

The complaint

Mr and Mrs G complain that Yorkshire Building Society will not refund payments they made as a result of a scam.

What happened

Both parties are aware of the circumstances of the complaint, so I won't repeat them all in great detail here. But in summary, Mr and Mrs G were contacted by a fraudster, who had intercepted an exchange of emails they'd had with a solicitor regarding a property purchase. The fraudster impersonated the solicitor and tricked Mr and Mrs G into making two payments – for £500 and £35,000 – that they thought were for the deposit on the property, but that were actually made to an account controlled by the fraudster;

Mr and Mrs G realised they had been scammed when the genuine solicitor confirmed it hadn't received the money.

Mr and Mrs G reported the matter to Yorkshire but it said it would not be refunding the payments to them as it didn't feel it was liable for Mr and Mrs G's loss. Yorkshire did contact the beneficiary bank (the bank to which the payments were made) but was only able to recover £25.50.

Unhappy with Yorkshire's response, Mr and Mrs G brought the complaint to our service. One of our Investigators looked into things and thought the complaint should be upheld. In summary, while they didn't think Yorkshire had done anything wrong in allowing the first payment to be progressed, they thought at the point Mr and Mrs G made the second payment, it was out of character for the account. In view of this the Investigator thought Yorkshire ought to have intervened at this stage. And that, that had Yorkshire intervened and spoken to Mr and Mrs G before allowing this second payment to be made, the scam would likely have come to light and Mr and Mrs G wouldn't have lost the money from the second payment. Our Investigator thought Yorkshire should refund the amount lost from the second payment, along with interest.

Yorkshire didn't accept our Investigator's view. It maintained that the payment was not out of character given the overall balance of the account, and felt that the Investigator had failed to consider Mr and Mrs G's responsibility to carry out due diligence regarding the payments they made.

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 agree with the conclusions reached by the Investigator, and for the same reasons.

It isn't in dispute that Mr and Mrs G authorised the payments made to the scammer from their Yorkshire account. As such the starting position is that Yorkshire ought to follow the instructions given by its customer in order for legitimate payments to be made as instructed. So Mr and Mrs G are not automatically entitled to a refund.

However, Yorkshire ought to be aware of this service's approach to cases involving these types of scams. Specifically, regarding the expectation that Yorkshire should be monitoring accounts to counter various risks, have systems in place to identify unusual transactions or other indicators that their customer is at risk of fraud; and in some situations, make additional checks before processing payments or to decline them altogether to protect customers from possible financial harm from fraud or scams.

Having looked at the operation of this account, in the months leading up to the scam, I'm satisfied an intervention wasn't necessary for the first payment, as it was for £500, a relatively low amount. But I agree with our Investigator's opinion that at the point Mr and Mrs G were making the second payment – which was for £35,000 – there was enough going on to have alerted Yorkshire that the payment being made was unusual and uncharacteristic. I say that because the second payment was significantly higher than any other payments made in at least the previous 18 months. It was also to a relatively new payee, and to a third party, whereas all the previous payments out of the account in the period we have statements for were to accounts in Mr G's name. I don't think that the overall high balance of the account means that this payment wasn't unusual in the context of Mr and Mrs G's usual account activity.

I'm persuaded that if Yorkshire had intervened and asked Mr and Mrs G the purpose of the payment, they would have confirmed that it was relating to a deposit on the purchase of a property. As professionals in these matters, Yorkshire ought reasonably to have been aware of the common tactics used in scams relating to property purchases, so I reasonably would have expected it to have asked Mr and Mrs G how they had received the payment details and followed this by asking if Mr and Mrs G had confirmed the payment details with the solicitor over the phone.

Yorkshire could also have explained the prevalence of email intercept scams to Mr and Mrs G and how they worked (including details such as genuine emails being intercepted and new bank details being provided). And could have asked Mr and Mrs G to contact the solicitor in person or on a trusted number to confirm that the payment details were correct. I'm satisfied, if they'd been made aware of the hallmarks of this type of scam, Mr and Mrs G would have likely taken this step to protect themselves.

So, overall, I'm persuaded a meaningful warning and suggestion such as this from Yorkshire would have likely exposed the scam and prevented Mr and Mrs G's loss, from the second payment.

I've also considered whether Mr and Mrs G should be held partly responsible for their loss, bearing in mind all Yorkshire has said regarding Mr and Mrs G's responsibility to carry out due diligence on payments they're asked to make. But I don't consider Mr and Mrs G should share responsibility for the loss here.

The emails from the fraudster were almost identical to genuine emails received and Mr and Mrs G were expecting to make a payment, so it wouldn't have come as a complete surprise. The correspondence from the fraudster also included a letter which appeared to be legitimately from the senior management of the solicitors firm, explaining why Mr and Mrs G were being given new account details to make payments to. This was a clever and sophisticated scam, and I'm not persuaded Mr and Mrs G can be said to have failed in their responsibilities by believing the payment details came from the genuine solicitor.

I've also considered whether Yorkshire did all it could to try and recover the money Mr and Mrs G lost. From the evidence I've seen Yorkshire contacted the recipient bank as soon as it was advised of the scam, so I don't think Yorkshire has missed an opportunity to recover more funds than it did.

Putting things right

For the reasons explained above Yorkshire Building Society should now;

- refund the second payment to Mr and Mrs G, minus any funds recovered from the recipient bank.
- pay 8% interest on this amount, from the date of the transaction to the date of settlement.

My final decision

I uphold this complaint. Yorkshire Building Society should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mrs G to accept or reject my decision before 8 February 2024.

Sophie Mitchell
Ombudsman