

The complaint

Mr B complains about Lloyds Bank PLC.

He says that Lloyds didn't do enough when it allowed an account to be opened by a fraudster or when it was notified of payments he made to its customer as part of a scam.

He would like Lloyds to refund him part of the money he has lost.

What happened

Mr B's brother asked him to transfer £600 to an account for him as he was unable to do so at the time. Mr B didn't question what the money was for at the time as he trusted his brother implicitly – but it was the balance on a puppy he was buying.

Afterwards, it transpired that when Mr B's brother went to collect the puppy, the owners of the property had no idea about what had happened, and it was a scam.

Mr B's bank refunded him 50% of the payment and contacted Lloyds as the receiving bank to try and recover the rest of the money on behalf of Mr B, however only £10 was able to be recovered.

Mr B made a complaint to Lloyds. He said that it had allowed a scammer to open a fake account.

Lloyds didn't uphold his complaint, but it did pay him £50 compensation due to him having to send a letter to it twice.

Unhappy, Mr B brought his complaint to this Service. Our Investigator looked into things but didn't think that the complaint should be upheld.

Mr B didn't accept this, he says that as he has been the victim of a scam, Lloyds should refund him.

So, the complaint has been passed to me to make a final 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'm not upholding this complaint for broadly the same reasons as our Investigator.

I know that this will be very disappointing for Mr B, however, being the victim of a scam doesn't automatically entitle Mr B to a refund from the bank that received his money.

Lloyds has signed up to the Contingent Reimbursement Model (CRM) Code. The CRM Code

sets out what is expected of the 'Sending Firm' and 'Receiving Firm' (in this case Lloyds) when payments are made or received.

In summary, the obligations for the receiving firm state that firms should:

- Take reasonable steps to prevent accounts from being used to launder the proceeds of Authorised Push Payment (APP) scams.
- Have procedures to prevent, detect and respond to the receipt of funds from APP scams; and
- Where the receiving Firm identifies funds where there are concerns that they may be the proceeds of an APP scam, it should freeze the funds and respond in a timely manner.

So, with this in mind, I have carefully considered Lloyds's obligations here.

Lloyds has shared information with this Service as part of its obligations under the CRM code which has allowed me to investigate Mr B's complaint – however I am limited to what I can share with Mr B due to Data Protection laws, as this information is confidential. However, I would like to reassure him that I have carefully reviewed all information provided before issuing my decision.

Complaints about receiving payment service providers (PSP's) came into our jurisdiction from 31 January 2019. I've seen evidence from Lloyds to show that the recipient account was opened before 31 January 2019 – and had been for some time. This means I'm not able comment on whether there were any failings by Lloyds when the account was opened.

I've gone on to consider whether the activity on the receiving bank account ought reasonably to have caused Lloyds any concern. I don't think there was anything relating to the activity on the account that should have prompted Lloyds to have any concerns prior to being notified that Mr B was reporting to it that he had been the victim of a scam.

Finally, I've considered Lloyds's actions on receipt of notification of the scam from Mr B's bank. From the information I have seen the money was withdrawn on receipt - and by the time Lloyds was made aware of the situation only £10 was recoverable. So, I'm satisfied that once it was notified of the scam Lloyds took appropriate action and returned the remaining funds promptly, but there was nothing it could have done to prevent Mr B's loss, and its actions weren't the cause of Mr B's remaining loss.

I know that Mr B has listed a number of reasons that he says mean he is entitled to a refund from Lloyds – I am afraid he is mistaken. The code that applies here are those quoted above.

Finally, I will address Mr B's point about Lloyds withholding data from him that would allow him to pursue the matter via the police or civil action.

The starting position here is that Lloyds isn't permitted to share the personal data of the holders of the receiving accounts unless those account holders have given their consent. However, Regulation 90 of the Payment Services Regulations 2017 provides an exception.

Regs 90(2) and (4) of the PSRs 2017 say that:

(2) Where the unique identifier provided by the payment service user is incorrect, the payment service provider is not liable under regulation 91 or 92 for non-execution or

defective execution of the payment transaction, but the payment service provider

(a) must make reasonable efforts to recover the funds involved in the payment transaction; and

(b) may, if agreed in the framework contract, charge the payment service user for any such recovery.

(4) If the payer's payment service provider is unable to recover the funds it must, on receipt of a written request, provide to the payer all available relevant information in order for the payer to claim repayment of the funds.

However, this exception is contingent upon an “incorrect unique identifier” being supplied. In this instance, Lloyds correctly executed the payment instruction Mr B gave. It routed his payment based on the account number and sort code he provided. The payment was sent to the destination Mr B had intended, albeit he was making the payment under false pretences.

When giving the payment instructions, Mr B specified a name for the holder of the receiving account. The regulatory requirements and best practice at the time for routing payments to the correct destination was the payee's sort code and account number (or IBAN for international payments) – not the payee's name. If it were the case that the payee's name was a unique identifier for the purpose of the regulations, there would have been no need for the later introduction of the Confirmation of Payee process.

Mr B says that it is unfair Lloyds won't share this information with him to pursue the individual that has his money – and that it won't act against the individual itself. He says that if Lloyds isn't prepared to do this, it should refund him itself. It isn't the case of Lloyds choosing not to supply him with the information he has asked for – it is bound by privacy laws and there isn't a lawful basis upon which it can share this directly with him. And this isn't a basis upon which it would be fair and reasonable to ask Lloyds to refund any outstanding loss. I could only do that if it can reasonably be concluded that its act or omission was the cause of the outstanding loss and/or if he was entitled to a refund under the CRM code.

In practice, I don't think Regulation 90 was intended to cover fraud and scams at all, but rather payments that were made by mistake. This service has nonetheless found that it was drafted broadly enough to cover a small number of scam cases. This view is also echoed by the regulator, the Financial Conduct Authority, in its published guidance for firms on the interpretation of this section of the regulations. “Payment Services and Electronic Money – Our Approach”. But Regulation 90 does not apply in Mr B's circumstances as it can't be said that incorrect unique identifiers were entered.

I'm naturally sympathetic about the way that he fell victim to a cruel and manipulative scam. But I'm afraid that sympathy doesn't allow me to misdirect myself in law. I'm satisfied that Regulation 90 doesn't require Lloyds to share the information with him that he's requested, and I can't compel Lloyds to undertake action against the person who scammed him out of his money. If Mr B choses, he can report the matter to the police, and I am sure that Lloyds would co-operate with their investigation. Alternatively, Mr B could go to court and obtain a court order for disclosure, and on production of this Lloyds would have a lawful basis to share this information with him.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 24 May 2024.

Claire Pugh
Ombudsman