

The complaint

Mr G complains that Lloyds Bank PLC (Lloyds) won't refund the money he lost to a purchase scam.

What happened

Mr G was looking to purchase a car and found one advertised on a well-known online social media marketplace (that I'll call F). The car was being advertised for a price of £500. Mr G says he thought this price was reasonable, as when researching prices of the same make and model, he said results varied from £300 to £650.

Mr G contacted the seller via F's messenger facility, and he was sent photos of the car. He was told the car could be with him by midday the following day. Mr G says he checked the car on the DVLA website which showed no issues, except for the car not having a valid MOT or tax. The seller said they'd have this arranged by the next morning, subject to extra charges, and he'd get the V5 document on delivery.

He understood the seller was acting on behalf of a business as that's what it showed on F. And he told Lloyds he could see other sales posts on the seller's page on F. As the car was around one hour's drive away, Mr G asked to view it in person. But the seller said they had no availability. He agreed to pay a £300 deposit and the final £200 on delivery. At 16:07 on 8 September 2023, he transferred £300 to the account details provided by the seller. He questioned why the payee's name differed from the seller's, to which the seller said they used this account for transactional purposes.

When the car didn't arrive the following day, the seller told Mr G that they hadn't received the funds, so Mr G had to resend it or pay a further £100. Mr G then realised he had been scammed and reported it to Lloyds at 13:57 on 9 September 2023.

Lloyds says it contacted the firm Mr G sent his funds to, at the time he first reported the scam, and it didn't respond. That firm later responded in December 2023 and said that no funds remained to be recovered.

Lloyds declined to refund Mr G under the Contingent Reimbursement Model (CRM) Code, of which it's a signatory. The CRM Code sets out that Lloyds should refund victims of authorised push payment (APP) scams (like Mr G), in all but a limited number of circumstances. In this case, Lloyds declined to refund Mr G because he didn't do enough to protect himself. It noted the following:

- The seller was located one hour's drive away, so Mr G ought to have inspected the vehicle in person before paying.
- He should have seen proof of ownership such as a V5 document before paying a deposit.
- The price of the car was too good to be true.
- The account Mr G paid did not match the seller's name and the explanation the seller gave was just accepted.

- The car had no MOT or tax, which should have been a concern.
- Mr G thought he was paying a business account, but Lloyds informed him through a confirmation of payee (CoP) check that the account he paid was a personal account.

Lloyds says it didn't need to give Mr G an online scam warning, as the activity wasn't unusual for him. But it provided evidence that showed Mr G chose 'buying something online' as the payment purpose when he made the payment. In response, Lloyds showed Mr G an online written warning which said:

*"[Customer name], 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"*

Mr G disputes seeing this warning at the time and told Lloyds he has problems with his eyesight.

Lloyds agreed to pay Mr G £40 for some service issues experienced when he raised his complaint. It says it didn't meet the timeframes for getting in touch with Mr G and so it paid £40 into his account to acknowledge this. It doesn't appear this point is still in dispute.

As Mr G was unhappy with Lloyds' decision to not refund his loss, he referred his complaint to our service, but our Investigator didn't uphold it. They too agreed that Mr G ought to have been concerned by some of the features of the scam, and this ought to have prompted him to take further steps before parting with his money. Our Investigator was persuaded that Lloyds wasn't required to provide Mr G with an Effective Warning, and that it did what it ought to have done when Mr G reported the scam. So, it had no liability under the CRM Code.

Mr G didn't accept this outcome. In response, he said he was 'getting told by the seller it was in pending for a review'.

As no agreement could be reached, this case was passed to me for a decision to be issued.

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.

I appreciate that Mr G has fallen victim to a cruel scam, and I'm sorry he lost this money. But Lloyds would not always be automatically liable for money its customers lose to scams. I'll explain why.

It's not in dispute that Mr G made the payment to the fraudster himself. So, in accordance with the Payment Services Regulations 2017 (PSR 2017) he is presumed liable for the loss in the first instance.

But where the customer has fallen victim to an APP scam, the provisions of the CRM Code could be relevant and Lloyds could, in some cases, be held liable for a customer's losses.

The starting position under the CRM Code is that Lloyds ought to refund Mr G, unless it can establish a valid exception to reimbursement applies. Such exceptions to reimbursement include (as far as is relevant to this complaint) that Mr G;

- 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

In this case, I think that Lloyds is entitled to rely on this exception to reimbursement. I know this will be disappointing for Mr G, so I'll explain why I've reached this outcome.

Firstly, I think the price of the car was too good to be true. Mr G has been unable to provide the vehicle registration and mileage of the car. He's also not been able to confirm whether it was a 2006 or 2009 plate. So, I've been unable to obtain a detail-specific valuation for the car he intended to purchase. But through my own research of the make and model for both 2006 and 2009 plates, I've found prices ranged from around £1,000 to £6,300 (with varying mileage). This is significantly more than what the seller was charging Mr G – even at the lower end of the scale. I don't doubt the price is likely what enticed Mr G into buying the car, considering how cheap it was in comparison to the typical selling price. But a very low price can be one indicator that there is potentially something untoward about the seller or the proposed deal.

In addition to the price, I think there were other signs that something wasn't quite right. As I understand it, the seller was located around one hour's drive from Mr G, so I don't think it would have been unreasonable to expect him to have made the journey to view the car first. But when Mr G asked to view the car before paying, the seller refused and said they didn't have availability. Given he was supposedly selling the car on behalf of a business, I find it unusual for the seller to have refused this request.

Whilst I've not seen evidence of it, Mr G says the DVLA check he completed showed no issues with the car, aside from no MOT or tax. I understand the seller said they would arrange this by delivery at midday the next day. Given Mr G paid the deposit after 16:00 the day before the delivery date, I find it quite unlikely that the seller would have been able to arrange an MOT check in time for the car's delivery.

As well as this, Mr G was asked to pay an account in a different name to the seller, and the explanation he was given didn't really explain why that account was in an entirely different name or who the account belonged to. Furthermore, through a CoP check completed when Mr G set up the payee, he would have known that he was not paying a business account as the seller had claimed. Rather, he was paying a personal account. This highlighted further inconsistencies in the seller's testimony. And if the seller was acting on behalf of a business, it's unusual that the payment went to an unrelated personal account.

Overall, there were a number of factors indicating that things might not be as they seemed with the sale. Despite this, the seller requested Mr G pay a deposit which was more than 50% of the total cost of the car, despite Mr G having seen no proof of ownership documentation nor videos of the car to prove it was in the seller's possession.

I understand Mr G was persuaded that the seller was genuine as their page showed previous sales posts, and he had completed a DVLA check on the car. However, I think there were still clear causes for concern present here, which ought to have prompted a more cautious approach from Mr G before proceeding with the payment.

In light of the above, I've found that Lloyds has fairly established that Mr G lacked a reasonable basis for believing that the person with whom he transacted was legitimate or that they were genuinely selling him a car. Therefore Mr G can be held at least partly liable for his loss under the CRM Code.

Standards for firms

Lloyds also has standards under the CRM Code it's expected to meet. Failure to do so in relation to a particular payment, or series of payments, could mean it's responsible for partially reimbursing its customer.

Effective Warning

The CRM Code requires a firm to provide an Effective Warning where it identifies an APP scam risk in a payment journey. I've considered the payment Mr G was making, and what information Lloyds had available to it at the time. Having done so, I'm not persuaded there was enough going on for Lloyds to have identified a scam risk when Mr G made the payment as it was not out of character or unusual for his typical usage, nor was it concerning in nature or value.

Recovery of funds

I've also considered whether Lloyds took appropriate and timely steps to notify the receiving firm of Mr G's claim, in line with the expectations under the CRM Code. Such expectations say that a sending bank should notify a receiving firm of an APP scam immediately. 'Immediately' isn't defined, but I think up to one hour would be considered reasonable.

Lloyds' confirmed Mr G reported the scam at 13:57 on 9 September 2023, and I can see from the evidence that a scam claim was raised at 14:37. And it says it contacted the firm Mr G paid at the point he reported the scam, as this happens automatically. However, it hasn't shown us evidence of the actual notification it sent and at what time this happened. But the fraud notes show an entry left at 16:54 which confirms the receiving firm was notified. So from this, it seems likely contact was made with the receiving firm, at least by 16:54.

Whilst Lloyds has not evidenced that it contacted the receiving bank as quickly as I'd have expected it to, I'm not persuaded that the potential delay had a material impact on Mr G's chances of recovering his funds. I say this because it took the receiving bank over three months to engage with Lloyds' recovery request. So, I find it unlikely that even if Lloyds had contacted the receiving bank within an hour of the scam being reported, that it would have made any difference to the success of the recovery attempt, as the funds likely would have been removed before they could be recovered. So, Lloyds would have no liability under the CRM Code.

Overall

In reaching my decision, it's not my intention to blame Mr G. My role here is to consider whether Lloyds has reached a fair and reasonable outcome, in light of the relevant rules and regulations – namely the CRM Code. And under the CRM Code, it is necessary to consider the actions of *both* Mr G and Lloyds when reaching an outcome. Taking these things into account, I'm satisfied Lloyds has fairly established a relevant exception to reimbursement applies, and there is no other applicable reason under the CRM Code for Lloyds to refund Mr G.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 14 June 2024.

Meghan Gilligan
Ombudsman