

## **complaint**

Mr J complains that Lloyds Bank PLC has declined to refund the money he lost when he fell victim to a scam.

## **background**

Mr J holds a current account with Lloyds. In March 2018, he received a text message that appeared to have originated with Lloyds. Mr J says the message appeared as part of the sequence of genuine messages he'd received from Lloyds in the past. It said that Lloyds had identified a possibly fraudulent attempt to make a payment of £450 from his current account. Mr J didn't recognise that attempted transaction.

Unknown to Mr J at the time, the message was in fact from a scammer, and no such payment had been attempted.

Immediately after this, he received a phone call from the scammer. Mr J says he'd been getting ready to meet up with friends and family so says he was somewhat caught off-guard by the call.

The caller claimed to be from Lloyds' fraud team. Mr J says the caller knew several specific details about him and the two Lloyds accounts he held. He says the caller's knowledge of his accounts convinced him he must be speaking with his bank.

The caller said they were ringing about the attempted £450 payment, which they said they'd been able to prevent leaving his account. Mr J was asked to log into his online banking and check the fraudulent payment wasn't showing. Mr J did so and confirmed that the transaction didn't appear.

He was told his money was still at risk and that he needed to move it immediately to a safe account to protect it. The caller gave him an account number and sort code to use. Mr J was told to put his own name into the payee reference box.

Mr J set up these details on his online banking as a new payee, and then made a Faster Payments transfer of £2860. The payment cleared most of the balance of his current account - leaving it in credit by just under £15.

All the while Mr J explains he believed he was acting on the instructions of his bank to protect his money, and didn't realise the money was actually being transferred to an account held with another bank.

The following morning Mr J started to wonder whether the call had been genuine and decided to visit a local branch. The branch staff realised the text message and call were not legitimate and said Mr J had been the victim of a scam. Mr J says they gave him the impression they thought he was lying.

Lloyds contacted the bank to which Mr J had sent the money in an attempt to retrieve any remaining funds. However, the receiving bank was only able to retrieve £80.13.

Lloyds said it would not refund the amount Mr J had lost, because he'd authorised the payment, and he hadn't taken steps to verify the caller was genuine. But it said it would pay him £100 for the distress Mr J said he'd been caused when he had visited the branch.

### *our investigation*

Our investigator thought Lloyds ought to have identified that the transaction was unusual. She thought that good industry practice would have been for Lloyds to contact Mr J about the transaction before it made the payment. And she thought that had Lloyds done so, the scam would have come to light and been prevented. She therefore recommended Lloyds should refund the outstanding amount.

Lloyds didn't agree. In summary, it said:

- This faster payment *could* be seen as a transaction that was unusual in size for this specific customer.
- But it wasn't uncommon or unreasonable for a large majority of Lloyds' customers to make one-off payments of this value from the same type of account (when for example purchasing a car, or other situations).
- In many of the scenarios in which Lloyds' customers might make these one-off payments, this would often follow the setting up of a new payee.
- It had a regulatory obligation to allow customers to access their funds.
- Mr J had made previous Faster Payments.
- Mr J had deposited a cash sum a few days before the transaction, which Lloyds said was often a sign that a customer was preparing to make a one-off payment.
- It would not be fair and reasonable to expect it to intervene in payments where it did not assess the payment as having any high-risk characteristics.
- Mr J had not attempted to verify the caller.
- Lloyds had not had any verbal interactions with Mr J prior to the transaction.
- Mr J had prior experience of dealing with its fraud team to resolve disputed transactions, during which he'd never been asked to make a payment or transfer from his account. He ought therefore to have been aware the scammer's request wasn't genuine.
- While Lloyds has since identified Mr J was potentially vulnerable at the time of the scam, it had only become aware of this after the event. So this could not have raised any additional concern about the transaction for Lloyds.

As a result, the complaint has been referred 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.

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 Lloyds 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 recognised by the FCA in recent years and by the British Bankers Association’s (BBA) 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,

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 a 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.

The above examples of published good industry practice, codes and guidance that I’ve set out above, all point to Lloyds’ responsibility to help protect its customers from fraud and to look out for unusual and out of character transactions.

In this case, I need to decide whether Lloyds acted fairly and reasonably in its dealings with Mr J when he made a payment of £2,860 to a new payee, or whether it should have done more than it did.

### **did Lloyds act fairly and reasonably in this case?**

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

I’m satisfied the request Mr J made to transfer the sum he did was clearly out of character and unusual for him. I’ll explain why.

The payment of £2860 that Mr J was making to the fraudster represented a large increase in spending from his account. From the account history Lloyds has provided, I can see that it was unusual for Mr J to make such a large single payment.

Lloyds accepts this was unusual for Mr J's account. But it says it wasn't the first time Mr J had made a Faster Payments transfer. He had made a number of these before.

But while I can see that Mr J had made previous Faster Payments transfers, those were for significantly lower sums. I'm also mindful that this specific payment reduced his account balance to £14.21. That left him without enough money to fund imminent direct debits. Again, I find this unusual and out of character for Mr J's account — this activity wasn't in line with way he typically operated his account. The account history suggests he was able to meet the upcoming payments only by arranging transfers in from another party after the scam subsequently came to light.

This relatively large payment for Mr J was also being sent to a newly created payee on his account. Lloyds has explained that many of its customers will send one-off payments to newly created payees, and that these might be preceded by a deposit into the account. It has pointed to a credit Mr J paid into his account a few days before the transfer out as an indicator that he might have been preparing to make such a one-off payment.

I've thought carefully about all these factors. I agree with Lloyds that it needs to strike a balance in the extent to which it intervenes in payments, against the risk of unduly inconveniencing or delaying legitimate payment requests.

But for the reasons I've explained, I think there was enough going on here that ought fairly and reasonably to have alerted Lloyds to this not being a typical transaction for their customer. In particular, the effect the transfer had on Mr J's balance, considered in combination with upcoming regular direct debit payments strikes me as being significantly out of keeping with Mr J's prior account history.

Lloyds has highlighted a credit Mr J made to his account around a week before the scam and says this matches the pattern of a customer planning to make a large transfer out. But I note that Mr J's account balance, prior to the credit Lloyds has highlighted, was £2,830.86. Immediately before the scam the account balance had reverted back to £2,874.21. That tends to suggest to me that any spending the credit was intended to cover had taken place by the time of the scam. In any event, I am not persuaded that the credit on 23 February changes the unusual and out of character nature of the scam transaction.

Lastly, I think it has some relevance that Mr J had previously been the victim of disputed transactions. I consider this something Lloyds ought fairly and reasonably to have taken into account when thinking about the level of caution needed in relation to Mr J's transactions.

All things considered, I'm persuaded this payment was unusual and out of character, and to an extent that I'd expect Lloyds to have identified it as such in the moment. Consequently, I think Lloyds ought fairly and reasonably, and as a matter of good practice, to have done more, and made enquiries about the purpose of the payment before proceeding with it.

I've taken account of Lloyds' comments that its approach is to balance the nature of the unusual transaction with the presence of any other red flags when making the decision as to whether it should to intervene. It says that in this case its fraud detection system didn't identify the payment as having high risk characteristics.

How Lloyds chooses to configure its fraud detection systems is a matter for it to decide. But the question I need to answer here is: based on all the circumstances, do I consider Lloyds ought fairly and reasonably to have done more in Mr J's case – whether its fraud prevention systems detected the payment or not.

For all the reasons I've explained, I think Lloyds ought fairly and reasonably to have identified that potentially Mr J was at risk of financial harm. I'm persuaded that as a matter of good practice, Lloyds should fairly and reasonably have made additional checks before processing the payment. Specifically, I consider Lloyds ought to have contacted Mr J to question him about the purpose of payment at the time. Had it done so I believe the scam would have become apparent and would have been prevented. I'll explain why.

Mr J fell victim to a scam which is sadly all too common – a 'safe account' scam. And it's a type of scam that I'm satisfied Lloyds ought to have been aware of at the time. Based on what Mr J has said, I'm persuaded that had Lloyds contacted Mr J about the payment to question what it was for, it's more likely than not he would have explained he thought he was acting on Lloyds' own instructions to protect his account.

I say this because Mr J says he hadn't been given a cover story or prepared one to use if he'd been questioned. I also note he freely went into a branch the following day, which led to the scam being readily uncovered by Lloyds.

That leads me to find that, upon making contact with Mr J and establishing the purpose behind the payment, Lloyds would have quickly identified this was *not* a legitimate transfer and that Mr J was in fact the victim of a scam. The funds would not have been sent to the scammer and so would not have been lost.

Finally, I've thought about Lloyds' comments that Mr J did not do enough to protect himself, such as taking steps to validate the caller. I'm satisfied that Mr J was the victim of a sophisticated scam, including the use of text message spoofing, and that he genuinely believed his money was at risk and that he needed to act quickly to protect his savings. In the circumstances, and in the belief that he was dealing with his bank and following its instructions, I find it understandable he acted without delay.

Lloyds also indicates that when making the payment Mr J would have seen that it was going to another bank, and not to a new Lloyds account. It questions whether Mr J ought to have noticed this at the time and whether this should have led Mr J to question the legitimacy of the caller.

Mr J says he doesn't recall seeing this information at the time. Lloyds hasn't evidenced exactly what Mr J might have been shown on his mobile banking, but if I accept that this was displayed, the available evidence leads me to conclude that either he didn't see this information, or he did but that it did not make an impression on him in the moment. I'm not persuaded the evidence leads me to conclude it most likely he saw it yet chose to ignore it. Again, in the context of believing at the time he needed to act in haste to follow his bank's instructions and protect his money, I can appreciate why he might reasonably have not noticed this information or that it might reasonably not have made an impact on him in the pressure and seeming urgency of the moment. As I've said, I'm satisfied Mr J was the victim of a sophisticated and cruel scam here.

Overall, I find that Lloyds should refund Mr J the money he lost as a result of this scam.

### **putting things right**

For the reasons given above, I uphold Mr J's complaint against Lloyds Bank PLC. I do not think it was fair and reasonable for Lloyds not to refund the amount Mr J lost through becoming the victim of a scam.

I now direct Lloyds Bank PLC to:

- refund Mr J the amount of the Faster Payments transfer, deducting the sum of £80.13 that has already been returned to him.
- pay interest on this amount at a rate of 8% simple interest, from the date of the withdrawal to the date of settlement. If Lloyds deducts tax from the interest element of this award, it should provide Mr J with the appropriate tax deduction certificate.

### **my final decision**

My final decision is that I uphold Mr J's complaint. Lloyds Bank PLC should calculate and pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 22 May 2020.

Stephen Dickie  
**ombudsman**