

The complaint

Mr K complains that Lloyds Bank PLC won't refund the money he lost when he was the victim of a scam.

What happened

In January 2022, Mr K was looking to buy a vehicle and found one he was interested in advertised on social media and an online automotive marketplace. He contacted the seller, agreed a price and arranged to come and view the vehicle. The seller then had to re-arrange due to a bank holiday and, as Mr K couldn't view the vehicle until a week later, they agreed he would pay a holding deposit to secure it until then. Mr K then also paid the purchase price in two payments before the rescheduled viewing, in order to be able to take the vehicle away quickly after the viewing. I've set out the payments Mr K made below:

Date	Details	Amount
1 January 2022	1 st account details	£1,500
7 January 2022	2 nd account details	£7,197.75
8 January 2022	2 nd account details	£7,000

Unfortunately, when Mr K arrived at the address he'd been given for the seller, the seller's business and the vehicle weren't there. Mr K then realised he'd been the victim of a scam and reported it to Lloyds.

Lloyds investigated but said it felt Mr K could have done more to protect himself, as he hadn't seen the vehicle in person before making the payments, and had ignored warnings it had shown him. So it didn't agree to refund the money he had lost. Mr K wasn't satisfied with Lloyds' response, so referred a complaint to our service.

I sent Mr K and Lloyds Bank PLC a provisional decision on 3 November 2023, setting out why I was intending to uphold the complaint in part. An extract from my provisional decision is set out below:

"In broad terms, the starting position in law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment."

Lloyds is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one Mr K fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies."

Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made
- The customer made the payment without a reasonable basis for believing that:
 - o the payee was the person the customer was expecting to pay;
 - o the payment was for genuine goods or services; and/or
 - o the person or business with whom they transacted was legitimate

There are further exceptions within the CRM code, but these don't apply here.

Did Mr K have a reasonable basis for belief when making the payments?

I appreciate that this was a sophisticated scam and that Mr K had done a number of checks to try to satisfy himself that the sale was genuine. But I also think there were a number of things about what was happening and what he was told that should have caused him significant concern.

From the independent valuations our service has carried out on the vehicle Mr K thought he was buying, it appears that the seller was listing it for sale at significantly below market value. Even before the discount the seller offered Mr K, the vehicle appears to have been listed at just over 50% of the usual market value for a vehicle of the same age, make and model. And as Mr K had looked at several websites and says he had seen a number of other similar models for sale, I think it's reasonable to have expected him to have noticed this and to have been concerned that the price the vehicle was being listed at was too good to be true.

The seller also asked Mr K to pay firstly half the outstanding balance, and then the full remaining balance, before he had seen the vehicle in person. But this isn't how I would expect a legitimate vehicle trader to operate, particularly after Mr K had already paid a holding deposit to secure the vehicle. And Mr K was also asked to pay into two different personal accounts, rather than a business account. But this also isn't how I would expect a limited company, as Mr K thought the seller was, to operate – particularly one that was supposedly listing a significant number of other vehicles for sale. And so I think these things should also have caused Mr K some concern.

The invoices Mr K was sent by the seller also contain a number of spelling and formatting errors, which I wouldn't necessarily expect of a professional company and which I think should also have caused him some concern.

While Mr K had done some checks into the sale, I think the issues I've mentioned above should have caused him significant concern. And I don't think the information he saw from the checks he did should have been enough to overcome those concerns.

So I think Lloyds has established that Mr K made the payments without a reasonable basis for belief that they were genuine. And so it has established that one of the exceptions to reimbursement under the CRM code applies here, and it does not have to refund Mr K all of the money he lost.

Did Lloyds meet its obligations under the CRM code?

Even though I don't think Mr K had a reasonable basis for belief when making the payments, he may still be entitled to a refund of some of the money he lost if Lloyds didn't meet its obligations under the CRM code – one of which is to provide effective warnings when it identifies a scam risk.

The first payment Mr K made wasn't for what I'd consider to be a particularly large amount. There were a number of payments out of his account in the previous months for similar or

larger amounts. And the payment didn't use up all the available balance in the account or leave the balance of the account at a particularly unusual level. So I don't think Lloyds ought to have identified a scam risk as a result of this first payment.

But the second payment Mr K made was for a much larger amount, and an amount significantly larger than any other payment made out of the account in the previous months. So I think Lloyds should have identified a scam risk as a result of this second payment, and shown Mr K an effective warning before allowing it to go through.

The CRM code says that an effective warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. And it says that, as a minimum, an effective warning should be understandable, clear, impactful, timely and specific.

Lloyds has sent us a copy of the warning it says Mr K was shown before making the second payment, which said:

"Pay by card

- It's a safer way to pay*
- If you can't pay by card, it's often a scam*
- Find out how to stay safe from scams on our Fraud Hub"*

But this warning doesn't give much detail about what this kind of scam could look or feel like, or about the consequences of falling victim to a scam. And I don't think it does enough to explain what steps someone could take to try to avoid falling victim to a scam. So I don't think this warning was specific or impactful enough to be effective in Mr K's circumstances. And so I don't think Lloyds has met its obligations under the CRM code.

Overall then, I think Lloyds has established that Mr K made the payments without a reasonable basis for belief that they were genuine. But I also think Lloyds has failed to meet its obligations, from the second payment onwards. So I think Mr K is entitled to a refund of 50% of the second and third payments under the CRM code.

As I think Mr K is entitled to this refund under the CRM code, I think Lloyds should have agreed to it when it first assessed his claim. And so I think Lloyds should also pay Mr K 8% simple interest on the refund, from the date it initially declined his claim until the date of settlement.

Did Lloyds do enough to try to recover the money Mr K lost?

We expect banks to take reasonable steps to try to recover the money their customers have lost, once they are made aware of a scam.

Lloyds' records show it contacted the banks the payments were sent to within a reasonable amount of time after it was told about the scam. So it has done what I would expect it to have done to try to recover the money Mr K lost.

Unfortunately, only £4.06 was recovered and refunded to Mr K. But as Lloyds has done what I would expect, I don't think it would be fair to ask it to do anything further here."

I said I'd consider anything further Mr K and Lloyds sent in following the provisional decision, provided it was received by the deadline given.

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.

Lloyds responded to the provisional decision saying it accepted the outcome, and didn't submit any further evidence or arguments.

Mr K replied making a number of further points, including that he didn't think the warning Lloyds showed him was clear enough and he thought the amount of money he transferred should have triggered a phone call. But I explained in my provisional decision that I already didn't think Lloyds had done what we'd expect it to – I didn't think the warning Lloyds showed him was effective or that it met its obligations under the CRM code. The reason I only recommended Lloyds refund 50% of the money Mr K lost was that I also didn't think he had a reasonable basis for belief when making the payments.

Mr K also argued that the checks he did into the seller and their company on the governments register of limited companies and social media showed their details matched what he'd been told. He said he had a number of conversations with the seller, who was always helpful and able to answer any questions he had. And that he did checks into the vehicle, including checking the registration, mileage and outstanding finance.

And I appreciate that he did a number of checks to try to satisfy himself that this was a genuine sale. But, as I explained in the provisional decision, I also think the seller asking him to pay the full outstanding balance before he had seen the vehicle in person, and asking him to send the money to two different personal accounts rather than a business account, should have caused him concern. I also think the spelling and formatting errors in the invoices he was sent should have caused him some concern.

And I explained that the independent valuations our service had carried out on the vehicle showed it was listed at just over 50% of the usual market value for that age, make and model. And while Mr K has said he saw, and ultimately bought, another similar vehicle for a similar price, he hasn't been able to send us any evidence of this. So I still think the valuations our service carried out are likely accurate and I still think the price the vehicle was listed at should have caused him significant concern too.

I appreciate that my decision will come as a disappointment to Mr K, but I still think Lloyds has established that he made the payments without a reasonable basis for belief that they were genuine.

As neither Mr K nor Lloyds provided any evidence or arguments in relation to any of the other conclusions set out in the provisional decision, I still think these conclusions are correct, and for the same reasons.

I still think Mr K is entitled to a refund of 50% of the second and third payments he made under the CRM code.

My final decision

For the reasons set out above, I uphold this complaint in part and require Lloyds Bank PLC to:

- Refund Mr K 50% of the second and third payments he made, less the £4.06 already refunded – for a total of £7,096.85
- Pay 8% simple interest on this refund from the date it initially responded to his claim until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 5 January 2024.

Alan Millward
Ombudsman