, why I find it markedly different to the prior spending Mr C tended to make.

I have also gone on to consider the fact Mr C set up a new payee and while I accept that setting up a new payee may not necessarily be enough for Lloyds to automatically be suspicious that Mr C was at financial harm This combined with Mr C's unusual and uncharacteristic spending on the account and that Mr C had deposited £6,500 into the account referenced 'new car' (bearing in mind this is a common story for a scam), I am satisfied this ought to triggered Lloyds to suspect a fraud or scam, and therefore justifies an intervention (such as phoning him in order to ask discreet questions about the nature and purpose of the payments).

So, upon establishing that Lloyds ought to have intervened, I have gone on to consider if that intervention would have prevented Mr C suffering a loss. And, on balance, I am satisfied it would have. If Lloyds had contacted Mr C and questioned him about the payment, it's highly likely it would have discovered this was a scam. I say this because Mr C was not given a cover story. So, upon asking Mr C further questions it would have discovered that he had been told his money was being held in a 'holding account' owned by the site. But he was being asked to transfer the money to an account held in an individual's name, which Lloyds could have quickly established and would have immediately raised concerns.

Secondly, it's likely it would have also established that Mr C hadn't seen the car in person. And, accompanied by the fact the money was being transferred to an individual's account *while Mr C was told this was a holding account, I think Lloyds would have recognised this had the hallmarks of a common and well known a scam.*

I have also considered Mr C's testimony, that shortly after transferring the money, his instinct told him something wasn't right and contacted Lloyds. Therefore, I think its plausible, that if Lloyds had intervened and highlighted its concerns to Mr C he would have listened to Lloyds and the loss he suffered would have been prevented.

So, but for Lloyds' failure to act on clear triggers of potential fraud or financial harm, Mr C would probably have not lost his money. I therefore intend asking it to refund the payment he lost as part of the scam.

Lloyds Bank Plc needs to refund Mr C £6,500 and pay interest at a rate of 8% simple interest from the date of the payment to the date of settlement (less any tax lawfully deductible)."

Both parties had an opportunity to respond to my provisional findings. Mr C's represented accepted my findings but Lloyds provided further comments for my consideration. Which I will answer below.

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 summary, Lloyds said there were previous higher payments out of Mr C's account, and they didn't have confirmation of payee for those payments at that time. It also said a one-off higher payment isn't an indication of a scam and it wouldn't be practical for the bank to take this approach. It also drew my attention to the fact Mr C had transferred money into his account with the reference 'new car' and the payment went out for the same amount; and said this isn't a clear sign of a scam.

I have taken Lloyds further comments into account. But having done so my decision remains the same. While I accept there were other comparable payments showing on Mr C's account, the comparable payments were not to a new payee and made via debit card. And while Lloyds have disputed the fact they would have been aware who the payment was being made to (the UK tax office) the payments were made via debit card oppose to faster payment. So I am still of the opinion that the payment in question was unusual spending on Mr C's account.

As I explained in my provisional findings, I have also considered that Mr C set up a new payee. And while this wouldn't necessarily be enough for Lloyds to be automatically suspicious, that combined with unusual and uncharacteristic account activity (amount and method) I am satisfied it justified an intervention from Lloyds such as phoning him to ask questions about the nature and purpose of the payments. And if this had occurred, I am satisfied its likely the scam would have been revealed, for the reasons I have explained above.

Lloyds also said that as Mr C had concerns at the time of making the payment, it shows he ignored his own misgivings and continued with the payment in fear of missing out and at the very least he ought to have seen the car in question. While I understand the point Lloyds made, I am not persuaded by its argument for the reasons I provided in my provisional findings. Secondly, I haven't seen in Mr C's testimony that at the time of making the payment he had concerns. But he did have concerns later that day when he contacted Lloyds. And as I explained in my provisional findings, if Lloyds had intervened and highlighted its concerns to Mr C I am persuaded he would have listened to Lloyds and the loss he suffered would have been prevented.

Therefore, my decision remains the same as my provisional findings

Putting things right

Lloyds Bank Plc needs to refund Mr C £6,500 and pay interest at a rate of 8% simple interest from the date of the payment to the date of settlement (less any tax lawfully deductible).

My final decision

My final decision is that I uphold this complaint and direct Lloyds Bank Plc to refund Mr C as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 18 October 2023.

Jade Rowe
Ombudsman