

complaint

Mr and Mrs N are unhappy Lloyds Bank PLC ("Lloyds") won't reimburse them monies lost following Mr N falling victim to a scam.

Mrs N has represented Mr N throughout the complaint.

What happened

The details of this case are well known to both parties and the investigator has provided a detailed background within their correspondence to both parties. So I won't go into too much detail here.

Broadly summarised, in 2002 Mrs N was in a serious road traffic accident. Mrs N received compensation as a result of the accident, and in 2007 Mr and Mrs N created an investment portfolio with Lloyds. The aims and needs of the investment portfolio suggested a timeframe of more than 10 years and this was to assist Mr and Mrs N with meeting their income needs up to 60 years of age when they could draw on their pension, and onwards.

Mrs N has said that throughout their years of marriage, Mr N handled the financial affairs, and this was the case even more so after the accident in 2002.

From August 2015 to May 2016, four withdrawals were made from the investment portfolio totalling £120,000. In December 2016, the remaining funds of the portfolio (approximately £33,000) were moved into two cash Individual Savings Account's (ISA's) one for Mr N and one for Mrs N – held with another provider. The portfolio with Lloyds was subsequently closed in March 2017.

Mrs N has said she wasn't made aware of the withdrawals and hadn't consented to them. Mrs N also says she wasn't aware of the closure of the investment portfolio with the remaining funds being withdrawn and placed into cash ISA's.

All of the funds withdrawn from the investment portfolio were withdrawn into Mr and Mrs N's joint account held with Lloyds. Mrs N says Mr N, during this time, made payments out of the joint account to third parties and they were made as a result of Mr N being the victim of a scam.

Mrs N says Mr N had got involved with people online and paid them money – with Mr N firmly believing that he was helping them and that he would be paid back. Subsequently Mrs N says Mr N was threatened and blackmailed as a result of his dealings with these people. Mrs N says the withdrawals from the investment portfolio and subsequent payments from the joint account depleted all of their funds and savings.

Overall, Mrs N considers Lloyds didn't do enough to protect her and her husband. Mrs N considers the portfolio was to provide her and her husband with a long-term income stream. The portfolio had a planned timeframe of more than 10 years and, as there had been no activity on the investment portfolio from 2007 until 2015, all the funds being subsequently withdrawn and depleted in two years – should have alerted Lloyds as the activity was unusual and out of character.

Mrs N says Lloyds did not contact her independently at any stage to verify the change in intentions of the long-term investment.

And given the unusual activity – both in terms of removing the funds from the investment portfolio and then onward from their joint accounts to the third parties - Mrs N says Lloyds ought to have been on alert that something wasn't right and intervened and the losses could have been prevented. Mrs N estimates the losses total around £160,000.

Mrs N complained to Lloyds about the matter in 2017. Lloyds reviewed the matter and issued its response on the concerns Mrs N had with the investment portfolio and the subsequent payments Mr N made using the withdrawn investment funds that had been made to third parties.

In respect of the investment portfolio Lloyds considered that it had acted in accordance with the terms and conditions regarding the withdrawal process. It explained it accepted the withdrawal requests from the joint portfolio in good faith. It advised the signatures on the letters it received for each withdrawal were signed by both Mr and Mrs N and matched the signatures held on its records. It said the funds were paid to their joint bank account held with Lloyds. Lloyds also explained that it received a request from both Mr and Mrs N to transfer the remaining funds from the investment portfolio to two cash ISA's held with another provider. Lloyds explained that any action undertaken was followed up with correspondence sent to Mr and Mrs N including when the joint investment portfolio was closed. Lloyds considered it had acted appropriately and plausibility had been established on each of the withdrawals.

With the payments Mr N subsequently made to various third parties, Lloyds considered that Mr N had authorised the payments. And when payments were made from joint accounts both parties have equal rights to make payments. As Mr N had authorised the payments, Lloyds considered it wasn't responsible for the losses. Lloyds tried to recover the monies from the third-party accounts but unfortunately no funds remained.

Unhappy with Lloyds' response on the matter, Mrs N referred the complaint on behalf of her and her husband to our service.

One of our investigators looked into the matter. Initially they thought that Lloyds could have probed further regarding the withdrawal requests and had they done so – the withdrawals would have been stopped and the losses prevented.

Lloyds responded and provided information it had obtained which it suggested that Mr N hadn't fallen victim to a scam and had made the payments to the third parties willingly.

Our investigator shared the information with Mrs N, and in light of Lloyds' response and Mrs N's, reviewed the matter again. Ultimately our investigator didn't uphold the complaint.

Broadly summarised, she considered Lloyds had acted in accordance with the terms and conditions regarding the investment portfolio, with Lloyds acting upon written instructions which had been signed by both parties. They were also satisfied that Lloyds had confirmed that Mrs N's signatures on each request matched what it had on file. While on one of the withdrawal requests it was noted that the signature didn't match, and to which Mrs N considered intervention should have happened, the investigator concluded that it wouldn't have made a difference and Mr N would have confirmed the signature and would have still been able to withdraw the money in any event.

With regards to Mrs N's concern that the investment was long-term and that as the funds were depleted over the course of two years, Lloyds should have been concerned and probed further, the investigator explained that information obtained by Lloyds suggested it wasn't clear Mr N had fallen victim to a scam or was being blackmailed. Because of this, she considered that even if Lloyds had intervened it wouldn't have made a difference. She considered that the third parties Mr N was paying across the period in question was as a result of either Mr N willingly doing so, or if as a result of being blackmailed, choosing to do so. And had Lloyds questioned Mr N it wouldn't have been able to prevent what was happening.

Mrs N disagreed with the investigator's opinion, and as the matter hasn't been resolved, it's been passed to me for a decision.

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.

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.

Having done so, I don't uphold this complaint. I know this will come as a disappointment to both Mr and Mrs N.

I would like to assure both Mr and Mrs N that I have carefully considered and reviewed all the testimony and evidence provided by both parties. And I would also like to add, that from reviewing all the information presented to me, I do recognise the sensitive nature of this complaint and the impact it has had on Mr and Mrs N.

At this point, I would also like to clarify that within this decision I can only look into the actions of Lloyds. I can't comment on the actions of any other financial businesses.

Turning to the matter at hand, it is clear that the crux of this complaint about Lloyds focuses on two key aspects:

- The activity carried out in connection with the joint investment portfolio. So whether Lloyds acted fairly and reasonably in carrying out the instructions it received. Or whether I consider the requests should have given Lloyds a cause for concern and it should have intervened – and, importantly, whether any intervention would have made a difference.
- Whether Lloyds should've done more when Mr N used the withdrawn funds and subsequently made payments from their Lloyds joint account to the third parties.

The investment portfolio

I have reviewed the 'Financial Planning Report' ("FRP") carried out in 2007.

Within the FRP, the 'Aims and Objectives for Investments' states:

"What Are You Looking To Achieve

You are seeking to review your existing investments now that you have retired with a view to generating an income to assist in meeting your day to day needs over the medium to long term. Specifically up to [Mr N] reaching the age of 60 yrs when he will draw his deferred pension making any income shortfall up from capital remaining on deposit.

Additional Information Relating To This Objective

- *You would like to invest a lump sum of £129,898 to meet this objective.*
- *You advised me that your timeframe for this investment is more than 10 years and do not anticipate needing access to the invested capital during this period....”*

Mrs N is unhappy that Lloyds allowed the funds to be withdrawn from the investment portfolio. She thinks Lloyds ought to have recognised something was amiss because the funds were being withdrawn before 10 years had passed and because there hadn't been any withdrawals before this – so there was a clear change to the investment strategy.

But I'm mindful Mr and Mrs N were in their mid-fifties in 2007. So by 2015, eight years later, Mr N was beyond 60 which I can see was an objective of the investments as set out in the FRP. And, while it says the timeframe for the investment is more than 10 years – it does state that Mr and Mrs N did not '*anticipate*' needing access to the funds, and people's circumstances can and do change. So when the withdrawals occurred from 2015 onwards, I'm not persuaded Lloyds ought to have been concerned.

Having said that, I can see Lloyds did undertake some checks each time withdrawals were requested – and Lloyds accepts it was obligated to check the plausibility of its client's instructions – thereby protecting the client(s) and itself from misappropriation. Lloyds has explained that it considers plausibility on each instruction in a number of ways. In short it looks at a number of things including – but not limited to – what it knows about its customer, whether the instruction is expected or completely unexpected, the method of contact, the amount, the purpose and the volume of transactions made.

Looking at the withdrawal instructions made, I can see;

For the £20,000 withdrawal in July 2015, the reason was to “*...request a cash withdrawal from our portfolio...for a purchase we wish to make.*”

For the £30,000 withdrawal in August 2015 the reason was to “*...assist our son in the purchase of a house.*”

For the £40,000 withdrawal in December 2015 the reason was to “*...carry out some improvements on our Kitchen and bathroom along with other improvements.*”

For the £30,000 withdrawal in May 2016 the reason was to “*...help our son with some purchases.*”

It is also important to note that as it was a joint investment portfolio, either party could provide an instruction to Lloyds. But where the funds were held in ISA's (within the portfolio) – written confirmation would need to be provided from both parties. Here, Lloyds received written instructions each time a withdrawal was requested, which were signed by both parties.

Conversations about the withdrawals also sometimes took place, and, as Mr N dealt with Mr and Mrs N's financial affairs – as a result of their own personal choice – it was Mr N who spoke with Lloyds on these occasions.

With the first withdrawal in July 2015, I note two phone calls were made to Mr N to check the plausibility of the withdrawal. Having spoken to Mr N, who confirmed the purchase was for a car, Lloyds proceeded with the withdrawal.

Lloyds could not locate a call recording for the second transaction in August 2015. So it seems a call wasn't made. But given the reason – Mr and Mrs N assisting their son in the purchase of a property – Lloyds were satisfied with the plausibility of the request.

Lloyds also contacted Mr N on the withdrawal requests made in December 2015 and May 2016. With the call in May 2016, the adviser initially spoke to Mrs N. The adviser explained to Mrs N that it had received the request to withdraw some more money out of the portfolio – with Mrs N then getting Mr N to speak with the adviser. I note the request was also referred for further consideration by a senior colleague within Lloyds who, having listened to the call, was satisfied with the request.

Lloyds also called Mr N in November 2016 following the letter it received from Mr and Mrs N requesting the closure of the portfolio (and the closure request stemmed from the conversation Mr N had in May 2016 as that withdrawal left around £32,000 in the portfolio).

So on each occasion, I'm satisfied Lloyds reasonably considered the plausibility of each withdrawal instruction alongside the subsequent request to close the portfolio down moving the remaining funds into two ISA's with another provider. I am also satisfied that on each request, the letters were signed by both Mr and Mrs N. As Mrs N says her husband dealt with all of the finances, it doesn't seem unusual that Lloyds upon contacting Mr and Mrs N would have ended up talking about each request with Mr N – as was the case when Lloyds contacted Mr and Mrs N in May 2016.

It's also the case that the written withdrawal requests appear to have been signed by both Mr and Mrs N, though Mrs N says she wasn't aware of her husband's actions and hadn't signed the letters. However, it is important to remember that I have to look at whether I think Lloyds ought to have been aware there was something untoward going on that it would have given Lloyds a cause for concern with each request. In this case, I don't think there was anything that would have alerted Lloyds that this was the case.

Reasons were given for each withdrawal, and on the whole they were relatively spread out. I am also mindful that with the July 2015 request, Mr N said that he and Mrs N were at a stage in life where they were starting to have to dig into their savings.

Lloyds were satisfied that the signatures matched the signatures it held on file for Mr and Mrs N. Having looked at the withdrawal requests, the remaining funds transfer request to two cash ISA's and the closure requests, Mrs N's signatures are – to my mind – near enough identical each time, and I don't think there was anything so unusual that would have given Lloyds any cause for concern that Mrs N hadn't consented to the withdrawals.

I understand Mrs N has noticed that on one request (in August 2015) Lloyds appears to have had a concern, in verifying the withdrawal request, that the signature didn't match. Mrs N thinks Lloyds should have reached out at this point. I understand why, on the face of it, Mrs N thinks this – but I don't agree. It isn't clear what signature Lloyds was referring to. And

as I've said, having carefully looked at the signatures, I'm persuaded Mrs N's signature is the same or close enough to the copy of her genuine signature throughout all the requests.

Lloyds says it was Mr N's signature that was the concern. And Lloyds have provided a copy of Mr N's signature that it held on file electronically, and Mr N's signature was slightly different to that on his withdrawal request. So it does seem that it is likely that Lloyds, at the time, had a concern over Mr N's signature if anything. I think it is likely Lloyds referred the matter internally for a second opinion and sought to match the signature to that of what it held on the application form from 2007 or other letters and then proceeded. Mr N's signature on the 2007 application form and July 2015 request were similar. And in any event, had Lloyds called to verify the signature, then as Mr N was handling the financial affairs, I'm persuaded that Mr N would have spoken with Lloyds and confirmed his signature.

With each of the requests, correspondence was sent by Lloyds to Mr and Mrs N confirming the actions it had carried out. I appreciate that Mrs N says Mr N dealt with their financial affairs so wasn't aware each time. But how Mr and Mrs N handled their financial affairs is their personal choice. And I'm satisfied Lloyds fulfilled its obligations by writing to both parties to confirm the withdrawals in any event.

Overall, having reviewed all the information in relation to the investment portfolio and the requests made, I'm satisfied Lloyds carried out the instructions it received each time in the way that I'd expect. And importantly, Lloyds did intervene and check the plausibility of each request. I don't think that Lloyds had cause for concern when it received the withdrawal requests and instructions relating to the investment portfolio to question Mr N or intervene further than it did.

However even if I considered that Lloyds should have intervened further, which I don't think it needed to, I'm satisfied any intervention wouldn't have made a difference. I say this because Mrs N has said Mr N fell victim to an elaborate scam, where he had made payments to people he met online and who had the intention of paying him back. But ultimately Mr N was threatened and blackmailed into paying more.

Lloyds obtained information which it considers indicated that Mr N had most likely met the third-parties online. One of the third-parties that Mr N had made payments to, held an account within the Lloyds Banking Group. Lloyds has said that it didn't have any concerns with the account and that it had also reached out to the customer to see what the payments they received, were for. Lloyds has provided notes of what was discussed, and the customer confirmed that they met Mr N through an online site, and they had been in a relationship with Mr N and he had made the payments to them willingly. The notes indicate the third party knew a considerable amount of personal information about Mr N.

It seems to me, Mr N had met the third-parties, whom he made payments to throughout the period in question, online. This is what Mr and Mrs N say happened, and what the third-party Lloyds contacted, also says happened. The difference seems to be in what the purpose for the payments are.

Our service is an alternative to court. We are here to resolve disputes between financial businesses and consumers. We don't have the powers to call or cross examine witnesses. My role within this case, is to simply determine whether Lloyds should have had cause for concern and reasonably intervened further than it, with the withdrawal requests meaning any losses could have been prevented.

Based on all the testimony and information provided, I have to weigh up what I think is most likely to have happened based on the balance of probabilities. And having done so I have to conclude that it is reasonable to suggest that Mr N most likely willingly met the third parties, and then proactively made the withdrawals requests from the investment portfolio which resulted in payments to the third-parties. I consider that, had any of the withdrawal requests given Lloyds potentially cause for concern, and had Lloyds intervened, Mr N would have placated any concerns Lloyds raised. And if at a later date, it did indeed turn to blackmail, with Mr N withdrawing more funds from the investment portfolio, to pay the third parties, then Mr N still chose to make the payments, albeit under duress. In my view any intervention from Lloyds in these circumstances wouldn't have, made a difference. I have to bear in mind that if Mr N was being blackmailed, and didn't want anybody to find out about what was going on, and given he was dealing with his and Mrs N's financial affairs it seems to me that it is also reasonable to suggest that he would have provided a sufficient cover story to Lloyds as to the purposes for the withdrawals or requests in relation to the portfolio.

So I can't fairly say that any further intervention from Lloyds would have made a difference in the particular circumstances of this case.

Should Lloyds have done more when payments were subsequently made by Mr N from the joint account Mr and Mrs N held with Lloyds – and would it have made a difference?

I'm satisfied that Lloyds did make enquiries about the withdrawals and instructions it received in relation to the investment portfolio. And as I set out above, I concluded it didn't need to intervene any further than it did, and had it done, it would haven't made a difference. But Lloyds didn't make enquiries about the payments subsequently made from Mr and Mrs N's joint account. Lloyds has said that the payments from the joint account weren't so unusual or out of character that it had a cause for concern and the payments didn't flag on its fraud detection systems.

So I've also looked to see whether Lloyds should have been on alert that Mr and Mrs N were potentially at risk of financial harm when Mr N made further payments from the joint account and if any intervention would have made a difference.

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 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.

It is the case that Mr N, following the funds being withdrawn from the investment portfolio into Mr and Mrs N's joint account, authorised subsequent payments out of the account. These were to either other accounts in Mr and Mrs N's names, other accounts held with financial business (such as credit card companies) and importantly also on to the third parties which Mrs N says were scamming and blackmailing Mr N.

So it is not in dispute that Mr N authorised the payments – and that's accepted by all parties. And under the Payment Service Regulations (which are the relevant regulations in place here) that means Mr and Mrs N are responsible for the payments made from their Lloyds joint account. That remains the case even though Mr and Mrs N say Mr N was the unfortunate victim of a scam.

There are times when I might expect a bank to question a transaction or payment, even though it may have been properly authorised. Broadly speaking, firms like Lloyds have certain obligations to protect customers from fraud.

So I need to decide whether Lloyds acted fairly and reasonably in its dealings with Mr and Mrs N after the withdrawals took place with subsequent payments being made from their joint account, or whether it should have done more than it did.

Firstly, as it was a joint current account, either party can make transactions under the account – it doesn't require consent from both parties. And the liability is joint and severable for both parties.

For the payments Mr N made from the joint account to either other accounts in their names or to other credit card providers, I don't think there would have been anything that would have given Lloyds cause for concern. After all, Mr N was in essence moving funds from their joint account into accounts in either his or her name.

As Mr and Mrs N held multiple accounts with other providers, there is a lot of movement on the Lloyds joint account and large amounts of the withdrawn investment funds that were moved into the Lloyds joint account, were moved on to other accounts in their names as well as to the third parties.

This makes it hard to possibly identify at what point Lloyds could or should possibly have stepped in and what may or may not have triggered or flagged on its systems to indicate Mr and Mrs N were potentially at risk of financial harm. I am also mindful that a large number of payments went to Mr N's own account held with another provider – so I don't expect Lloyds to have been on alert in respect of those payments.

For the payments Mr N made to third parties, a large proportion of them are for comparatively small amounts and not so remarkable that it would have given Lloyds a cause for concern. But I do note there were some larger payments made to the third parties and it is possible that Lloyds could have intervened. However, I don't consider I need to determine when this potentially could or should have happened. I say this because any intervention from Lloyds, at any point, wouldn't have had a material impact on the choices Mr N had made to make the payments.

I say this for the same reasons that I found in relation to the withdrawals from the investment portfolio. Mr N was either willingly making the payments or, if as a result of blackmail, choosing to make the payment and I find that is likely, no intervention or questioning would have made a material difference to the choice Mr N was making in go ahead with the payments.

I appreciate Mrs N has asked Lloyds to provide evidence of the information it obtained from the third-party it had contacted, as the third party mentioned having photos of themselves with Mr N. Lloyds has explained that it didn't seek a copy of any photos – and just took the comments on the reasons for the payments that were received by the third party from Mr N, into consideration. I would say that even if Lloyds did obtain any photos – which I don't think is necessary, it wouldn't be necessary for it to provide it to either our service or Mrs N as it is the third party's information to disclose and it would breach General Data Protection Regulations (GDPR) if that information is shared without that third party's consent.

That said, I do think it was reasonable for Lloyds to place weight on the information it received. It received testimony from a third party where Mr N had made payments to. And the third party provided a plausible explanation to Lloyds about the payments. The amounts being paid tied in with that third party's testimony. And in forming my decision I took into account what Lloyds discussed with the third party, alongside all of the evidence and testimony to see what I think was more likely than not to have happened and whether any prevention at any point would have made a difference. Having done so, I am not as persuaded as I would need to be that Mr N hadn't willingly made the payments and overall, I'm not satisfied that it is more likely than not that Mr N had fallen victim to a scam. It seems that Mr N most likely made the payments, and then possibly as a result of blackmail chose to. Any intervention from Lloyds in these circumstances wouldn't have, made a difference and I don't think it could have done anything to prevent the losses that occurred.

In summary

I can't reasonably say that Lloyds had acted unfairly when it carried out the instructions it received in relation to the investment portfolio. The withdrawals and movement of the remaining funds to two cash ISA's and the subsequent closure of the portfolio all came through as a result of signed instructions from both Mr and Mrs N. I don't think it was unreasonable for Lloyds to carry out the instructions as there wasn't anything to suggest anything untoward was going on and that the instructions hadn't been consented to by both parties.

And I can't fairly say that any intervention from Lloyds would have prevented Mr N from making the withdrawals and then subsequently making the payments he did from the joint account. So I don't think Lloyds should be held liable for the losses that occurred.

My final decision

For the reasons given above, I don't uphold this complaint and Lloyds Bank PLC don't need to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs N to accept or reject my decision before 13 September 2021.

Matthew Horner
ombudsman