

The complaint

Mr M and Mrs M complain that Lloyds Bank PLC won't refund the money that was lost when Mrs M fell victim to a scam.

Mrs M's son is a party to the account. As the events complained about happened to Mrs M and she has taken the lead on the complaint, I am referring to her submissions throughout my decision.

What happened

The circumstances that led to this complaint are well known to both parties, so I won't repeat them in detail here. In summary:

- Mrs M was befriended by an individual that I'll refer to as J when she was using an online psychic service. Mrs M and J became close friends and over several years shared details of their lives. J told Mrs M he was successful in business, developing properties as well as having entertainment businesses in the UK and abroad. J told Mrs M about business opportunities in Latin America, where he was living at the time and asked Mrs M if she would like to invest. Mrs M says initially she wasn't interested, but J was persistent and so she agreed.
- Mrs M thought she and J were business partners and that the money she was transferring was being used towards the ventures they had discussed. Mrs M made four faster payments totalling £25,000 to J's UK based current account, two in March 2021 and two in October 2021.
- Mrs M tried to make a payment of £25,000 in April 2021. This payment did not go through because Lloyds blocked Mrs M's account and invoked the Banking Protocol. Around the same time, J encouraged Mrs M to open a new account with an electronic money institution.
- When Mrs M went to Latin America to stay with J, her card was used to make six transactions totalling almost £82,000 to a casual dining restaurant. Mrs M says that some of these transactions were funded by a loan and a credit card cash advance that J took out in her name without her knowledge or agreement.
- Whilst in Latin America, Mrs M discovered J had given her false documentation to support the business ventures. She said nothing J had told her stacked up, and his story started to change. Mrs M believes there are other victims, and she's provided screenshots from social media to show J uses different names.

Mrs M raised the matter with Lloyds. Lloyds is a signatory of the Lending Standards Board Contingent Reimbursement Model CRM Code (the "CRM Code"). The CRM Code requires firms to reimburse customers who have been the victims of authorised push payment (APP) scams in all but a limited number of circumstances. The disputed payments made using Mrs M's debit card are not authorised push payments and so cannot be considered under the CRM Code.

In its final response, Lloyds said it could not help Mrs M. It concluded it was unable to refund the bank transfers Mrs M had made under the CRM Code because it thought the situation was a civil dispute. It said this was a business deal that had broken down and suggested Mrs M should take legal action against J. It said that there had been no compromise to Mrs M's online banking details and that she was aware of the loan application, referring to a phone call she'd had with the bank to discuss it before it was taken out. It said the disputed card payments were made using Chip and PIN and only Mrs M would have been able to complete them.

Mrs M referred the complaint to us. Our Investigator looked into the matter and recommended that it should be partially upheld. He thought there was enough evidence to show this was a scam and was persuaded J intended to defraud Mrs M from the start. He referred to the forged documentation, the wider circumstances surrounding the payments and the evidence provided to us by J's UK bank to support this.

He then went on to consider whether Mrs M had a claim under the CRM Code. He thought Mrs M should have done more to confirm this was a legitimate business opportunity before making the payments in March 2021. He thought Mrs M had paid £6,500 without sufficient evidence that the business existed or that the opportunities were genuine.

But he thought that the situation surrounding the £18,500 Mrs M had paid in October 2021 was different. He said the forged documentation J had provided was convincing, so Mrs M had a reasonable basis for believing these payments were legitimate. He didn't think any warning that Lloyds could have given would have made a material difference in preventing the payments being made. He thought Mrs M was set on making payments to J because she continued to do so even after police intervention.

He looked at the disputed card payments and concluded, on balance, that the transactions were made with Mrs M's knowledge and agreement. He referred to call recordings between Mrs M and Lloyds where she was discussing the transaction fees applied to her account. The Investigator felt Mrs M was aware of her account balance and that she knew about the transactions that had been made, but did not dispute them at that time. He didn't think Mrs M would have said the transactions were made without her consent even if Lloyds had intervened and asked more questions.

Overall, he thought that Lloyds should reimburse the two transactions Mrs M made in October 2021 under the provisions of the CRM Code along with 8% simple interest from the date the claim under the CRM Code was declined.

Neither Mrs M nor Lloyds agreed. Mrs M said it did not go far enough and highlighted she was claiming for all of the transactions plus associated business costs, such as travelling expenses. She pointed out that her credit rating has been impacted because of the loan and the credit card. She said there was a business plan and referred to the WhatsApp messages between her and J where the projects were discussed at great length. She pointed out that J sent her photographs to support what was being said.

Lloyds said the documentation may have looked official, but Mrs M didn't know the language so could not have confirmed its contents. It said a simple internet search showed a company existing with the same name and similar location details, but it was in an entirely different line of business. It said that Mrs M did not take any independent advice before sending funds.

Mrs M says the documentation J provided to her was standard and nothing out of the ordinary. She said it is possible to set up a company without requiring legal advice and representation and pointed out there are other means of translating documents without

needing to speak the language. She explained she'd provided the police with information about J and that she'd asked J to get a lawyer to write up their agreement, which he did. Mrs M was adamant the card transactions were signed for and that she did not make them. She said J must have falsified her signature and would have been able to do it because he had a copy of her passport from when he was going to apply for a travel visa on her behalf.

As no agreement could be reached, the complaint was referred to me to decide.

In March 2024, I issued my provisional findings on the matter. I didn't agree with everything our Investigator had concluded. I have included an extract of my provisional findings below:

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

I have summarised matters in my own words and in less detail than has been provided. No discourtesy is intended by this as it enables me to focus on the key issues of this complaint and its surrounding investigation. From what I've seen so far, I don't think I can fairly conclude that Lloyds must refund Mrs M in full. I know this is not the news Mrs M is hoping for, so I will explain why.

There is no question that Mrs M has had a very difficult time in recent years. Discovering that she has been deceived by a person she trusted and thought of as a close friend is obviously an incredibly upsetting experience. She wants the case to be looked at "through the eyes of a criminal" and for weight to be placed on how manipulative J has been. But unfortunately, that alone isn't enough for me to say Lloyds is responsible for refunding Mrs M's losses. My role isn't to determine whether Mrs M has been the victim of a crime. My role is to determine whether Lloyds is entitled to hold Mrs M responsible for the transactions in dispute.

When considering what is fair and reasonable, I am required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. Some of the transactions in dispute are faster payments and some are card payments. As the rules, guidance and standards that apply to each method of payment are different, I will take each payment type in turn.

The faster payments Mrs M made

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that its customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. When Lloyds made the faster payments to J's UK account, it was complying with Mrs M's instructions. At the time, Mrs M wanted to pay J and there was no mistake made as the money was sent to those account details. As I don't think Lloyds acted incorrectly by making these payments, I've gone on to consider whether it should have refunded them for any other reason.

When considering what is fair and reasonable in this case, I've also thought about the

Lending Standards Board's voluntary Contingent Reimbursement Model, which Lloyds has signed up to and was in force for the faster payments Mrs M made to J's UK account.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam. The CRM Code doesn't apply to private civil disputes. I can see why Lloyds initially thought this was a failed business venture and not a scam. Mrs M had been in contact with J for a long time, she was in Latin America at the time she raised the scam claim and she'd been staying with J whilst she was there. But I consider there is

enough evidence to support that J was willingly and intentionally acting fraudulently by deliberately setting out to scam Mrs M. The bank that received Mrs M's money has confirmed to us there has been other reports of fraud relating to the account holder. J provided documentation to Mrs M that the organisations in that country have confirmed was falsified. I'm also mindful that J repeatedly did not make good on his promises to Mrs M about both sharing profits from the business and progressing with purchases of property in the UK.

Having gone on to consider the terms of the CRM Code, I think Lloyds should have refunded the money Mrs M lost as a result of the faster payments she made. The CRM Code requires firms to assess whether a customer was vulnerable to the APP scam they fell victim to at the time it occurred. The relevant sections state:

"R2(3 A Customer is vulnerable to APP scams if it would not be reasonable to expect that Customer to have protected themselves, at the time of becoming victim of an APP scam, against that particular APP scam, to the extent of the impact they suffered.

This should be assessed on a case-by-case basis.

In these circumstances, the Customer should be reimbursed notwithstanding the provisions in R2(1), and whether or not the Firm had previously identified the Customer as vulnerable. [...]

Factors to consider include:

(a) All Customers can be vulnerable to APP scams and vulnerability is dynamic. The reasons for dynamics of vulnerability may include: the personal circumstances of the Customer; the timing and nature of the APP scam itself; the capacity the Customer had to protect themselves; and the impact of the APP scam on that Customer

(b) A Customer's personal circumstances which lead to vulnerability are varied, may be temporary or permanent, and may vary in severity over time

(c) APP scams may include long-running APP scams or in the moment APP scams."

I don't think it would be reasonable to have expected Mrs M to have protected herself against this scam. I think her personal circumstances made her more susceptible to falling victim to this befriending scam, especially given its timing and long running nature.

Mrs M has told us she became addicted to the online chat service during a difficult time in her life. Her bank statements show a significant number of transactions to the online chat service spanning many months, often multiple times on the same day. I think it's indicative that using the service was beyond her control and that it was consuming a big part of her day-to-day life. The bank is already aware that Mrs M lost her husband in sudden, tragic circumstances. From what Mrs M has said, they had been together for almost all of Mrs M's adult life. The shock, grief and sense of loss Mrs M has felt in her life since has not abated

with the passage of time.

Mrs M suggests that she became friendly with J during 2019 and she'd known him for around two years by the time she travelled to Latin America. I think it's important to remember that much of their interaction happened when the world was in the grip of the Covid-19 pandemic where people were unable to meet and socialise in person, which served to strengthen and deepen online connections. I've only seen extracts of personal messages Mrs M exchanged with J between March and November 2021, which is the period

covering the transactions in dispute. These messages alone span hundreds of pages. From what I have read it's clear Mrs M came to rely on J and his readings for emotional support. This is supported by one of the messages I've seen where Mrs M says: "Your [sic] my extended family...now I talk to you more than anyone xx"

The messages show Mrs M was in extensive contact with J. There are references to conversations taking place over email as well as them speaking on the phone almost every day. Mrs M has shared a significant amount of detail about her personal life with J. She has told him about her job search and about her friends and family. She's told J about a court case causing her significant stress involving the drawn-out eviction of troublesome tenants. Mrs M was dealing with things on her own and this dynamic with J became integral to her. He gained Mrs M's trust and makes promises to her about the kind of lifestyle his business opportunities could offer. Mrs M was significantly less able to represent her own interests in these discussions and I think this is something J picked up on and exploited.

I consider Mrs M was particularly susceptible to detriment and note that Lloyds was concerned enough to invoke the Banking Protocol twice in April 2021. It's clear that Mrs M didn't identify any red flags in the situation for herself. I don't think she was making these payments against her own better judgment, rather, she didn't perceive J to be a stranger and couldn't recognise any risks with what she wanted to do. Mrs M displayed a determination to continue to make payments by opening up another account with an electronic money institution. The importance she placed on the situation, to such an extent that she ultimately travelled halfway across the world to follow it through makes me feel it is unlikely that there is anything anyone could have said which would have stopped Mrs M from making these payments. I think this speaks to Mrs M being unable to recognise and accept the need to test the legitimacy of what she was being told by J.

By chance, Mrs M befriended a lawyer abroad who told her the documentation J had given her had pages missing and didn't make sense. Even when the scam was eventually revealed Mrs M said: "He is so convincing to the point I doubt myself, even now with all of the evidence." Indeed, it seems to me, such was her vulnerability, that interventions from the police and other authority figures could not break the spell she was under.

For these reasons, I do not think it would be reasonable to have expected Mrs M to protect herself from becoming the victim of this scam in her circumstances. As a result, I find Mrs M was vulnerable to this particular APP scam.

The CRM Code is clear that where the consumer meets the definition of vulnerability under the CRM Code – they should be reimbursed in full whether or not the firm previously identified the customer as vulnerable. It is also the case that if a customer meets the definition of vulnerability set out under the CRM Code that exceptions to reimbursement (such as reasonable basis for belief, ignoring effective warnings and gross negligence) do not apply.

This means I am currently minded to conclude that Lloyds should refund the faster payments Mrs M made to J's UK bank in full.

The payments made using Mrs M's card details

Mrs M is disputing six payments made to a casual dining restaurant using her debit card. These payments do not fall within the scope of the CRM Code.

When an account holder raises concerns about a transaction, I'd expect their card issuer to look into the situation further to see whether it has any responsibility for refunding the amounts in dispute. It may need to provide a refund if its customer didn't authorise the

transaction, or if it didn't intervene in the payment to check it was one its customer wanted to make when it ought fairly to have done so and that intervention would have prevented the transaction from being made. In some circumstances, a card issuer can ask for a transaction its customer made to be refunded through the chargeback process operated by the card scheme.

Lloyds declined Mrs M's claim for these transactions to be refunded. It concluded the transactions were authorised by her. Mrs M strongly disagrees with this. She says she did not make these transactions herself and nor were they made with her wider agreement. She explains there was no reason for her to inject further capital into the business without seeing the accounts and that she would not have done so by using a card machine in any case.

Whether a payment transaction has been authorised or not is important because account holders will usually be liable for payments they've authorised and, generally speaking, banks will be liable for unauthorised payments. If Mrs M made the disputed transactions herself or authorised for them to be made on her behalf, it would not be fair to ask Lloyds to refund them. The difficulty here is it is not very clear exactly what happened or how it happened. Mrs M has said different things about whether she made the payments herself or not. In situations where evidence is missing, incomplete or contradictory, as it is here, I have to make my decision on balance, forming a conclusion on what I think is more likely than not in light of the evidence that I do have.

There has been much debate in this case as to whether the disputed transactions were made using Mrs M's card and PIN or whether they were made using Mrs M's card and signature. But whether they were authenticated using the card and PIN or whether they were authenticated by the card and signature is not as pivotal to liability as Mrs M thinks it is. This is because the regulations relevant to this case say that authentication is not, on its own, enough to enable Lloyds to hold her responsible. So, I also need to think about whether the evidence suggests that it's more likely than not that Mrs M consented to the transactions being made.

When Mrs M made the complaint to us, she submitted a 21-page document setting out the events in her own words. In this document she said: "We first went to restaurant of chicken brother, I followed J to the table next to the counter, I sat down playing on my phone. Next thing J thrust the visa machine and said put your pin number I was taken back, I knew why he Wanted the money but how can I say no without confrontation [sic]."

This strongly suggests that Mrs M made at least some of the card payments in dispute herself. I've thought about what Mrs M has said about making payments in circumstances when she didn't really want to. She's also explained that she paid for things for J's apartment when she was there but deliberately entered her PIN incorrectly as she was getting uncomfortable with the payments and felt "guilt tripped" into buying items. But being pressured or coerced into giving consent for a payment doesn't make a payment unauthorised.

I'm also mindful of what Lloyds has said about Mrs M contacting the bank after all the debit card payments has been made. Mrs M spoke to Lloyds to query the charges that had been applied as a result of the payments, and crucially, not the payments themselves. I feel I can place weight on that conversation as it happened very close in time to the events complained about. I consider Mrs M knew about the payments and at that point in time did not raise any concerns about them.

In addition, Mrs M said to J that "I have only a current account which have no special facility for international transaction, that why you kept checking my online banking to keep an eye on fees [sic]". It's unclear whether Mrs M had given her online banking details to J in order to

let him log in and check for himself or whether Mrs M was logging in and then passing her device to J. Either way, I think this conversation further supports that Mrs M was aware of the activity on her account and at that time did not dispute it. This means I don't think it was unfair of Lloyds to treat the card transactions as being authorised by Mrs M, even in circumstances when it later turned out that her trust in J was misplaced.

Mrs M is concerned that Lloyds did not monitor these card transactions and intervene at the time she was making them. She's pointed to other occasions where the bank has stopped transactions for a much lower value. There are many payments made by customers each day and it's not realistic or reasonable to expect Lloyds to stop and check every payment instruction. There's a balance to be struck between identifying payments that could potentially be fraudulent, and minimising disruption to legitimate payments.

Nonetheless, I'm mindful that Lloyds should fairly and reasonably have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And in some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I find it surprising that Lloyds considers these payments were not out of character for Mrs M's account. Mrs M's current account statements show that transactions of this size made minutes apart to a casual dining restaurant in Latin America were unusual and out of character for Mrs M. Even though Mrs M had made other transactions in the country she was staying in, this was a lot of money for both Mrs M to spend and a lot of money for anyone to spend at an establishment of this nature. So I do agree that these payments should have stood out and caused Lloyds concern. But this failure to intervene, in and of itself, isn't enough for me to say that Lloyds must refund the money. I also have to consider whether Lloyds' intervention would have made any difference.

On balance, I'm persuaded the information Mrs M would have most likely given about the payments and her connection to the intended payee would have been sufficient to satisfy Lloyds that she was not at risk of financial harm from fraud. I think she would have told the bank she was making the payments to a business that she was connected with (because at the time she believed that to be true) and that she would have told the bank that she was currently abroad on business. Mrs M told our Investigator that she thinks she would have told the bank the transactions were for white goods and for the apartment if she'd been asked. Either way, I'm not persuaded that Mrs M would have said enough to enable the bank to disturb a fraud or scam, especially not if J was on hand to be involved in the conversations as he had been in connection to other matters. As such, I don't think the bank's failure to intervene in the payments has resulted in the loss Mrs M has suffered.

I've thought about whether Lloyds should have asked for the payments made to be refunded under the chargeback process. A chargeback is the process by which payment settlement disputes are resolved between card issuers and merchants, under the relevant card scheme rules. A chargeback isn't guaranteed to result in a refund. There needs to be a right to a chargeback under the card scheme rules. And under those rules the merchant can defend a chargeback if it doesn't agree with the request.

There is no obligation for a card issuer to raise a chargeback when a consumer asks for one. But I would consider it good practice for a chargeback to be attempted where the right exists and it is reasonable to do so.

My understanding is Lloyds did not raise a chargeback. I don't think that was unfair of the bank because I don't think there was a reasonable prospect of success. The reasons a card

issuer can raise a chargeback are limited and there's nothing that obviously fits this particular situation as the reasons are typically focused on resolving issues with goods bought from retailers. Even if Lloyds had tried to raise a chargeback asserting that Mrs M did not receive anything for the money that had been paid, I think it's more likely than not that any challenge would have been defended by the merchant.

I say this because J provided evidence to an organisation based in Latin America that was investigating the payments and that organisation accepted it on face value. I understand Mrs M's position that the paperwork connecting her to the business was falsified, and that J obtained a copy of her passport under false pretences. But chargebacks aren't decided on the merits of the dispute between the cardholder and merchant, they're decided on the relevant card scheme's rules. I think it's more likely than not that J would have been able to comply with the card scheme's rules and file a defence to the chargeback.

Overall

I know Mrs M is going to be very disappointed with my provisional decision. She's explained that from her perspective a scam is a scam and she's expecting to receive all of the money that's been spent in connection to J back. But for the reasons I've explained, I can't fairly and reasonably order Lloyds to do that.

Mrs M has raised points around the repayment of the loan and her credit card and the impact these matters are having on her credit file. Although these matters form part of a separate complaint, I would remind Lloyds of the need to treat a consumer experiencing financial difficulties fairly.

To put things right, I'm currently minded to say that Lloyds Bank PLC should:

Refund the faster payments Mrs M made - £25,000

Pay 8% simple interest on that amount calculated from the date Lloyds originally declined Mrs M's claim under the CRM Code until the date of settlement.

Responses to my provisional decision

Lloyds responded to say it accepted my provisional decision and was willing to resolve the matter in line with the settlement I'd proposed.

Mrs M did not agree. She asked me to share copies of the translated documentation that I'd relied upon and confirmed that she'd appointed fresh solicitors to give her advice as to her position.

Mrs M's new solicitors responded in early May 2024. In summary, they said that the transactions made using Mrs M's card details form part of the same scam and should be treated no differently to the faster payments. They felt I had overlooked the significance of J's intentions to defraud Mrs M from the start and suggested Lloyds had failed to protect Mrs M's interests as it could and should have done more to safeguard her against this scam. They said that I had not given enough consideration or weight to the fact Mrs M was pressured and not autonomous in her decision making. They were concerned that Lloyds was not monitoring Mrs M's transactions whilst she was abroad, and felt I should place greater weight on this point before reaching a final decision, suggesting that the disputed card transactions might not have been made had Lloyds intervened. They said the only card transaction that Mrs M might have authorised personally was one payment on 3 November 2021 and if she did so, it was under duress and pressure; the remainder were not authorised by her at all.

In addition, they pointed out that there had been a breach of security on Mrs M's mobile banking app whilst she was abroad and around the time of these transactions and no further action had been taken.

I shared the solicitor's response with Lloyds. The bank confirmed it had nothing further to add at this time.

I was mindful that Mrs M had appointed fresh solicitors quite late into this process and wrote to them to address some of the points that had been raised in their letter. I explained there is no obligation for a card issuer to reimburse authorised card transactions when its customer is in vulnerable circumstances. I explained that I agreed that the card payments were unusual, but it does not follow that Lloyds must refund the resulting transactions because it did not act. I explained that I have to consider whether any intervention would have made a difference and prevented the loss, referring back to my provisional decision and my thoughts that on balance Mrs M would not have said enough to enable Lloyds to disturb a fraud or a scam. I said that in my view, Mrs M being physically present in Latin America would have given some legitimacy and credibility to the information she'd previously provided to the bank about the wider situation. I highlighted a particular section of my provisional decision where I explained why I was not persuaded that Mrs M would have been willing to entertain the idea that the business opportunities might not be as they were presented.

I asked the solicitors to confirm the circumstances around the breach of security on Mrs M's mobile banking app so I could be sure we were all referring to the same event.

I explained that under the Payment Services Regulations 2017, a transaction is considered to be authorised if the payer has given consent to it. I said this is an objective test, and it doesn't depend on the consumer being fully aware of the details of the payment at the time. It is not an informed consent. I said coercion, deception and duress do not invalid that consent.

I pointed to the comments they had made around Mrs M not authorising all of the card payments. I explained that whether transactions are authorised or not is a finding of fact and that where there is a dispute about what happened, I have to base my decision on the balance of probabilities – in other words, on what I consider is more likely than not to have happened in the light of the available evidence. In reaching my provisional conclusions, I could not ignore that Mrs M's recollections of how the disputed card payments could have happened is unclear. Mrs M's own written submission that she made at least one of the payments herself does not suggest that J stole her payment tools.

The solicitors replied to me and explained that Mrs M's mobile banking app failed to work or worked only intermittently for the duration of her stay in Latin America, which was from October 2021 to June 2022. They referred to Mrs M being told by the bank in January 2022 that there had been a security breach in relation to her app.

They pointed me to guidance issued by the regulator, the Financial Conduct Authority, explaining that the use of a password, card or PIN does not prove that a payment has been authorised. They explain Mrs M has maintained that she did not authorise any of the payments made by card, although she acknowledges she was physically in the restaurant and compelled to make the very first payment. They provided extracts of Mrs M's phone messages at the dates and times when some of the later payments were made to demonstrate that Mrs M was not in the same location and point out that none of the discussions indicate a payment was to be made.

They told me that Mrs M had made a further complaint to Lloyds in May 2024 after learning that J's account held with another bank had been marked by Lloyds as a scam account in

January 2022. Mrs M said payments she had made from her account to this account should not have been considered to be a failed investment by the bank if the account had been identified as a fraud account. The solicitors concluded this was a material change in position and should be taken into consideration.

As both parties have now had the opportunity to consider and respond to my provisional decision, I will now reconsider the matter.

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've thought carefully about everything Mrs M and her representatives have said in response to my provisional decision.

I am sorry to have to disappoint Mrs M, but I remain unable to agree that I can fairly say that Lloyds should have to refund all of the money that's in dispute here. I know this wasn't the answer Mrs M was hoping for. I can appreciate that it must seem deeply unfair given what has happened and I do sympathise with all that she has been through.

Both sides are broadly happy with the premise that the four faster payments Mrs M made to J's UK based current account in March and October 2021 should be refunded because Mrs M was vulnerable under the CRM Code. I don't think what Mrs M has said about Lloyds recording this receiving account as a scam account in January 2022 changes this position. By agreeing to refund these faster payments in full, Lloyds is effectively accepting the wider circumstances surrounding these payments was a scam and not a failed investment opportunity.

Mrs M and her representatives have maintained that the card payments should not be treated any differently because they arise out of the same underlying circumstances. But as I have explained, the CRM code does not apply to card payments. This means that for payments made by card, Mrs M, in line with the Payment Services Regulations 2017 and the terms of her account, is generally responsible for transactions which she authorises. Authorisation here carries a narrow meaning.

Lloyds can hold Mrs M liable for the disputed card payments if the evidence suggests that it's more likely than not that she made them herself or agreed they could be made. I agree with Mrs M's representatives that Lloyds cannot say that the use of Mrs M's payment tools such as her card and PIN conclusively proves the payments were authorised. But J having an intent to defraud and manipulate Mrs M isn't enough in and of itself to show that he stole and used her payment tools to make these specific transactions without her knowledge or permission.

This is a finely balanced matter. When I was investigating the complaint, I asked Mrs M how she thought her card came to be in the restaurant and whether she was there when the disputed transactions were made. She replied to say the fraud occurred because the bank had been negligent and operating inadequate security measures.

In response to my provisional decision, her representatives said that Mrs M *"has maintained that she did not authorise any of the payments made by her debit card, save that (whilst she does not accept this to be the case) she acknowledges that the very first payment she says she was compelled to make whilst physically in the restaurant on 3 November 2021 might be argued as having been 'authorised' by her."*

This means that, on balance, Mrs M had knowledge and awareness of at least the first card payment. There was a further disputed card payment made less than ten minutes afterwards and, in addition, an undisputed card payment was made later that day. This suggests to me it's more likely than not that Mrs M had control and use of her card at that time. I appreciate the point that Mrs M's representatives made about her locations at the times in the days that followed when further disputed card payments were made, but the authorisation of a card payment doesn't rely on Mrs M carrying out the transaction herself. Mrs M being in a different geographical location doesn't automatically mean she didn't authorise the spending. Consent will still have been given if the transaction is carried out on her behalf or with her knowledge. I've thought about what Mrs M's representatives have said about a breach of security on her mobile banking app. But they've suggested the app either failed to work or only worked intermittently across the months that she was in Latin America. I've not seen enough to be able to fairly conclude any such problems with the app are indicative of a point of compromise that helped to facilitate the card transactions that are in dispute.

What Mrs M and her representatives have said in response to my provisional decision really doesn't shed much further light on how the disputed card transactions came to be made. In my provisional decision I explained why I was persuaded, on balance, that Mrs M knew about the payments and at that point in time did not raise any concerns about them. I've thought carefully about everything that's been said and provided since, but I remain mindful that Mrs M believed she was in a business partnership with J and was making decisions through this lens. The phone messages Mrs M exchanged with J support this.

On 6 November 2021 she messaged J to discuss the businesses and how they are set up. She says that she has invested a lot of money and has a 50% stake in the business. She concludes the conversation by saying things like *"I agree it's complicated so I have kept quiet and leave u to it" [sic]* and *"As I said leave it up to u" [sic]*. In the days that followed, Mrs M said *"I will only inject £500k with no condition attach." [sic]* Thinking about everything I have to consider, it seems more likely than not that Mrs M was aware of the spending that had happened on the account and agreed it could be made at that time. The fact that Mrs M's trust in J was later found to be misplaced does not change the basis on which these payments were most likely made. Overall, I cannot be as sure as I would need to be that the disputed card payments were made without Mrs M's knowledge and agreement. I remain unpersuaded that an intervention from Lloyds would have prevented the disputed card payments being made, for the same reasons I've already explained in my provisional decision.

There is no legal obligation for Lloyds to reimburse authorised card payments. But it remains good practice for Lloyds to investigate what has happened and to consider whether it would be appropriate to reimburse some or all of the money on a case-by-case basis, especially in situations where it is clear that its customer has been the victim of a fraud or scam. Lloyds has considered the difficult situation Mrs M is facing but concluded not to do anything further in this particular case. I have to be fair and reasonable to both sides in a complaint. I cannot fairly compel Lloyds to do more when the relevant law, rules, codes and good practice that apply to card payments do not say that it should.

I know this wasn't the answer Mrs M was hoping for. But for the reasons I have explained above, along with the reasons set out in my provisional decision and reproduced above, I am unable to fairly instruct Lloyds to refund the disputed card transactions.

Putting things right

For the reasons I've explained, I uphold this complaint about Lloyds Bank PLC in part and instruct it to:

- Refund the faster payments Mrs M made because she was vulnerable under the CRM Code - £25,000

- Pay interest on that amount at 8% simple per annum from the date it declined Mrs M's claim under the CRM Code to the date of settlement.

My final decision

My final decision is that I partially uphold this complaint against Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 16 July 2024.

Claire Marsh
Ombudsman