

complaint

The estate of the late Mr G is unhappy that West Bromwich Building Society (“WBBS”) hasn’t refunded money after the late Mr G was the victim of a scam. It thinks WBBS didn’t do enough to protect Mr G from the scam.

For ease of reading I’ll refer to the estate of Mr G as “E” throughout this decision.

background

The late Mr G had an account with WBBS. In April 2018 he went to a WBBS branch to arrange a cheque for £14,400 made payable to a third party. Mr G’s passbook records the date of this withdrawal as 10 April 2018. Mr G went to a WBBS branch again a few weeks later to arrange a further cheque, this time for £64,000, payable to another third party which I’ll call ‘C’. Mr G’s passbook records the date of this withdrawal as 3 May 2018.

E says, in summary, that:

- Mr G lived at his house since birth. He was very close to his two sisters. His eldest sister died in 2013 and he never fully recovered. His remaining sister died in 2017 and he became very withdrawn. He rarely left the house, other than to buy food, pay bills and generally deal with his affairs. And he never ventured out of his home town. He also did not deal easily with change. He didn’t have a computer or internet access. He never answered the phone and would only return a call if he recognised the number. He never let anyone in the house and was a complete creature of habit. He would pay his rent at the same time and place without fail every week, a trait that would be repeated in all his other dealings. It was this level of routine that led the council officer to call at his home when his rent wasn’t paid and to ultimately call the police, who found him dead in the property.
- It found notes and scribblings made by Mr G. These notes included the monetary amounts later made into cheques with an ‘investment company’ name alongside. The notes show Mr G thought the cheques were for an investment in gold bullion. It assumes the £14,400 was sold to Mr G as some sort of deposit, and the £64,000 was the remainder needed for the ‘investment’.
- Mr G visited the WBBS branch on almost a weekly basis. It was completely out of the ordinary and out of character for him to withdraw such amounts. This should have been recognised by WBBS. Mr G was also almost 70 years old and clearly vulnerable: his physical appearance had changed – he was more unkempt and had lost weight recently. He didn’t have any paperwork and it believes it would only have taken one or two simple questions from WBBS for it to have become apparent that he was being scammed.
- It questions whether Mr G later realised he had been the victim of a scam and whether this led to his premature death.

WBBS didn’t accept E’s complaint. So E brought the matter here. An investigator here looked into the case and recommended that the complaint be upheld and that WBBS pay E £78,400 (the total of the two cheque withdrawals) less any amount already recovered, plus interest calculated at 8% simple per year. WBBS didn’t agree.

WBBS says, in summary, that:

- It has robust policies and procedures in place. Staff are trained to ask the right questions and spot suspicious activity. When a customer in branch makes a significant withdrawal, staff always make conversation to try to establish the reasons for the withdrawal.
- Mr G was well known to branch staff. Someone's age doesn't necessarily make them vulnerable, and it would only have been aware he'd lost his siblings if he'd said. Branch staff it's interviewed as part of its investigation have said there was no change in Mr G's behaviour or appearance that alerted them to any issue of vulnerability. Nevertheless, on requesting the initial cheque for £14,400, staff asked relevant questions. The customer service adviser at branch knew Mr G from previous visits and thinks Mr G said the cheque was for a family member. He appeared to be his normal self and the transaction was carried out.
- It provides only mortgage and savings accounts. It's therefore not uncommon for customers to save for long periods of time and then withdraw large sums of money. It's also not uncommon for customers to move their funds to other providers or investment companies to gain a better return on their savings. Therefore, Mr G withdrawing a large sum of money via cheque would not raise any concerns.
- There is only so much it can ask, and the investigator has made a lot of assumptions. It can't force a customer to give it information if they don't want to. And if a customer does not tell it of a problem but everything appears in order, then it cannot refuse a customer their funds. It would only invoke the Banking Protocol if the customer seemed confused, upset, not their normal self (if known to staff) or vulnerable giving it concern for the transaction. Its customers complain that they do not like the fact that it asks questions – this is a very fine line it has to deal with. And if it invoked the Banking Protocol every time a customer made a withdrawal that was out of character but appeared not to be as a result of vulnerability, then it believes it would be criticised by the authorities and risk losing their confidence.
- Staff also questioned Mr G about the cheque withdrawal for £64,000 and he said it was for an investment. Again, he appeared to be of sound mind and the transaction was carried out. However, when staff at branch investigated further it found that Mr G had been in branch the day before attempting to withdraw £12,000 in cash, which he said was for a holiday. Due to this being a large cash withdrawal, it had not allowed him to withdraw these funds and had explained its cash withdrawal limits and that the funds would have to be ordered in advance. Its branch staff subsequently referred to its Financial Crime Team to investigate further. Based on the details it had from Mr G in relation to the company, it established that C was a large regulated investment company, so this caused no concern.
- E has made very valid points about the failures on the part of the bank that received the £64,000 cheque.

As the investigator and WBBS were unable to agree, E's complaint about WBBS was passed to me for a decision.

I sent E and WBBS my provisional decision on 14 April 2020 explaining why I was intending to uphold E's complaint and the direction I was intending to make. I said that before I made

my final decision, I'd look at anything else the parties wanted to give me, so long as I got it before 14 May 2020.

There is no need for me to set out in detail here everything the parties have said in response to my provisional decision – but I have set out in summary the responses I have received below.

WBBS has responded to my provisional decision and says, in summary, that:

- It's difficult to understand how Mr G could have been the victim of fraud if he wouldn't answer the telephone, had no computer or internet access, and never ventured out of his home town. Also, its staff at the relevant branch had regular contact with Mr G, potentially more so than his family, and it's very difficult to reconcile the observations made by E compared with those of its branch staff who knew Mr G well and saw and spoke with him on a weekly basis. As they came to know him well, they recall there was no difference in his behaviour or appearance during both transactions. However, it agrees that both cheque requests should have been recognised as unusual – and they were.
- The first cheque request prompted questions which resulted in the member of staff being satisfied that the request was reasonable and for a family member. The member of staff recalls asking Mr G questions but due to the passage of time can't recall the conversation verbatim. However, the Banking Protocol Prompt Card used by its customer facing branch staff shows the questions its staff would ask; staff are trained on this, the card is readily on sight for them (but not customers) and its process is for all its staff to ask all questions from this card if they think the transaction is unusual. The staff member recalls having a conversation with Mr G and the outcome was they were satisfied that the cheque was for a family member. It's obliged to record where there is a suspicion but after speaking to Mr G that wasn't the case here, so no record was made.
- The second cheque request resulted in a referral to its Financial Crime Manager. There was nothing to indicate the two withdrawals were connected and its Financial Crime Manager accepted the first withdrawal for £14,400 was for a family member. The second cheque withdrawal of £64,000 was assessed and the Financial Crime Manager believed this was the movement of inheritance funds that Mr G had deposited with it in May 2018 – some £95,000. They believed he was investing in a genuine company – C is registered at Companies House and this is one of the checks the Financial Crime Team would have undertaken. The Financial Crime Manager no longer works there, but she may have believed the cheque payee 'C' was part of a large and well-known investment company, which would fit the comment they made about a large regulated investment company. Because of this, and the prior inheritance deposit, they believed that Mr G may have been investing his funds elsewhere to get a better return and there was nothing to suggest it was a suspicious activity.
- There's been no mention of the receiving bank's failure to alert it once it identified the account into which the initial cheque of £14,400 was deposited was fraudulent. If the receiving bank had told it that one of its cheques had been paid into an account where fraud had been identified, it would have been able to contact Mr G and potentially reclaim more funds than it did. And the second transaction, in this case, may never have taken place.

E has also responded to my provisional decision, attaching some questions and warnings around scams.

my findings

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

Having done so, I've reached materially the same conclusions for the same reasons as in my provisional decision. I've set out my reasoning again below, including some further comment where appropriate, to address WBBS's response to my provisional decision.

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.

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 Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story:

- The law recognises that a bank may be liable to its customer if it makes a payment in circumstances where it has reasonable grounds (although not necessarily proof) for believing that the payment instruction was an attempt to misappropriate the funds of its customer (known as 'the Quincecare duty').
- Regulated firms like WBBS are also required to conduct their '*business with due skill, care and diligence*' (FCA Principle for Businesses 2) and to '*pay due regard to the interests of its customers*' (Principle 6).

And as a matter of good industry practice at the time, I consider firms should also have taken proactive steps to:

- identify and assist vulnerable consumers and consumers in vulnerable circumstances, including those at risk of financial exploitation (something also recognised by the FCA in recent years and by the British Bankers Association's February 2016 report '*improving outcomes for customers in vulnerable circumstances*');
- look to identify and help prevent transactions – particularly unusual or out of character transactions – that could involve fraud or be the result of a scam (something also recognised by the British Standards Institute's October 2017 '*Protecting Customers from Financial harm as a result of fraud or financial abuse – Code of Practice*', which a number of banks and trade associations were involved in the development of); and
- in relation to branch transactions – follow the Banking Protocol when available.

This means that there are circumstances, irrespective of the payment channel used, where a bank should, in my opinion, fairly and reasonably take additional steps, or make additional checks, before processing a payment, or in some cases decline to make the payment altogether, to help protect customers from the possibility of financial harm.

This is particularly so in light of the environment created by the increase in sophisticated fraud and scams in recent years – which banks are generally more familiar with than the average customer.

In this case, I need to decide whether WBBS acted fairly and reasonably in its dealing with the Mr G in respect of cheque withdrawals of £14,400 on 10 April 2018 and £64,000 on 3 May 2018.

The Banking Protocol

The Banking Protocol is a multi-agency initiative between the Police, financial sector organisations (including banks, building societies and the post office) and Trading Standards *'aimed at identifying customers who are in the process of being defrauded and implementing safeguarding procedures to prevent their repeat victimisation and further loss of funds'*. It has been fully in force since March 2018.

In broad terms, according to UK Finance's toolkit, financial businesses commit to:

- Look out for any unusual or out of character withdrawals and to implement the Banking Protocol procedure when such transactions are identified.
- Discreetly question the customer about the withdrawal or transaction and their reasons for making it, keeping in mind that the customer may have been told they are helping to catch a corrupt bank employee and may have been given a cover story to tell if asked about the transaction.
- Consider the responses against what they expect normal activity on the individual's account. If they are concerned or suspicious that the customer may be the victim of fraud, they should notify a senior member of staff, who should take the customer to a quiet area and ask further questions to establish more details.
- If the senior colleague believes the customer is the victim of fraud, either as a result of the answers provided or through their general behaviour, they should call the Police immediately who will attend the branch and speak to the customer.

The Banking Protocol procedures are not limited to elderly or vulnerable customers, or certain fraud types, and bank staff are encouraged to contact the Police even if they are not sure. For example, UK Finance's Bank Colleague FAQ's say:

"Does it only relate to elderly or vulnerable customers?

No, whilst crime data analysis and demographics indicate that the 70 and over age group are targeted more than other age groups for courier & rogue trader frauds, anyone can be the victim of fraud and we should strive to protect all customers from financial harm.

Does the Banking Protocol only relate to courier or rogue trader offences?

No. Customers may have been defrauded in several ways. Courier fraud, and rogue trader offences are two of the most common offences in which suspects ask the victims to attend banks to make withdrawals or transfers. However, customers may have been the victim of another fraud, such as romance fraud or investment fraud. The Banking Protocol process should be followed for any transaction which you feel is unusual as you may prevent your customer from becoming a victim of fraud.

I'm a bank colleague what should I look out for?

When a customer requests a cash withdrawal or transfer, firstly consider your internal training procedures.

In the circumstances presented does the request appear to be out of character. Is the request for a significant amount? Does the account history show any similar withdrawals or transfers recently? Has the customer provided an explanation for the withdrawal? Are they elderly, vulnerable, upset or nervous? Is the customer on the phone whilst making the request (in some cases suspects stay on the phone to victim's whilst they are conducting transactions)? Bear in mind that as part of the fraud the customer may have been convinced, they are helping to catch 'corrupt bank staff' and given a story to tell you.

I'm a bank colleague what are my responsibilities?

If you identify a customer requesting a cash withdrawal or transfer you think is unusual, commence the Banking Protocol procedure. Ask the customer questions about the transaction. Consider the Banking Protocol questions on the prompt card. If you have any concerns raise the issue with a senior colleague.

I think a customer may be a victim but I'm not sure. Should I still follow the Banking Protocol?

Yes. If you have questioned the customer and are still not sure, the police urge you to still call them. It is not possible to answer every 'what if' so if you are suspicious or concerned but are not completely sure then still report this following the Banking Protocol. You might prevent a customer becoming the victim of a crime."

Did WBBS act fairly and reasonably in Mr G's case?

As I've explained, I consider that as a matter of good practice WBBS should have been on the lookout for unusual and out of character transactions.

I appreciate that WBBS says it's not uncommon for its customers to save for long periods of time and then withdraw or move large sums of money; and that it believes it would be criticised by the authorities and risk losing their confidence if it invoked the Banking Protocol every time a customer made a withdrawal that was out of character. However, Mr G's passbooks show that he made regular cash withdrawals for £300 and £500. The cheque withdrawals for £14,400 and £64,000 were very clearly unusual and out of character for him. Bearing this in mind, I'm not persuaded I need to make a finding on whether Mr G was vulnerable or in vulnerable circumstances and whether WBBS should have known this – I'm satisfied WBBS should have recognised the cheque requests as unusual and out of character irrespective of whether or not it thought Mr G was in vulnerable circumstances at the time.

While I accept there is a balance to be struck between identifying payments that could potentially be fraudulent – and then responding appropriately to any concerns – and ensuring minimal disruption to legitimate payments, I do not think that means WBBS acted

fairly and reasonably in this case. I also do not think that given the circumstances in this case as a whole – including the environment created by the increase in sophisticated fraud and scams in recent years – that WBBS ought not to have done more simply because its customers do from time-to-time instruct legitimate payments that are unusual compared to their usual account activity and significant in terms of value.

Considering all of this, I am satisfied that WBBS ought to have recognised that Mr G could be at risk of financial harm and taken steps to look into what was going on.

I'm mindful of the challenges faced by branch staff in the moment, when confronted with such situations, with only limited information on which to make decisions. And from the information I've seen I do think that WBBS may very well have asked Mr G what the cheque for £14,400 was for and it's possible Mr G said it was for a family member; and WBBS asked Mr G what the cheque for £64,000 was for and Mr G said it was for an investment.

However, it's important to highlight that the Banking Protocol recognises that banks will often have to ask more detailed and specific questions to understand whether a customer might be a victim of fraud. And it recognises that customers are often convinced by the fraudster's story and so ultimately it may be necessary to ask more detailed questions or even escalate the matter to the police before a customer realises they are a victim of fraud.

The 'Banking Protocol Prompt Card' WBBS has sent us, which it says was in use at the time, says:

"Is the withdrawal or transaction unusual for this customer? [and if the answer is yes then]...

Please ask the customer further questions, for example:

- What is the money going to be used for?*
- Who are you giving the money to?*
- Was this withdrawal or transaction planned or unexpected?*
- Have you had a call or been approached, claiming you have been a victim of fraud or offered an investment?*
- Have you been contacted by someone claiming they are Police, bank staff or a trader?"*

I'm satisfied, therefore that WBBS should have recognised that simply asking what the cheques were for wasn't enough to understand whether Mr G might be about to become a victim of fraud. To be clear, I'm not suggesting that Mr G should have been subject to an interrogation – merely in the circumstances a basic level of questioning designed to get into sufficient detail to disturb or unearth a potential fraud.

I understand that WBBS argues that it did ask Mr G questions – it has pointed to the Banking Protocol Prompt Card above which it says shows the questions its staff would have asked. I also understand that it says after it had spoken to Mr G it didn't have concerns, so a note of the conversation would not have been made. However, this doesn't automatically mean these questions were asked or that WBBS didn't unreasonably (bearing in mind everything I've said above) miss a chance to unearth the scam.

So I've thought carefully about whether the kind of questions that I believe ought fairly and reasonably to have been asked by WBBS would have made a difference. I can't be certain,

so I need to make up my mind based on the balance of probabilities – in other words, based on what I think most likely would have happened.

I understand the cheque for £14,400 in April 2018 was made out to a third person's name and Mr G may have said this was for a family member. I'm persuaded by the evidence E has provided that Mr G more likely than not thought this was actually for an investment in gold bullion. I accept it's possible that if Mr G told WBBS incorrectly that the cheque was for a family member, that if WBBS had gone on to provide appropriate fraud and scam warnings and ask further questions about the payment – such as, what was it for, and whether Mr G had been called or approached by someone claiming he'd been the victim of a fraud or offering an investment – Mr G might have maintained that the payment was for a family member. However, I'm mindful of Mr G's family situation at the time as E has described it. And I think that had WBBS asked simple further questions, such as who and what the cheque was for more specifically (and bearing in mind the name Mr G was asking the cheque to be made payable to), Mr G would have most likely hesitated and struggled with a convincing simple explanation and WBBS would have most likely been concerned.

In any event, I don't think it's most likely that Mr G would have maintained that it was for a family member. It appears that in May 2018 when arranging the cheque for £64,000, Mr G did tell WBBS that the £64,000 cheque was for an investment. And I'm persuaded from the evidence – in particular the notes E has submitted which appear to have been made by Mr G – that this second cheque was part of the same scam – an 'investment' in gold bullion with 'investment company' C. I therefore consider it's more likely than not that Mr G would have revealed at the time he requested the first cheque for £14,400 that this was also for an investment if WBBS had given appropriate warnings and asked appropriate and straightforward questions designed to get into sufficient detail to disturb or unearth a potential fraud. The transaction was for a large amount, and I see no reason why Mr G would not have taken WBBS's warnings seriously, have been concerned for his money, opened up more, and explained the investment was for gold bullion and how he had come to know about it.

Given this, WBBS could have and should have then – in relation to the first cheque – questioned Mr G further about the proposed investment. It ought then to have been concerned: Mr G didn't initially disclose the reason for the withdrawal as an investment; he didn't appear to have any paperwork for the investment; he was requesting for the cheque to be made payable to a third person and not an investment company; and most likely his level of knowledge of the proposed 'investment company' he thought he was about to invest with should have concerned WBBS.

WBBS has said that C is registered at Companies House and its Financial Crime Manager may have thought it was part of specific, larger and more well-known investment company. But I haven't seen evidence that persuades me C was a regulated investment company offering, or likely to be offering, legitimate investments in gold bullion – or that it would have been reasonable for WBBS to simply assume it was – or that it was part of the specific well-known investment company it has referred to, bearing in mind the way in which investment scammers work to make themselves look legitimate. Taking all of this into account, I'm satisfied that if WBBS had questioned things further and appropriately cautioned Mr G to consider and/or check the legitimacy of the investment before proceeding further, it's most likely that both WBBS and Mr G would have been sufficiently concerned that Mr G ultimately would not have proceeded, and the scam would have been avoided.

The second cheque was even more unusual than the first. I understand Mr G requested this second cheque to be written out for C and that he said it was an investment. In its response to my provisional decision WBBS has said I've said that it shouldn't have taken this at automatic face value, but it says that it didn't. But again, for all the reasons explained above, I still don't think WBBS did enough at this point or that it could therefore have been sure enough Mr G wasn't at risk of financial harm. And if it had looked into things further it would have discovered that Mr G had been in branch the day before asking to withdraw £12,000 in cash for a holiday – not an investment.

In any event, as I've said, I'm satisfied that the second cheque was, more likely than not, linked to the same scam. And I'm satisfied that if the scam had been avoided with the first cheque of £14,400, Mr G most likely wouldn't have gone on to request the second cheque at all. I therefore don't need to consider whether WBBS should have done more in branch before putting through Mr G's cheque withdrawal request for £64,000 – although for clarity I do think for the same reasons it should have done more than it did and that this would have made a difference; I also don't need to consider the points WBBS has alluded to regarding the bank that received the £64,000 – since this second cheque, more likely than not, would never have been requested by Mr G had WBBS done what I'm satisfied it should have done previously.

For all the reasons I've explained, I'm satisfied in the particular circumstances of this complaint that WBBS ought to have done more to help Mr G. I'm persuaded that had it done so, Mr G wouldn't have suffered the loss of £78,400 – that he wouldn't have made the two payments to the scammers. WBBS should therefore pay E £78,400 to reimburse it, less any amount WBBS managed to recover and already return to Mr G or E. And as Mr G was, and then later E has, been deprived of the use of this money in the meantime, WBBS should also pay E interest on this, calculated at 8% simple per year from the date of loss to the date of settlement. If WBBS deducts tax from this interest, it should provide E with the appropriate tax deduction certificate.

my final decision

For the reasons I've explained, I uphold E's complaint and I direct West Bromwich Building Society to pay E:

- £78,400 less any amount already recovered and returned to Mr G or E.
- Interest on this amount calculated at 8% simple per year from the date of loss to the date of settlement. If West Bromwich Building Society deducts tax from this interest, it should provide E with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 7 August 2020.

Neil Bridge
ombudsman