

complaint

Mr F complains that Lloyds Bank PLC will not refund money he lost, after he fell victim to a scam.

background

I issued a provisional decision in February 2021. For ease, I provide a copy of the background as set out in my provisional decision below:

At the outset I think it important to recognise that the circumstances of this particular case, are not like those of a typical scam.

For ease I have set out in the table below a list of the relevant transactions and events that I deem to be important.

Date	Description/ Type of transaction	Amount
August 2015	Account balance	£124,897.54
April 2016	Account balance	£121,097.54
29/1/16	Funds sent via a money transfer service provider for GHC5280	These were transfers Mr F says he made prior to those sent from his Lloyds account. He's told us he transferred around 8,000 USD
2/2/16	Funds sent via a money transfer service provider for GHC13474	
4/2/16	Funds sent via a money transfer service provider for GHC6245	
7/4/16	Bank transfer foreign payment	£21,877.05
18/4/16	Bank transfer foreign payment	£14,431.06
5/5/16	Bank transfer foreign payment	£3,566.59
16/5/16	Bank transfer foreign payment	£14,316.39
25/5/16	Funds paid into the account from another of Mr F's accounts with Lloyds	£17,000
25/5/16	Bank transfer foreign payment	£17,551.25
8/7/16	Funds paid into the account from another of Mr F's account with Lloyds	£50,000
8/7/16	Bank transfer foreign payment	£15,826.54
	Total of all payments from Lloyds account	£87,568.88

In 2015, Mr F was working in Ghana. During his time there he met a third party whom he had a relationship with. They were in a relationship from mid-November to mid- December 2015, prior to him returning to the UK in December 2015.

On his return to the UK, correspondence was maintained between Mr F and the third party. Mr F has explained he was surprised when he received a message on 16 December 2015, from the third party, informing him of a pregnancy.

Mr F says he started to receive abusive and threatening messages from the third party. And has provided a message he received on 30 December 2015, in which the third party threatened to sue him in court and says Mr F will not lose his kids alone but his life as well.

Mr F told us it was around this time the third party demanded money to go abroad to undergo a termination of the pregnancy.

In correspondence Mr F sent to a government agency in Ghana, he commented that he suspected the third party wasn't pregnant and that it was a scam to obtain money. Mr F says when he asked for proof of the pregnancy the third party wrote to the director of the Educational Institution in Ghana and that the director replied back to the third party (copying him in) stating that it needed to be resolved outside of the organisation.

Mr F has explained that in early January 2016 the daily abuse, threats and obscenities intensified. In his correspondence with the government agency in Ghana he said that as he'd returned to the UK and was trying to lead a normal life, reconcile with his wife and keep his family together, he was prepared to meet the third party's demands in order to silence it. It was at the end of January 2016 Mr F sent three payments via money transfer service providers to the third party (these were prior to payments sent from his Lloyds account).

Mr F was then informed by the third party that she was still pregnant. Mr F explains he received more abusive messages from the third party and also from another party (I'll refer to as X) believed to be her lawyer, who was claiming Mr F had tried to poison her.

Mr F was told X had filed a petition against him with the government agency in Ghana - whom X claimed had sent representatives to Mr F's employer. Mr F says he never received anything relating to this. Mr F feels the third party claimed to involve the agency and his employer to deliberately put pressure on him to pay more money, which succeeded.

Following this, Mr F received an email from another party (I'll refer to as D), whom he recalled from his work in Ghana and employer. Mr F said he liked and trusted D as he worked for the employer and, because he had the confidence of the director. D claimed to be delegated to help Mr F solve this issue.

Shortly after the initial contact from D, he contacted Mr F to suggest the third party attend a clinic at a cost of \$30,000 USD. Mr F says he thought the amount charged was very high but that he borrowed this money which he sent directly to the third party's account in the hope this would be the end of the matter. A payment of £21,877.05 was made from Mr F's Lloyds account on 7 April 2016.

However, the third party then claimed the costs had risen to \$50,000 USD. Mr F again said he was suspicious that this was indeed blackmail/extortion on a large scale by the third party and D, given that neither would provide him with documentary proof about the costs or contact details for the clinic.

Mr F explained due to the stress caused by the constant abuse and threats he transferred a further £14,431.06 (\$20,000 USD) on 18 April 2016.

D then got in touch with Mr F to say the third party hadn't turned up. Around this time, Mr F said he received messages from the third-party demanding compensation of \$50,000 USD, otherwise she'd not have the procedure. Mr F said he protested and explained he couldn't send any more money.

Around the end of April 2016, he wrote the director of the Educational Institution in Ghana to explain what was happening but received no reply. Mr F suspects the email he was given as a direct contact was false. From what I've currently seen, it is not fully clear whether the contact details Mr F had for the director was gained when he was copied into the director's reply to the third party around January 2016 or whether this was obtained through any of the other parties involved.

In his letter to the government agency Mr F explained that due to the stress caused at the time, he contemplated suicide on more than one occasion. Mr F's told us he managed to borrow the money which was transferred to the third party's account in three instalments – £3,566.59 on 5 May 2016, £14,316.39 on 16 May 2016 and £17,551.25 on 25 May 2016. Mr F added that due to the stress and an unbalanced state of mind at the time he considered being in debt better than a lifetime of blackmail.

The third party attended the alleged procedure at the end of May 2016. It was a day after this that D contacted Mr F to advise him of complications. Mr F was also contacted by a friend of the third party who demanded \$30,000 USD so that the third party could be taken abroad for an operation. While Mr F, as mentioned above, has from the outset suspected that he was being blackmailed, he said that it was at this time he was absolutely certain this was a blackmailing operation.

Mr F has said he was contacted by D, the third party's friend and, that X had also got back in touch - with the messages remaining threatening and abusive. D contacted Mr F further at the beginning of July 2016 to say he'd negotiated a deal in which Mr F would pay \$20,000 USD and the clinic would pay \$10,000 USD for the third party to have an operation. Mr F initially refused to pay any further money, however, after further abusive and threatening messages he transferred a further £15,826.54 to the third party on 8 July 2016.

In total, Mr F lost £87,568.88 in payments he made to the third party from his Lloyds account.

Mr F raised the matter with Lloyds on 11 January 2018, which was over a year after the payments had been made. On becoming aware of the scam Lloyds contacted the receiving bank in order to try to recover the funds. Unfortunately, no funds were recovered.

Lloyds didn't uphold the complaint. In its final response it said no error had been made by the bank. It said the transactions did not flag, as its system did not deem them suspicious. Lloyds added transactions are not manually checked – they are referred through its fraud detection methods – the parameters of which change all the time. Lloyds say that as Mr F had willingly transferred the money it is unable to refund the money lost as a result of a scam.

Mr F has explained that as a result of the blackmail he has been left in debt, with a damaged reputation and an inability to focus and concentrate due to the high levels of stress and chronic insomnia.

As Mr F remained unhappy, he brought his complaint to our service. One of our investigators looked into things and sent his initial thoughts to Lloyds recommending the complaint be upheld. He thought the large payments were unusual and out of character for Mr F's account when taking into account the sudden increase in spending and that the payments were international transfers to a new payee. He considered Lloyds ought reasonably to have intervened. And had it done so, he thought Mr F would have explained what was happening and this would have prevented him from sending further funds. He proposed that Lloyds either refund the full amount Mr F had lost or at least from the second payment (a partial refund of £65,691.83).

Lloyds disagreed with our investigator's view of the complaint and so the complaint has been passed to me to reach a decision. Lloyds in its response said:

- *Mr F had a relationship with the third party and continued contact on his return to the UK.*
- *Its referred to Mr F's comments within his communication with the agency in Ghana where he says he was working on his marriage and was prepared to meet the third party's demands.*

- *It doesn't agree that intervention from it when Mr F was making the payment would have made a difference in this particular case. It's said had Mr F been asked questions about the payments it is likely he would have explained he was sending funds to a friend in Ghana. And that when considering Mr F had worked in Ghana, this would have been a plausible explanation.*

In my provisional decision I explained why I was minded to uphold the complaint in part. I included significant detail about how the scam seemed to have unfolded as well as what the parties had said. I won't repeat all of that here but I concluded, in summary, that:

- There was no dispute Mr F had authorised all the international transfers he made from his Lloyds classic account. And 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. But I also took into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time in order to decide whether Lloyds acted fairly and reasonably in its dealings with Mr F when he made the international transfers, or whether it should have done more.
- Having considered Mr F's previous account usage, I considered the first payment to be unusual and out of character for how his account was previously run. It followed that I was persuaded Lloyds ought to have got in touch with Mr F when he made the first international transfer of £21,877.05.
- Lloyds in its response to our investigator said due to the time that's passed there is limited information available and, that without this information it is unable to determine if any of the transactions were referred for more checks on its systems. On balance, I was persuaded it was more likely than not Lloyds didn't make any enquiries about the payments before processing them based on the lack of evidence and because Mr F was consistent in saying he received no contact from the bank at any point during the scam.
- I explained that had Lloyds got in touch, as I think it ought to have done when the first payment was made, I needed to decide whether this would have made a difference. Taking into account Mr F's recounting of what happened, I was persuaded that given he wished to protect his reputation, the reputation of his employer and, also due to thinking about his family, it was more likely than not he'd have provided a plausible explanation as to why he was sending the funds for the first few payments. I also explained that I had to take into account that Mr F had worked in Ghana and had a relationship with the third party. So when thinking about the likely answers Mr F would have given had Lloyds questioned him about the first few payments, I was persuaded on balance, these would not have given Lloyds caused for concern that he might have been at risk of financial harm.
- While I didn't think intervention from Lloyds at the start would have made a difference, I did think given the spending on the account, the number of payments made – all to the same party and all for reasonably large amounts - ought to have prompted Lloyds to get in touch with Mr F again at a later stage to question the payments he was making. I added that given the spending on the account, I consider banks should seek to prevent its bank accounts from being used to further financial crime.
- I was persuaded that when Mr F made the fifth payment of £17,551.25 on 25 May 2016 Lloyds ought reasonably to have intervened again. Prior to making this payment, Mr F credited his account with £17,000. And while Lloyds has said that his account had a healthy balance and the credit came from another of Mr F's accounts,

I think Lloyds at this stage ought to have recognised Mr F might be at risk of financial harm or was laundering money and got in touch to question the payments – after all this was the fifth large payment Mr F had made to Ghana in a short space of time.

- In consideration of the above, I was mindful of Mr F's testimony, where he explained that prior to making the payments to the third party in May, due to the stress caused at the time, he contemplated suicide on more than one occasion and was in an unbalanced state of mind. Had Lloyds got in touch at this point, I thought Mr F would have found it difficult to maintain and provide a plausible explanation/response as to why he was making continued international payments for such large amounts. On balance, given Mr F's state of mind at the time, had Lloyds got in touch and asked Mr F further questions, I was persuaded the situation would have stated to unravel and unfold. I think further questioning would have likely led to Mr F telling Lloyds what was happening and that he was being blackmailed. As given what Mr F has told us, it suggests in May he was reaching a crisis point.
- I thought Lloyds ought to have recognised Mr F was the victim of financial crime and that it should have taken steps in preventing him from making the payments and advised him to contact the Police. I thought intervention would've enabled Mr F to recognise the seriousness of the situation he was in and give him some time to reflect on his best next steps. In that context, I was persuaded once Mr F had told someone (in this case Lloyds) what was happening, it's more likely than not that he would have felt empowered to notify the necessary authorities and stopped making the payments.
- Whilst I felt Lloyds was at fault for not protecting Mr F and for allowing the furthering of a financial crime, I didn't think it should refund the entire sum Mr F had lost. I thought Mr F was at fault to some extent too. I said that because I didn't think Mr F would have been open and honest had Lloyds questioned him about the first few payments he made. I said this because, Mr F has been clear that he was suspicious he was being blackmailed and that he indeed had suspicions from the outset. I had concerns about how readily Mr F willingly handed over a considerable amount of money to the third party based on the plausibility of what he was being told and the events taking place. This was particularly when taking into account the relatively limited evidence Mr F received to support the claims of the third party. Mr F in recounting what happened said he asked the parties contacting him for evidence in support of what was being claimed but that he never received any information. And despite this he continued to make the payments to the third party. I also couldn't fairly ignore that Mr F clearly expressed that he was prepared to meet the demands of the third party in order to silence the matter for a number of reasons, which included (but not limited to) him being in fear of his life, wanting to protect his family and his reputation. I thought, in all the circumstances, it was fair to instruct Lloyds to refund Mr F from 25 May 2016 - the payments of £17,551.25 and £15,826.54 (total of £33,377.79) but that this amount should be reduced by 50% to take into account Mr F's own actions.
- The investigator recommended Lloyds should pay £100 compensation in recognition of the distress and inconvenience caused to Mr F. Lloyds hadn't commented specifically in response to this recommendation. I was mindful that Mr F's loss was ultimately caused by the act of the third party and, although Lloyds ought to have intervened for the reasons I've summarised, given what I said about Mr F's actions, I was not inclined to say any compensation ought to be awarded.

In response to my provisional decision Lloyds and Mr F replied to say they both disagreed with my findings. I will now summarise each party's response:

Mr F replied to say he started to make the large transfers from his account for the following reasons:

- The third party demanded he made bank transfers as she said the money transfer service provider would question such large transfers.
- He was worried by an ex-colleague (referred to as D), whom he recalled from his work in Ghana and his employer, who told him the security agency and government agency in Ghana had talked to his employer and the director.
- Mr F explained he was persuaded by D, whom was someone he knew and respected from his employer. When D told him he'd been delegated by the director to contact him and advised him to pay for a termination of the pregnancy, he believed him as he had no reason not to.
- At the time of the first transfer Mr F says he thought he could see a way through the abuse and threats of the third party by following the advice of the director and D. Mr F adds he had no idea the contacts were not what they appeared to be. Mr F has commented in his reply that because D had been so convincing and seemed to know so much about him, he believes there is collaboration with the scammers.
- He believes Lloyds ought to have blocked the transfers from the initial payment (given the amount, that it was a payment to a new payee and that it was being made to an account in Ghana). Mr F says that had Lloyds contacted him and questioned him about the first payment he made he feels certain he would have admitted he was being blackmailed/scammed. Mr F said the amounts were simply too large to be plausibly explained as gifts or help to a friend. And that the transfers were very uncharacteristic of his usual behaviour over the many years he's held accounts with the bank.

Mr F reiterated that had Lloyds got in touch when he had made the first transfer, he is certain he would have admitted to being blackmailed/scammed. He maintains Lloyds should reimburse him for the total loss he has incurred as a result, along with interest and compensation.

Lloyds in its response made the following points:

- It said the transfers Mr F made into the account were from another of his Lloyds accounts, therefore it would have had no reason to question these deposits. It reiterated that had Mr F been questioned about the payments, it is likely he would have explained he was sending funds to a friend in Ghana. And given Mr F had worked in Ghana this would have been a plausible explanation.
- Lloyds say there was nothing in the activity that alerted for further security checks.
- It doesn't believe Mr F has been the victim of a scam as by his own testimony he acknowledged himself as having been blackmailed/extorted. It follows that it doesn't consider Mr F to have been under the spell of a scam at any point.
- Lloyds also considers a recent court ruling to be relevant here, where it was agreed that there should be no extension of the Quincecare duty where the transfer is properly and lawfully authorised by the customer. It says this decision provides banks with a clear position and that where a payment was authorised by the customer, there is limited scope to argue that their bank has a duty of care to prevent the consequences of that payment.

my findings

Having carefully considered the further comments made by both parties, along with having reconsidered all the previous evidence and arguments provided, my decision remains unchanged. I've reached the same conclusions as set out in my provisional decision and summarised above.

I know this will be disappointing for both Mr F and Lloyds so I will explain why.

I'd like to assure Mr F that I've carefully considered everything he has told us in relation to the circumstances of this complaint and I do recognise and understand his strength of feeling about what has happened. But I'm afraid my position remains the same for the reasons I explained in detail in my provisional decision – which is summarised and in part copied above. Had Lloyds got in touch with Mr F when he made the first payments, as I think it ought to have done here, when taking Mr F's testimony into account, I don't think that intervention from Lloyds would have initially have made a difference here.

Mr F in his recounting of what happened has been clear that when the third party started to ask for money, he was prepared to meet the third party's demands in order to silence the situation. As set out above, this was on the basis that Mr F wished to protect his reputation, the reputation of his employer and, also due to thinking about his family. I'm persuaded that had Lloyds got in touch with Mr F regarding any of the first few payments he was likely to have provided a plausible explanation as to why he was sending the funds.

When thinking about the likely answers he would have given had Lloyds questioned him about the first few payments, on balance, I don't think I can fairly and reasonably say these would have given Lloyds cause for concern that he might have been at risk of financial harm. I say this because, Mr F had a connection to the third party and to the country at this point. So when the situation initially started, I think it's more likely than not Mr F would have been able to explain what he was making the payments for in a feasible and, on the face of it, credible way.

However, while I don't think intervention from Lloyds at the start would have made a difference, I remain of the view that the spending on the account, the number of payments made – all to the same party and all for reasonably large amounts - ought to have prompted Lloyds to get in touch with Mr F again at a later stage to question the payments he was making. I also say this because, given the spending on the account, I consider a bank should seek to prevent its bank accounts from being used to further financial crime. When looking at the pattern of spending in this particular case it could have been indicative of money laundering so we would have reasonably expected the bank to have investigated further to avail itself of its obligations to monitor accounts. Banks are under obligations to carry out account monitoring under various requirements – including anti-money laundering, countering the financing of terrorism and preventing financial crime, so I'd expect the bank to be monitoring accounts and payments.

Lloyds in its response to my provisional decision said it considers too high a standard has been applied to what is expected of it in terms of identifying payments that might indicate a consumer is at risk of financial harm; and it has referred to 'the Quincecare duty' in support of its argument. I am mindful that the courts have interpreted Quincecare narrowly and the circumstances of this complaint are different to that case. Our 'fair and reasonable' remit also enables us to take account of regulatory and industry standards beyond the narrow legal duties considered in that and other court cases.

In any event, I am not suggesting Quincecare applies to this case, however the broad legal position that a bank is expected to process payments that a customer authorises is not absolute – and Quincecare (along with regulators' rules and guidance, relevant codes of practice and good industry practice at the time) is an example of that.

I acknowledge there is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. The systems and procedures Lloyds put in place to manage those competing demands are a matter for the bank. But it is neither unfair nor unreasonable to expect a bank to double-check payment instructions that ought reasonably to trigger concerns as to whether they are unusual or uncharacteristic for this particular customer and/or account activity.

In the circumstances of this particular case, I remain persuaded that when Mr F made the fifth payment of £17,551.25 on 25 May 2016 Lloyds ought reasonably to have intervened. Prior to making this payment, Mr F credited his account with £17,000. And while Lloyds has reiterated that his account had a healthy balance and the credit came from another of Mr F's accounts - so had no reason to question the deposit, I still think Lloyds ought to have recognised Mr F might be at risk of financial harm or was laundering money and got in touch to question the payments – after all this was the fifth large payment Mr F had made to Ghana in a short space of time.

And when considering what Mr F has told us about his state of mind at the time of making the payment to the third party in May, had Lloyds got in touch with Mr F at this point, I think he would have found it difficult to continue to maintain and provide a plausible explanation/ response as to why he was making continued international payments for such large amounts for all the reasons I've previously explained and summarised above.

For clarity, had Lloyds asked Mr F further questions, on balance, I'm persuaded the situation would have started to unravel and unfold. I also think some further questioning from Lloyds - for example, what were the payments for, what was the reason for the continued payments to the payee – would have likely resulted in Mr F being unable to answer these further questions plausibly. Mr F has described being in an increasingly stressful situation, things were evolving, and things had continued to escalate. The level of contact and the nature of the contact he received from the different parties from what he's told us, meant the only way out he could see from the situation was to consider ending his own life. I think it's clear Mr F was under a lot of pressure and was unable to cope with the increasing severity of the situation which seemed to be never ending no matter what he did. I think it is more likely than not Mr F would have failed to give credible and compelling answers to even basic questions about the surrounding circumstances at this point, had Lloyds have asked.

It remains that I think Lloyds at this stage ought to have recognised Mr F was the victim of financial crime and that it should've taken steps in preventing him from making the payments and advised him to contact the Police. I think this intervention would've enabled Mr F to accept the seriousness of the situation he was in and give him some time to reflect on his best next steps. In that context I'm persuaded once Mr F had told someone (in this case Lloyds) what was happening, it's more likely than not that he would've felt empowered to notify the necessary authorities and stopped making the payments.

Overall, while I'm persuaded that intervention from the start wouldn't have made a difference, I do consider that Lloyds ought to have intervened from 25 May 2016 and, that intervention would have, on balance, changed the course of events and prevented Mr F from sending more money.

should Mr F bear some responsibility by way of contributory negligence?

I'm grateful to Mr F for reiterating his circumstances which are linked to the scam, including how this has affected him personally, emotionally and financially. But I also think all of that was clear before I made my provisional decision, so what's been said more recently hasn't changed my opinion. I still think Mr F should take some responsibility for the loss in this particular case. I say this because there was limited evidence to support the claims being made to Mr F by the various parties, he had suspicions about the situation and whether he was being blackmailed but proactively decided not to involve the Police and continued to send funds.

So for the reasons set out in my provisional decision and summarised above, I think it's fair to instruct Lloyds to refund Mr F from 25 May 2016 – the payments of £17,551.25 and £15,826.54 (total of £33,377.79) but that this amount should be reduced by 50% to take into account Mr F's own actions.

additional compensation

My opinion remains unchanged in relation to the investigator's recommendation that Lloyds should pay £100 compensation in recognition of the distress and inconvenience caused to Mr F. So I find no award for compensation ought to be awarded.

my final decision

My final decision is that I uphold this complaint in part and instruct Lloyds Bank PLC to:

- refund £16,688.89
- if the account in question is interest bearing, Lloyds should pay the account interest rate from the date of loss to the date of settlement

† If Lloyds considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr F how much it's taken off. It should also give Mr F a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 8 July 2021.

Staci Rowland
ombudsman