

Complaint

Miss W is unhappy that Lloyds Bank PLC didn't reimburse her after she fell victim to a scam.

Background

The background to this case is well known to the parties so I don't intend to set it out in full here. But in summary, Miss W received a phone call from someone who claimed to be an employee of Lloyds. They told her that her account was at risk and that it was essential she transfer her funds into a safe account as soon as possible. Unfortunately, that individual wasn't a genuine employee of the bank but a fraudster.

On 27 June 2023, she made the following payments in connection with the scam:

1	£5
2	£2,600
3	£2,400
4	£1,600
5	£1,400

Once she realised that she'd fallen victim to a scam, Miss W notified Lloyds. It didn't agree to reimburse her in full. It said that she hadn't done enough to check that the caller was genuine. However, it said it could've done more in connection with payments 3, 4 and 5. It agreed to refund 50% of those payments.

Miss W was unhappy with that response and so she referred her complaint to this service. It was looked at by an Investigator who didn't uphold it. He was persuaded that Lloyds had made a reasonable offer in all the circumstances. Miss W disagreed with the Investigator's opinion and so the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In broad terms, the starting position at 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, that isn't the end of the story. Lloyds is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code ("the CRM code"). This code requires firms to reimburse customers who have been the victim of authorised push payment ("APP") scams, like the one Miss W fell victim to, in all but a limited number of circumstances.

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; or
- 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: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.

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

Lloyds has already conceded that it didn't provide a warning in connection with these payments and, on that basis, it has agreed to refund 50% of payments 3, 4 and 5. However, it continues to argue that the second exception set out above is applicable to this case – i.e., that Miss W made these payments without a reasonable basis for believing they were in response to a legitimate request. I've considered its arguments carefully and I agree with that conclusion.

Based on her recollections of the call, the scammer doesn't appear to have needed to do much to persuade her that it was genuinely from the bank. I understand they knew her name and address, but it doesn't sound as if they knew any information that a person might only expect their bank to know. I also understand that the scammer didn't attempt to 'spoof' a genuine Lloyds number – something which is a commonly occurring feature of such scams. Miss W made the payments to an account in the name of a private individual and made five separate payments, rather than one large payment. I think she ought to have found this proposal odd and it should've given her pause for thought. Overall, I'm not persuaded that she made these payments with a reasonable basis for believing that they were in response to a genuine request from the bank.

I've also considered whether Lloyds did everything it should've done here. Good industry practice required that it be on the lookout for account activity or payments that were unusual or out of character to the extent that they might have indicated an increased risk of fraud. On spotting such a payment, I'd expect it to intervene in a way that's proportionate to the risk. I don't think it would've had any reasonable basis for intervening in connection with payments 1 and 2. But by payment 3, I think it should've been concerned that Miss W was at risk of financial harm due to fraud. It should've intervened at that point, but it didn't do so. If it had done, I think it's more likely than not that her subsequent losses would've prevented.

However, I've also considered whether it would be fair and reasonable for Miss W to bear some responsibility for her losses here. In doing so, I've taken into account what the law says about contributory negligence but also kept in mind that I must decide this complaint based on what I consider to be fair and reasonable in all the circumstances. Having done so, I'm satisfied that it would be fair and reasonable for her to do so and for Lloyds to make a deduction from the compensation it pays her of 50%.

I don't say any of this to downplay or diminish the fact that Miss W has fallen victim to a cruel and cynical scam. I have a great deal of sympathy for her and the position she's found herself in. However, my role is limited to looking at the actions and inactions of the bank and I'm satisfied it didn't do anything wrong in paying her a partial refund.

Final decision

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 10 May 2024.

James Kimmitt
Ombudsman