

The complaint

Mr B complains that Lloyds Bank PLC (Lloyds) won't refund him the money he lost after he fell victim to an Authorised Push Payment (APP) scam.

What happened

The background to this complaint is well known to both parties so I won't repeat it all in detail here. But in summary, I understand it to be as follows.

In November 2023, Mr B received a phone call from an individual claiming to work for Lloyds, telling him that his account was at risk and his money needed to be moved to a new account to keep it safe. They told him that somebody had tried to use his card and sent him a text message, which appeared to come from Lloyds, which Mr B said supported this.

Mr B has said that he did have some uncertainty but, to reassure him, the caller directed him to the Lloyds website where he could see the number that was calling him listed. Mr B has said he triple checked that the number matched the number that was calling. The number he could see was actually the number for the Financial Services Compensation Scheme (FSCS) rather than a Lloyds number. But unknown to Mr B at the time he was talking to fraudsters, who had spoofed the FSCS's genuine number.

The fraudsters instructed Mr B that he needed to move money to his bank manager, who would be setting up a new account for him. Believing everything to be genuine Mr B made the following payments totalling £1,880, from his Lloyds account, to accounts the fraudsters controlled;

24 November 2023	@ 16:30	£625
24 November 2023	@ 16:31	£410
24 November 2023	@ 16:32	£380
24 November 2023	@ 16:33	£310
24 November 2023	@ 16:33	£155

On realising this was a scam, Mr B raised the matter with Lloyds. It looked into his fraud claim and upheld it in part. In summary, it said it ought to have recognised the second payment being made in such a short period of time was suspicious and it ought to have intervened at this point. It agreed to refund £395 to Mr B (plus interest) along with £50 for the trouble and upset caused. Following this Lloyds paid a further £25 to Mr B in recognition of the time taken to make this refund to him.

Lloyds also contacted the beneficiary bank (the bank to which the payments were made) to try and recover the money that had been sent. But it was only able to recover £40, which it returned to Mr B. Lloyds didn't think it was liable to refund Mr B all of the money he lost, in summary it said while it was aware the scammer put Mr B on the spot, there were several warning signs, which had Mr B challenged more, could have helped highlight this was a scam.

Unhappy with Lloyds response, Mr B brought his complaint to this service. One of our Investigator's looked into things and didn't uphold it. In summary, it was our Investigator's view that there was enough going on that Mr B ought to have had some concerns about the payments he was about to make.

Mr B didn't agree with our Investigator's view. As agreement couldn't be reached the complaint has been passed to me for a final decision. But before issuing this final decision I provided both parties with my initial thoughts, in that I was minded to disagree with our Investigator and ask Lloyds to refund Mr B the remainder of his loss. Mr B agreed with my provisional thoughts. I asked Lloyds to confirm its position, but it didn't respond – so it is now appropriate for me to formalise things with 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.

In broad terms, the starting position at law is that a firm is expected to process payments and 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 Mr B 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.

Lloyds has acknowledged, at least in part, that it should have intervened and so has agreed it is partially liable. It is not entirely clear from Lloyds submissions though where it thinks that intervention should have taken place, nor as to why it has refunded the amount it has. In its submissions it has indicated that it believes that intervention should have taken place at the point Mr B made payment two, but separately it has said it doesn't think it is liable for payments one to three, but that intervention should have taken place at payment four.

If Lloyds consider intervention should have taken place at payment two, I would have expected it to have refunded, at least in part considering the arguments it makes, elements of *all* the payments from payment two. Or, if it considered that intervention should have taken place from payment four, I would have expected the refund to be a proportion of the final two payments. The amount Lloyds has refunded doesn't correlate with either of these scenarios, rather the refund it has made to Mr B, represents 50% of payments two and three.

But in any event, where Lloyds has acknowledged that it didn't intervene and provide effective warnings at any stage (irrespective of whether that intervention should have been from payments two or four) the crux of this complaint and all that is left to consider is

whether Mr B had a reasonable basis for belief when he made the payments. And, while I acknowledge in the circumstances of this case it is finely balanced, I think he did.

The CRM Code specifies that all the circumstances at the time (to include the sophistication of the scam) need to be taken into account.

Firstly, I consider that the scam here was relatively sophisticated and persuasive. It involved phone number 'spoofing' to mimic real phone numbers, along with the fraudsters sending Mr B text messages which appeared to come from the bank.

From what I've seen I don't think Mr B has proceeded with a complete disregard to risk and he asked the caller how he could know it was them calling. He was persuaded, amongst other things, by the number he was called from matching a number on Lloyds website. I'm mindful that the number spoofed here was that of the FSCS, rather than a Lloyds number – but I don't think it's unreasonable for Mr B to have believed the legitimacy of receiving a call from a number that appears on his bank's website. I don't think Mr B would have been aware, especially in the absence of a warning, of how safe account or impersonation scams typically work, and how a fraudster can spoof a genuine number.

All the actions Mr B subsequently took must be seen in that context – i.e. that he believed he was following the instructions of his bank's fraud team. Lloyds has pointed to certain aspects of what he was being asked to do that he should've regarded with greater suspicion. For example, the fact that he was being asked to make payments to accounts held with another bank or that those accounts appeared to be personal accounts. These things were explained by the scammers. The explanations that they gave carried more weight because Mr B had already been persuaded that this genuinely was a call from Lloyds.

I also don't think Lloyds has given enough consideration to the fact the fraudster had created an environment where Mr B thought he had to act quickly to protect his accounts from an attack. With the benefit of hindsight and the removal of the pressured environment, it's easier to identify elements where Mr B may have had an opportunity to ask further questions. But I'm mindful that the convincing nature of these scams can often have a negative effect on a person's thought process and make them take steps that they might not ordinarily take.

So, all things considered, I am not persuaded Mr B acted unreasonably in the circumstances. Rather, I think he did what a reasonable person would most likely have done in the same situation. As such, I don't think it is fair to conclude that Mr B didn't have a reasonable basis for belief.

Putting things right

I now direct Lloyds Bank PLC to refund Mr B;

- £1,445 (being the total amount sent of £1,880, less the £395 already reimbursed by Lloyds and the £40 recovered from the beneficiary bank).
- add 8% simple interest per year to this amount, from the date it declined Mr B's claim to the date of settlement.

My final decision

My final decision is that I 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 22 November 2024.

Stephen Wise
Ombudsman