

complaint

Mr D complains that Lloyds Bank PLC hasn't refunded him after he fell victim to an invoice interception scam.

background

In Autumn 2018, Mr D obtained quotes for work to be carried out by a local plumbing firm. He'd received an email that appeared to originate from the correct firm, which requested payment in advance to cover costs.

Mr D trusted the firm and so sent the £2,500 from his Lloyds account to the account details provided in the email he'd received. But unknown to Mr D at the time, the plumbing firm's email account had been hacked by fraudsters. The email and invoice wasn't genuine. He'd been tricked into sending the money to an account that had no connection to the plumbers.

The following day, Lloyds contacted Mr D. It had identified an unusual pattern of activity on the recipient account and was concerned that Mr D had fallen victim to a scam. Lloyds tried to recover his funds, but no money remained in the recipient account to return to Mr D. Mr D complained to Lloyds and asked it to reimburse him for what he'd lost in the scam.

Lloyds didn't think it was at fault, and so wasn't liable for the money Mr D had sent. Lloyds said it had done everything it could, and as soon as it had identified the scam it had taken the appropriate steps to block the recipient's account. But it said the funds had already been removed by the fraudsters before the scam had been identified.

Mr D asked our service to independently review his complaint. Our investigator looked into what had happened. The investigator didn't recommend the complaint should be upheld. She didn't think Lloyds had missed an opportunity to identify the payment was being made in relation to a scam, because she didn't think it would have stood out as being particularly unusual or suspicious. She was satisfied Lloyds had acted appropriately in the steps it had taken in identifying the scam, and subsequently attempting to recover the money Mr D lost.

Mr D didn't accept our investigator's view. In summary, Mr D thought:

- the amount of the transfer was high for him so should have stood out as unusual;
- Lloyds hadn't matched the business payee name he'd entered to that of the recipient account;
- Lloyds had had all the information it needed to identify this was a scam from the time he'd originally authorised the payment, and so questioned why Lloyds allowed the transaction to proceed;
- he had no prior knowledge of this type of fraud and didn't think Lloyds had done enough to alert him to that risk;
- he pointed out that at least one other victim of the same email interception had been refunded by their bank; and,
- he thought it unfair that there was very limited protection for a Faster Payment.

Mr D thought Lloyds should refund him for the money he'd lost to the scammer. As a result, Mr D's complaint has been passed to me to reach a final decision.

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 have reached the same conclusions as those of the investigator and for the same reasons. I know this will come as a disappointment to Mr D, so I'll explain why I think what I do.

From the outset I should say that I appreciate how strongly Mr D feels about what happened, and I understand his frustration that his bank was not able to prevent the loss he incurred. He was acting in good faith and the innocent victim of a crime. It was absolutely not his fault that the plumbing firm had its email account compromised and it is not fair that that Mr D has lost out as a result.

So, I can understand why he feels so strongly that his money should be reimbursed by Lloyds, and why he does not accept what the investigator said. However, the principal blame here resides with the actions of the fraudster. The fraudster's actions were designed to steal money from the clients of the plumbing firm. The fraudster is liable for the money Mr D lost. For me to say Lloyds is liable in this type of situation, I would need to find that the bank could and should have acted to prevent the loss, or that it failed to meet its obligations in some other way.

The starting point here is that Lloyds is obliged to follow Mr D's instructions and to make the payments he requests to the sort code and account number he designates, unless it has sufficient reason to be concerned that Mr D might be at risk of financial harm by doing so.

Mr D sent the payment to the scammer without any interaction with the bank's staff. When Mr D made the payment, he didn't know he was dealing with a scammer, and sent the money in the genuine belief he was making the payment to defray the advance costs of the plumbing firm.

But this means that at the time he made the payment, he wanted it to go ahead. He took the steps necessary to authorise the payment to be made. Lloyds then had an obligation to make the payment he requested, unless it had good reason to think Mr D might be about to fall victim to a scam. It says it didn't have sufficient reason to think that.

I've considered the increase of sophisticated scams in recent years and whether it would have been reasonable to expect Lloyds to have had a closer look at the circumstances surrounding this specific payment - especially as I consider that as a matter of good practice Lloyds should have been on the lookout for unusual and out of character transactions.

In thinking about this, I've considered whether the evidence shows the transfer made by Mr D was significantly out of character or otherwise so unusual for him to an extent that I'd reasonably have expected Lloyds to have had concerns. To establish this, I've reviewed the payment in question against the typical pattern of Mr D's account usage, in the six months leading up to the scam.

Mr D had made a number of other payments out of his account in the six months before the scam. This included payments for larger sums than this. The payment he made here left the majority of his account balance intact. Mr D is right to point out that the payment of £2,500 was a larger than average transfer for his account. But I don't think it was sufficiently so, in

other words not to the extent that I'd expect Lloyds should immediately have had concerns about what Mr D was asking it to do, and so carry out additional checks.

The amount itself wasn't significantly different to the normal pattern of withdrawals and payments on his account, and I don't think this transaction was so unusual or suspicious in comparison to Mr D's normal account activity that, in itself, it ought to have alerted Lloyds that Mr D may have been at risk of financial harm. This means the bank didn't do anything wrong by following the instructions Mr D gave and sending the money.

Mr D points out that he had entered the correct business's payee name when he made the payment and that this wouldn't have matched the recipient account name. He thinks Lloyds ought to have checked this before it made his payment. There is a newly introduced system to provide confirmation of payee names, which has since come into effect and would have meant this check would have been carried out.

But that new system had not been implemented at the time of this scam. When Mr D made his payment this simply wasn't a check Lloyds was required or expected to carry out for transfers it didn't have some other reason to question. As noted above, Lloyds had an obligation to follow Mr D's instructions in making payments to the sort code and account number he had requested. At the time of this payment, the payee name entered might typically be shown on a customer's bank statement but wasn't routinely used for verification. So I can't say Lloyds was liable through not taking the additional step of double-checking the payee name. In the absence of other concerns about the payment it had no obligation to do this.

I understand Mr D's frustration that he had no knowledge of this type of scam prior to this incident. In common with other banks, Lloyds has undertaken consumer scam education. Of course, those efforts have failed to prevent all scams from occurring, such as this one. But I do not consider this means Lloyds is liable for the loss Mr D has suffered. Neither do I find it liable on the basis that Mr D paid by Faster Payments transfer rather than a card payment or other means, I cannot see that it was directly involved in the choice of payment method for this specific transaction – that seems likely to have been the decision of the scammer.

I would also stress that I do not consider Mr D is at fault here. I am simply considering whether I think the transaction he made ought to have raised sufficient concern with Lloyds that it should have directly intervened, or otherwise sufficiently at fault to make it liable for what happened.

It is the case that since the time of this scam a new voluntary code has been introduced to increase protection for customers. But the code doesn't apply retrospectively, and I cannot fairly require Lloyds to follow a code that was not in place at the time.

Lloyds' records show that it acted rapidly to try to recover the money he'd sent. It took steps very quickly after it identified a pattern of unusual activity on the receiving account, and so uncovered the scam. Unfortunately, despite this, no funds remained. Based on the evidence, Lloyds did what it could at that time to help Mr D. Fraudsters will typically withdraw funds very quickly leaving none by the time the scam comes to light. That appears to be what happened here. I haven't seen anything to make me think Lloyds could reasonably have done more here or acted more quickly than it did.

Mr D notes that at least one other customer has been refunded by their bank following our investigation. In reaching a decision on Mr D's complaint, as I am here, I am required to

consider the specific circumstances surrounding the payment that forms the subject of his complaint, alongside other relevant factors such as his own typical account usage. These are unique to him, and I cannot apply considerations from another customer to deciding Mr D's case.

Having considered everything, I'm not going to uphold Mr D's complaint about Lloyds. I do appreciate this will be disappointing for Mr D.

I am very sorry that Mr D fell victim to what was an opportunist scam, and that he has lost out as a result. I appreciate that he has lost a significant sum in consequence of the fraudster's actions. But in all of the circumstances, I don't think I can fairly say Lloyds should reasonably have prevented what happened. That means I cannot fairly require Lloyds to refund Mr D.

my final decision

For the reasons given above, I do not uphold Mr D's complaint about Lloyds Bank plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 30 January 2021.

Stephen Dickie
Ombudsman