

The complaint

A company which I will refer to as 'P' complains that Lloyds Bank Plc failed to prevent the company falling victim to a scam.

What happened

In March 2021, P advised its sister concern who provided P with accounting services (I will refer to them as the accountant), to make a payment to one of their suppliers, from P's account with Lloyds. The supplier was based abroad, and the payment was to be made to a bank where they were based.

The accountant told us later, that on receiving the payment instruction, they called the supplier and confirmed the IBAN, invoice number, amount and the invoice date. However, there was a delay in making the payment, as insufficient funds were available in P's account.

Soon after some new funds were received into the account, the accountant got another email purportedly from P (but actually from a scammer), enquiring about the receipt of the funds and asking the accountant to make the payment to the supplier. This email however included a 'revised invoice' with updated bank account details. The money was now to be paid to a bank in the UK.

It appears that upon receiving the email with the new payment details, the accountant called the director of P. On this call they confirmed the amount to be paid and the supplier's name, but the change of account details was not discussed. The accountant went ahead and made the payment as instructed in the revised invoice. The payment was for 50% of the invoice amount.

Few days later the accountant received another email from the scammer advising them to make the balance payment. There wasn't sufficient balance to pay the full amount. The scammer advised the accountant to pay the available amount, which they did.

The scam came to light two weeks later. P contacted Lloyds, who in turn contacted the bank to where the money was sent. Unfortunately, only a small amount could be recovered. P complained to Lloyds as above, and it essentially said that it hadn't done anything wrong. P also complained to the recipient's bank.

One of our investigators considered both the complaints and said that in their opinion they should be upheld. As regards the complaint about Lloyds, the investigator said that the disputed payments were unusually high compared to the normal account activity. So, when the payments were made, the bank ought to have intervened to confirm with P that it was they who were making the payments and confirm the payment details. Had they done so, the scam would have come to light. As such Lloyds missed an opportunity to prevent P's loss. The investigator did not think that there was any contributory negligence on the part of P. So, they concluded that P doesn't have to share the loss incurred. Separately the investigator also concluded that P's complaint against the recipient bank must be upheld. Therefore, they said that P's loss should be shared equally between Lloyds and the recipient bank.

Lloyds didn't accept the investigator's opinion. It said, in summary:

- The payments were duly authorised in accordance with the account terms and therefore the bank was obliged to act upon the instructions.
- There was nothing unusual about the transactions to have placed the bank on notice that its customer was at risk of fraud to involve intervention. P transferred funds into the account in question before making the payments, and this was in keeping with their normal payment practice in crediting the account to facilitate outward payments.
- Even if the bank had intervened and contacted P, given that they were not made aware of the changes to the supplier's bank details, the payments would have been confirmed as genuine.

The bank was also of the view that P (or their accountant) missed several opportunities to spot and prevent the scam. So, it said that P should take some responsibility for the loss. Separately, the recipient bank accepted the investigator's recommendation. However, P didn't accept the offer, awaiting the outcome of this case.

My provisional decision

I issued a provisional decision (which forms part of this decision), upholding the complaint. I said:

Did Lloyds miss an opportunity to prevent the loss to P?

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that its customer authorises it to make. However, there are circumstances where it might be appropriate for banks to take additional steps – as for example have systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud.

I have reviewed the account statements for about six months leading up to the payments to the scammer, to understand the general account activity.

The account is a non-sterling account. It isn't a very active account. The bank suggests that P normally transfers funds into the account to facilitate outward payments, and that was what happened here as well. As such, it says the activity surrounding the disputed payments wasn't unusual.

From what I can see from the account statements, there were seven incoming payments into the account during the six-month period prior to the disputed transactions. None of them appears to be a transfer by P into the account. They seem to come from the customers of P. Further, whilst I acknowledge that there were instances where the outgoing payments were made soon after receiving the credits, that was not always the case.

In relation to the outgoing payments, from what I can see, all of them were made either to one particular company (who I will refer to as 'H') or P's director or the accountants. P has confirmed that H is a company with whom they have business relationship. There was just one payment to a third party, but it was for a very small amount. In other words, it appears that the outgoing payments from the account were typically made to existing, some specific payees. However, the two disputed payments were made to a new payee.

I have also considered the size of the prior payments. The previous payments were in the region of €10,000 to €15,000 whereas the two disputed payments were around €80,000

each. The bank has referred us to previous six months period when it says that P made four other payments but the highest of those was also about €28,000. I am of the view that the disputed payments were much higher compared to the normal outgoings. I accept that some occasional higher payments could happen on an account. However, by the time the second payment was made, there were two large payments in quick succession to a new payee which was unusual to the normal account activity. I consider that ought to have prompted the bank to look at what was going on to ensure that their customer wasn't a victim of scam.

The bank suggests that even if it had intervened, it would have spoken to P (the director of P) who wouldn't have been aware of the change in the bank account details and therefore would have confirmed that the payment was genuine.

It is not clear to me as to why the bank would call the director instead of the payer who was the accountant. However, I consider it reasonable to assume that had they called the director to verify the payment, any such conversation would have brought to light that the payment was due to go to an account in the UK and not abroad as expected by the director.

On the other hand, had the bank contacted the accountant, they would have explained that they were making payments on the instructions of P and further questioning would have highlighted that the instructions came via email. That would have given the opportunity to the bank to highlight to the payer, the risks involved in receiving email instructions and ask them to contact P, which in turn would have led to the discovery of the scam. So, either way I consider that the scam would have come to light.

Further, I have not been seen evidence of any warning provided by the bank when the payments were made. (It is for the bank to provide me with evidence that it did all it reasonably could to help its customer from falling victim to scams).

Taking all of the above into account, I consider that it is fair that bank accepts some responsibility for the loss to its customer arising from the second payment.

Did P act reasonably in the circumstances?

I have then considered whether P should accept some responsibility for the loss.

The scammer's email address had one letter different to that of P's genuine email address. I don't think that was something the accountant could have easily spotted. The bank says that the fake invoice was missing the supplier's stamp. I am not persuaded that ought to have stood out sufficiently for the accountant to be suspicious about it. However, I agree that P had other opportunities to spot and prevent the scam, but they didn't.

The accountant told us that upon receiving the initial (genuine) payment instruction from P, they called the supplier and confirmed the IBAN, the invoice number, amount and invoice date. As noted earlier, P's supplier was based abroad and their account was also in the same place, as one would usually expect. And when the accountant spoke to the supplier, clearly there was no mention of any potential change to their bank account, as they confirmed the IBAN.

Two days later, the accountant received a follow up email from P asking them to make the payment. That time also there was no mention of any change to the bank account. A further two days later, the accountant received the revised invoice with a different bank detail and that too to an account in the UK.

The accountant told us that on receiving the revised invoice, they called the director of P and confirmed the invoice number and amount but did not check the bank details. It is not clear why they didn't call the supplier again as they did initially, especially given that only few days ago they spoke to them but they made no mention of change to account details and the account is now changed from their country to the UK. It is also unclear why, when they spoke to the director, they checked other details but made no mention of the account change, which was a crucial change. So, I think that there was a missed opportunity here.

Further, after making the first payment, the accountant sent the payment confirmation to P via email, which went to the scammer. However, the director of P then called the accountant and wanted to know whether the payment was made. The accountant told the director that the payment was made and that they had sent the confirmation email to P (which P didn't get). This too didn't raise any suspicion.

The director then asked the accountant to send the payment details to his personal email address which they did. Having sought the payment details it is reasonable to expect that the director had a look at it, and even a cursory glance would have shown that the payment was made to an account in the UK and not to where it was originally expected. I consider that this too was a missed opportunity.

Thereafter, when the scammer asked the accountant to send the remaining 50% of the invoice, the accountant said that there wasn't enough money. The scammer then asked the accountant to basically send whatever available balance and said that 'the outstanding will be applied on their next Invoice'. In my view this was somewhat unusual too.

Taking all of this together, I am of the view that there was some contributory negligence on the part of P. And all of this happened prior to the second payment. Therefore, I consider it fair that the loss arising from the second payment is shared equally between Lloyds and P.

The second payment was for €78,000. When the scam came to light, Lloyds contacted the recipient's bank and were told that £13.26 had been recovered by recipient's bank. However, Lloyds told us that it was to receive that back. Assuming that is still the case, the bank should reimburse P 50% of €78,000 (i.e., €39,000).

P has recently confirmed to us that they had only paid the first instalment of 50% (€79,170) to the supplier since. P has also confirmed that the supplier had in fact delivered the goods.

Thus, in effect it is the supplier who has been deprived of the money (of not receiving the balance 50%). Therefore, Lloyds do not have to pay any interest to P.

P is also unhappy with the service provided by Lloyds. The bank has acknowledged it and has offered £150 for the inconvenience caused. I consider it fair in the circumstances of the complaint.

What happened after my provisional decision

Lloyds responded to say that it doesn't have anything to add, other than to confirm that the £150 by way of compensation for the inconvenience caused, has already been paid to P.

P initially did not agree with the provisional decision. However, following their conversation with the investigator, they wrote to us confirming their acceptance of the 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 see no reason to depart from the conclusions I reached in my Provisional Decision. I remain of the view that the settlement set out in my Provisional Decision represents a fair and reasonable outcome to this complaint.

In summary, I consider that Lloyds could have done more to prevent the scam, especially when the second payment happened. I also consider that there was some contributory negligence on part of P. So, the loss to P due to the second payment should be shared between Lloyds and P. Lloyds however doesn't have to pay interest, for the reasons I have explained in the Provisional Decision.

As regards the first payment, I now understand that P has accepted the receiving bank's offer to reimburse it in full together with interest

My final decision

My final decision is that I uphold this complaint. In full and final settlement of it, Lloyds Bank Plc should pay €39,000 to P.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 3 April 2024.

Raj Varadarajan
Ombudsman