

The complaint

Mr G1 and Mr G2 complain that Cynergy Bank Plc ('Cynergy') won't refund the money they lost when Mr G2 fell victim to an authorised push payment ('APP') scam. They've asked Cynergy to reimburse their loss, along with compensatory interest.

While the complaint relates to a joint account belonging to Mr G1 and Mr G2, it was Mr G2 who fell victim to the scam. So for ease, I'll refer to Mr G2 throughout this decision.

What happened

In January 2023, Mr G2 and his wife were looking to buy a new car. Mr G2's wife found a potentially suitable car online and booked an appointment to visit the dealership on 30 January 2023 to view the car. Mr G2 invited an acquaintance ('Mr C') to go with them to the dealership to give advice on the quality and condition of the car they were interested in buying.

On 30 January 2023, the dealership let Mr G2 know that the car had been sold to someone else. Shortly afterwards, Mr C arrived at Mr G2's home and was invited in.

Whilst in Mr G2's home, Mr C searched online and found an alternative car for Mr G2. The car was being advertised on a well-known website ('B') and was due to be put up for auction. Mr C told Mr G2 that the car was better than the car he'd missed out on, and recommended that Mr G2 buy it.

Mr G2 didn't have a trade buying account with B and so he wasn't able to buy the car himself. However, Mr C said he had a trade buying account with B and could act as an intermediary. Mr C spoke with the dealership selling the car and told them he wanted to buy the car on Mr G2's behalf. The dealership agreed to sell the car to Mr G2 (via Mr C) for the listed price of £37,200.

Mr G2 then made a £38,000 payment to Mr C, which included £800 for Mr C's services, to facilitate the purchase of the car. The payment was made from the Cynergy account Mr G2 shares jointly with Mr G1.

Unfortunately, Mr G2 didn't receive the car or a refund from Mr C. In June 2023, Mr G2 reported to Cynergy that he'd been the victim of a scam. Initially, Cynergy didn't agree that Mr G2 had been the victim of a scam and thought the situation should be treated as a civil dispute between Mr G2 and Mr C. However, after receiving additional evidence from Mr G2, Cynergy accepted Mr G2 had been the victim of a scam.

In September 2023, Cynergy contacted Mr C's bank, but it was unable to recover any of Mr G2's funds. In December 2023, Cynergy explained to Mr G2 that it wouldn't be refunding his loss because Mr G2 hadn't seen the car before making the payment to Mr C, or spoken with the business that was meant to be selling the car.

Mr G2 raised a complaint with Cynergy, which was answered in January 2024. Cynergy reiterated its decision not to reimburse Mr G2 and said it wasn't liable for the loss because Mr G2 hadn't taken due care before making the disputed payment.

Unhappy with Cynergy's response to his complaint, Mr G2 referred it to this service. Our Investigator didn't uphold the complaint. They didn't think Cynergy reasonably ought to have been concerned about the payment or done anything to check Mr G2 wasn't at risk of financial harm. However, the Investigator considered that, even if Cynergy had enquired as to the purpose of the payment, they didn't think the scam would've been identified. The Investigator also didn't think Cynergy could've recovered any of the funds from the beneficiary bank (the bank the disputed payment was sent to), as the funds had already been removed when Mr G2 reported the scam to Cynergy.

Mr G2 didn't agree with the Investigator's opinion. He said the payment should've given Cynergy cause for concern and it should've made further enquiries with him, therefore giving him additional time to consider what he was doing, which would've prevented the payment being made.

As an agreement couldn't be reached, the complaint has been referred to me to decide.

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 deciding what's fair and reasonable in all the circumstances of a complaint, I'm 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 time.

I'm aware that I've summarised this complaint and the responses briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here – which is to determine whether Cynergy reasonably could've prevented Mr G2's loss. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as an alternative to the courts.

Having thought carefully about what's happened, I'm not upholding Mr G2's complaint. I appreciate he's lost a significant amount of money, and this isn't the answer he wanted. I also recognise that Mr G2 was taken advantage of by someone he thought he could trust, and that the scam has taken its toll on his health.

However, whilst Mr G2 has my upmost sympathy, I can't fairly say Cynergy should've reasonably prevented the scam or that it should be held liable for the loss. I'll explain why.

The relevant law and regulations in place at the time

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the relevant regulations and the terms and conditions of the customer's account.

It's not in dispute here that Mr G2 made the scam payment himself and authorised Cynergy to send the funds to Mr C. So, under the Payment Service Regulations 2017, the starting position here is that Mr G2 is responsible for the payment (and the subsequent loss) despite the payment being made as the result of a scam.

However, there are times when I might expect a bank to question a transaction or payment, even though it may have been properly authorised. Broadly speaking, firms like Cynergy are expected to be on the lookout for (and to protect customers from) potential fraud.

What this means for Mr G2

Given the above, I've considered if the scam payment was unusual or out of character, if Cynergy should've stepped in and questioned Mr G2 before the payment was made and whether Cynergy reasonably could've prevented the scam payment being made.

Cynergy has confirmed that the scam payment wasn't flagged as suspicious. During the payment process, Mr G2 was shown a generic warning about scams on Cynergy's mobile banking app. However, there's nothing to suggest this was because Cynergy had any concerns about the payment.

After looking at Mr G2's typical account movements, I'm satisfied that the scam payment was out of character. I say this because the payment was for a significant value, and it was being made to a new payee. I accept Mr G2 had made faster payments before for large values, but the majority of Mr G2's previous faster payments were for much smaller amounts, making a £38,000 faster payment to a new payee unusual.

As the scam payment was out of character, I think Cynergy should've carried out some additional checks before approving the payment. However, whether Cynergy can be held responsible for the loss is dependant on whether intervention at the time of the payment would've made a difference to Mr G2's decision to go ahead with the payment.

I appreciate Mr G2's comments that he was feeling unwell at the time of the payment and unable to think clearly about what he was doing. I also accept that questions and scam education from Cynergy might have caused Mr G2 to reconsider his decision and act differently. It's also possible that intervention from Cynergy wouldn't have made a difference and the payment would've been made regardless.

I can't say for certain what would've happened if Cynergy had intervened (because it didn't question the scam payment). So, I must consider whether the available evidence shows that it was more likely than not that Mr G2 would've acted differently.

If Cynergy had spoken to Mr G2 prior to him making the scam payment, I have little doubt that he would've been honest with his answers. As such, I think he would've explained that he was paying a third party to purchase a car on his behalf.

Although, on the face of it, that arrangement might seem abnormal, I think the following information would've been explained:

- Mr G2 had known Mr C for approximately seven years;
- Mr G2 had proactively sought Mr C's advice about a car he had wanted to buy;
- Mr C had a car dealership in Cyprus that Mr G2 had visited, along with an active website;
- Mr G2 had met some of Mr C's clients in the past, who had shared positive reviews of working with Mr C;
- the car was being advertised on a genuine website;
- the price of the car was reasonable and not too good to be true;
- Mr G2 couldn't buy the car direct from B, as he didn't have a trade buying account;
- Mr C said he did have a trade buying account with B, which was plausible given the industry Mr C worked in; and
- Mr G2 was paying a business account, matching the name of Mr C and his business.

Overall, whilst Cynergy didn't intervene when it reasonably should've done, I'm not persuaded that Cynergy would've had any concerns that Mr G2 was at risk of financial harm and would've had no reason to refuse to make the payment for Mr G2. Cynergy would've likely been reassured that Mr G2 had known Mr C for several years and Mr G2 had sought Mr C's professional opinion on a car purchase before the scam took place.

I know Mr G2 feels very strongly that Cynergy could've prevented the scam from happening. But I don't think any scam education about car purchase scams would've likely resonated with Mr G2 and persuaded him that he was being scammed by Mr C, or dissuaded him from going ahead with the payment or doing anything differently in the circumstances.

Recovery of the funds

I've considered whether Cynergy could've done more to recover Mr G1 and Mr G2's funds. I've seen evidence which shows Mr C removed the funds immediately, and by the time the scam was reported to Cynergy, there were no funds remaining to be returned. As a result, there was no opportunity for Cynergy to recover Mr G2's payment.

Summary

I appreciate Mr G2 has lost a significant amount of money to a cruel scam, orchestrated by someone Mr G2 had known for a long time and thought he could trust. And while Cynergy didn't do what I'd expect it to have done (by carrying out some additional checks on the payment before approving it), I find it more likely than not that the payment would've been made regardless of any intervention, given the relationship Mr G2 had with Mr C and the belief he held in everything being legitimate. So, I don't find I can fairly and reasonably say Cynergy could've prevented the loss or should be held liable in some way.

My final decision

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G1 and Mr G2 to accept or reject my decision before 12 November 2024.

Liam Davies
Ombudsman