

The complaint

Mr M complains that National Westminster Bank Plc trading as Ulster Bank didn't protect him when he fell victim to a Safe account scam.

What happened

Mr M received a call from someone purporting to be Ulster bank. They explained there'd been unusual activity on his account and asked him to confirm if a payment to a gym was him, which Mr M confirmed it wasn't. They listed other transactions Mr M hadn't made and persuaded him his account had been hacked, so to move his funds out of his bank account to an account he held already held with an Electronic Money Provider (EMI) to keep them safe.

The scam went on for over a week, with Mr M receiving daily calls from the scammer to arrange for funds up to his daily bank account limit to be moved to the EMI. He said they asked him for different parts of his security details each day, so would've acquired the full PIN and password for his banking. Mr M believed the funds were safe in this other account, but the scammer was actually using a virtual card set up on their device to spend all Mr M's funds.

During the scam, a £17,000 loan was paid into Mr M's account. Mr M has explained the scammer told him this was a fraudulent loan and to also move these funds out of the account. He says they explained Ulster would then deal with this with the EMI. He says he was told not to worry about the loan and didn't realise it was in his name – but he has confirmed he did receive emails relating to the loan application and it being approved.

When Mr M realised he'd been scammed he asked Ulster to cancel the loan. He said he hadn't taken it out or benefitted from it and so shouldn't be held liable. He also said it wasn't affordable for him. Ulster didn't uphold his complaint. It said that the loan was applied for online using Mr M's online banking and as he's confirmed he moved the funds himself to his own account elsewhere, he should be held responsible for it. It said Mr M had passed its affordability criteria. And also said the funds went to an established payee and most of the payments were made by Open Banking, so initiated by Mr M using his EMI account.

Mr M brought his complaint to our service. He disagreed he should be liable for the loan. He accepted he made all the payments in dispute, but said this was due to the scam. Our Investigator didn't uphold his complaint. She wasn't persuaded that Mr M didn't apply for this loan. But also said that even if it was the scammer, she felt Mr M should be held liable for it. He had moved the money out of Ulster's control to his own account, despite him knowing the funds weren't his. She also said the affordability checks were proportionate.

Mr M disagreed and asked for an ombudsman to review his case. He said he wasn't liable for the loan under Section 83 of the Consumer Credit Act 1974, as another person had taken out this loan without his consent. He also said the activity on his account was out of character, so Ulster should've had concerns about it. Our Investigator had a follow-up call with his representative about this point and explained why it didn't change her outcome.

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 recognise this will be very disappointing for Mr M, but I'm in agreement with our Investigator that I can't fairly ask Ulster to cancel the loan and remove it from his credit file. I'll explain why.

As I have set out on Mr M's EMI case, I'm not persuaded Mr M has given us the full picture for what happened in this scam. The evidence we hold indicates that more must have gone on than he has shared with us. And this makes it more difficult to place weight on Mr M's testimony and version of events. In this case, Ulster has shown the loan was applied for online by someone who had successfully logged into Mr M's online banking using the correct credentials. Mr M's genuine mobile and email address were given, and the income entered was accurate based on the account data Ulster already held.

From the security steps Mr M has explained the scammer asked him to complete, I do accept it's likely the scammer held his full PIN. The loan was applied for four days into the scam, enabling the scammer to have obtained all four digits. And it is possible he'd disclosed his full password considering he's explained the scammer called often and asked for a few characters each time. However Mr M hasn't told us he disclosed his customer number to the scammer, which was needed to log into his online banking. But I recognise the scammer already held Mr M's contact details.

Mr M has provided us with two emails he received for the loan confirming it's been accepted and setting out the terms. He's also provided us with acknowledgement emails he received about other borrowing he says the scammer tried to take out in his name later in the scam.

Mr M says the scammer called him and advised him not to be concerned about the loan and due to this he assumed it wasn't in his name and wasn't then concerned by the emails. But the emails are clear that Mr M has taken out a loan and will be responsible for repaying it. As Mr M says he didn't apply for the loan, I would've expected him to have contacted actual Ulster immediately on receiving any of these emails and have explained he hadn't taken out a loan. And if he read the paperwork after the scammer called to reassure him, to then call Ulster and say the paperwork contradicted what he'd been told – but he didn't do this.

Mr M's testimony is that he understood £17,000 of fraudulent funds had entered his bank account as a loan, but not his loan. But he accepts he held loan paperwork in his name for these funds. Under the scammers instruction he then moved some of these fraudulent funds into his own savings, then back into his current account with some of his own money and then out to an account in his own name with another firm. He understood the loan issue would be rectified at a later time. I accept Mr M was under the spell of the scam, but what he's explained he understood doesn't seem plausible or that he ought to have been persuaded by it.

It's not clear why Mr M would believe Ulster would want him to send this money to another firm rather than them just taking the funds back themselves. Mr M says he knew the funds weren't his and were fraudulent, but he was willing to mix them with his own funds and move them into his own EMI account. It ought to have seemed implausible that his genuine bank would want him moving fraudulent money between his Ulster accounts and then out to another firm. And so implicating and linking his account with another firm in financial crime.

I can't ignore that there are a number of concerns with Mr M's testimony in this case. It seems he hasn't shared the full details of what happened in the scam; we don't understand

how the scammer held all the information needed to log onto Mr M's online banking; and then apply for the loan; and we know Mr M didn't contact his genuine bank about the loan emails he received, despite their content being concerning and contradicting what he was being told. He was also happy to move the 'fraudulent' loan funds to his own savings account with Ulster and then outside of Ulster and did so over a few days.

Considering all this, I do think it's possible Mr M completed the application himself. I can't explain how the scammer could've done this based on what Mr M says he shared. Or understand why Mr M wasn't more concerned by the loan emails and/or being asked to move this money to around his own accounts, when he says he had no part in borrowing it.

But, even if I was to accept the scammer somehow completed the application without Mr M's knowledge or consent, I do consider his actions then amount to him consenting to the loan.

As I've set out above, Mr M was the one who moved the loan funds from his Ulster account into his own EMI account. He did so after receiving the correspondence from Ulster which clearly set out that the loan was taken out in his name – although I appreciate he says the scammers told him not to worry about this as it was a fraudulent loan. But given that he took the action of moving the funds on, I consider it reasonable for Ulster to hold him liable for the contract. I do appreciate the money was then lost to Mr M from the EMI account – but I don't think that means *Ulster* should reasonably be expected not to pursue the money they paid out. And Mr M is aware our service is looking into how the money was lost from the EMI account as a separate matter.

I have considered the information Mr M has shared about his health and how that impacts him. I acknowledge he has been through a difficult time and this impacts him adversely in stressful situations. But I can't say this information is enough to say he's not liable for this borrowing. The scam went on over a period of time, as did him moving the loan funds, so while I accept the impact of his health on his judgement, this doesn't change my outcome.

Mr M's representative also raised that the activity on Mr M's account was unusual and suspicious, so they suggest he should not be held liable under Section 83 of the Consumer Credit Act 1974. And that this also means Ulster was negligent towards Mr M and is liable for all the transactions during the period of the scam. Section 83 referred to has no bearing on unusual or suspicious transactions – it relates to liability for credit.

I accept that the payments out of this account were a change to the normal account activity. But I also have to consider all the circumstances of this case. This was an existing payee for the account and the account the funds were going to was one in Mr M's own name and under his own control. It was Mr M signing in, using his correct credentials – biometrics – to make the payments initiated from Ulster. Mr M also had a loan credit his account, so an increase in spending is then an expected activity, rather than an unusual one.

Finally, even if I was to consider Ulster should've contacted Mr M about the account activity, I can't safely say that it would've prevented the loss. As it doesn't appear we've been given the full picture of what was going on with the scam and I'm aware Mr M was heavily under the spell of the scam, I can't fairly conclude that any intervention by Ulster during the scam would've unravelled it and prevented the subsequent losses.

My final decision

For the reasons set out above, I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 11 February 2025.

Amy Osborne
Ombudsman