

complaint

Ms M complains that Lloyds Bank PLC won't refund money that she lost when she fell victim to a scam.

background

Ms M signed up to an online dating agency. She was contacted by someone, who turned out to be a 'scammer'. I understand that from January 2017 Ms M was in regular contact with him. She says she was led to believe the scammer worked for a shipping company that did business in many different places around the world. In March 2017, the scammer asked for the first of a series of payments to be made to help him out of difficult situations.

Below is a table of the payments and what they were supposedly for:

£10,000 from Executor's account	to Ms M's Club account ending 4460	to Ms M's Classic account ending 4023	to the scammer
2 March 2017 - £10,000 – the scammer was stuck in South Africa and needed to load a ship with cargo to Cyprus. However, there had been an accident and some people were in hospital, he needed £10,000 as couldn't afford a lawyer as he hadn't yet been paid.			
£50,000 from Lloyds loan	to Ms M's Club account ending 4460	to Ms M's Classic account ending 4023	to the scammer
30 March 2017 - £50,000 – the scammer had been in a bad car accident and had put three people in hospital. He had his passport taken from him and needed to pay £50,000 for damages and hospital fees. Ms M took a loan out through Lloyds to fund this.			
11 April 2017 – 30 March 2017 transfer returned as the account was invalid - £48,745.98			
11 April 2017 - £48,745.98 – branch transfer to the scammer			
£10,500 from Executor's account	to Ms M's Club account ending 4460	to Ms M's Classic account ending 4023	to the scammer
20 April 2017 - £10,500 – scammer told Ms M he needed one final payment of £10,500 for insurance costs.			
£41,500 from late father's account with another bank	To the scammer		
11 May 2017 - £41,500 – the scammer was on his way to the airport to meet Ms M. He never arrived but called her to say he had been incarcerated and would be held in a detention centre for two weeks. The money was sent to help free him.			
£60,000 from Ms M	to Ms M's Club account ending 4460	to Ms M's Classic account ending 4023	to scammer
22/23/24 May 2017 - £60,000 sent in three payments as the payment couldn't be sent at once due to system limitations. The scammer asked for a further payment to get a flight to Cyprus to unload the ship and to cover duty costs. These payments were stopped by another bank and she was contacted by that bank on 30 May 2017. It was at this point Ms M realised she had been the victim of a scam.			

Additional information about events during the course of this scam are as follows:

- A 'loan agreement' was made between Ms M as the lender, and the scammer as the borrower for £60,000. The loan agreement was made on 29 March 2017. It was subject to interest of 8.5% - 20% to be decided by the borrower. The loan was to be repaid by 21 April 2017. The agreement was governed by internal laws and was made valid in all countries worldwide.
- Ms M says she was provided with a bank statement showing the scammer had funds of approximately £2 million with a high-street bank and so she says she didn't see any risk in lending the funds. Ms M says she no longer has a copy of this statement.
- Ms M says she researched the scammer's lawyer, but she no longer has that information as her computer needed to be wiped after it was hacked. She recalls receiving emails from the lawyer and when she researched the law firm, she didn't find anything untoward.
- Ms M can't recall why she found the scammer credible at the time, just that she did so, and she had a strong desire to help him.
- Ms M says she didn't find anything unusual in the requests for payments to be sent to different accounts in different countries.
- The payment of £41,500 sent on 11 May 2017, was sent from another bank and is not subject to this complaint.
- The £60,000 sent to the scammer in May 2017 was stopped by another bank and returned to Ms M.
- I understand the £10,500 sent to the scammer in April 2017 was recovered by another bank and returned to Ms M.
- The transfers on 2 March, 30 March and 22 May 2017, were all initially stopped by Lloyds' fraud detection systems and were subsequently made following verification and further discussion with Lloyds (more about this can be found in my findings).

I issued my provisional decision on 17 February 2021, explaining why I wasn't minded to uphold this complaint. Lloyds hasn't responded, so I have assumed it has nothing further to add. Ms M doesn't agree with the outcome reached. In summary, she has said:

- She can't believe the case worker got this so wrong and it appears the ombudsman has been heavily influenced by fresh matters raised by Lloyds.
- She doesn't believe Lloyds did enough to investigate inherently suspicious transactions and doesn't believe the issue has been sufficiently scrutinised.
- She was advised to come to us by the police and she would have thought those well experienced in investigating fraud would carry considerable weight and explain why she was so profoundly deceived.
- Specialist police officers found poor banking practices at banks, including the lack of due diligence and failure to carry out even rudimentary ID checks before opening accounts that a fraudster was able to use to defraud her. She also refers to a recent headline about the regulator investigating another bank for breaching money laundering regulations.
- She would not have lent any money to the scammer if she hadn't believed the lies; it's self-evident the more sophisticated the scam the more easily people will be duped.
- She doesn't understand why the other account holder should have been invited to join the complaint, the lack of their involvement is irrelevant to her banking arrangements.
- The bank ought to have taken sufficient steps to investigate given its knowledge of her, fraud, and the amounts involved.

- Her occupation has no bearing on the actions of the bank. She considers her job irrelevant and doesn't accept this provision is relevant to the discharge of Lloyds' obligations to any customer.
- There is a related point over alleged contributory negligence over her belief the scammer was good for the money. She is well aware people suffer cash flow problems or have difficulty accessing their funds on demand or in an emergency.
- She is criticised for ticking 'miscellaneous' and says if this is viewed as lacking precision what box should she have ticked and shouldn't Lloyds have made further enquiry?
- She rejects any imputation on her honesty, any failing on her part is evidence of a confused and emotional response to a plea for help from one she truly believed was in need. She notes the ombudsman referring to her being under a spell.

When a matter is referred to me, I consider it afresh. That means I may, or may not, agree the outcome reached by an investigator is fair and reasonable. If I disagree, then a provisional decision is issued setting out why I'm minded to reach different conclusions and to provide the parties with an opportunity to present any further evidence or arguments for consideration.

Much of what Ms M has argued in response to my provisional decision had already been explained in my provisional findings. As such I haven't been persuaded to alter my findings and I make my provisional decision final. In doing so, I will respond to her points below.

my findings

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

I would firstly like to make clear here that my consideration is solely in relation to whether or not Lloyds did enough when Ms M was making the transactions she did. I can't consider any complaint she has about whether banks have carried out sufficient due diligence when accounts have been opened that have enabled scams to take place. So although Ms M has made submissions about money laundering requirements and due diligence, they aren't relevant to my consideration of whether Lloyds could, or should, have done more to stop Ms M making the payments she did.

I explained in my provisional findings that the payments made on 2 March and 20 April 2017 ultimately originated from an executor's account that is held by Ms M and another executor. Ms M questions the need to join the other executor to the account.

As explained, the loss of those particular funds has been incurred by that account and not Ms M solely. That the other executor isn't involved in Ms M's banking arrangements isn't the issue. It's because any decision I make about those funds not only affects Ms M but also the other account holder; and the decision of whether to accept any outcome in relation to those funds is for both account holders to make not just Ms M. It is for that reason we asked Ms M to join the other party. Ms M didn't wish to ask the other party to join – which is of course her right – but she was also unable to provide anything to support that the funds were gifted to her or left to her as previously submitted. In the absence of such evidence, I remain of the view it isn't appropriate for us to consider those particular transactions as not all eligible complainants have joined the complaint.

Because of that, and because some funds had already been returned to Ms M, my consideration was limited to the Lloyds loan and subsequent transfer to the scammer of £50,000. When doing so, I took into account the wider picture and what, on balance, we knew when deciding this complaint.

Ms M has made a few comments about being the victim of a sophisticated scam. But that has never been in dispute – all parties to this complaint, and me as the deciding ombudsman, accept that Ms M has been scammed. But that alone doesn't mean she is entitled to be reimbursed by her bank. That all depends on whether the bank did any thing wrong – that is, could it have done any more to prevent the scam from taking place or intervened such that Ms M would have become live to the scam and stopped sending money. It also depends on whether Ms M is responsible, in any way or in any part, for her losses.

I found there wasn't any dispute that Ms M authorised the payments out of her account to the scammer. The scammer deceived her into believing a relationship had been formed after being in contact with her for a few months. She was told he worked in shipping which took him all over the world. This had led to an air of plausibility when the scammer later needed funds for various things including the loading and unloading of a ship, such that Ms M found him credible.

The payments from Ms M were 'authorised' even though she was the victim of a scam. She either used her security credentials to request payments online, or she went to branch. So, although she didn't intend to get scammed, under the Payment Services Regulations 2009 (which applied at the time) and the general terms and conditions of bank accounts, Ms M is presumed liable in the first instance.

Taking into account the law, regulators rules and guidance, any relevant codes of practice and what I consider to have been good industry practice at the time, I considered Lloyds should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

As can be seen from the brief summary of what the payments were supposedly for, the scammer had told a series of stories in order to gain financial help from Ms M. It appeared the stories involved more than one accident, several people hurt and an urgent and desperate need for large sums of money in a very short space of time. Had the last transaction been successful Ms M would have sent the scammer over £170,000. I thought most would agree that was a very large sum of money and Ms M was sending that to someone, as I understood it, that she had never met in person.

We asked Ms M to explain to us what she found credible about the scammer, particularly given the stories she was told and the continual need for funds. I understood and accepted this happened a few years ago and so exact recall was unlikely. But Ms M initially didn't engage with us about this, instead arguing about what the bank should and could have done. Eventually, Ms M told us that she couldn't really explain what she found credible about the scammer and the series of events, just that she did, and she wanted to help.

Ms M has said she has been criticised for allegedly not answering the question as to why she believed the scammer, but she answered in the only way anyone could – that she found him wholly plausible. When someone falls victim to a scam, this type of question is asked as it helps us get to the bottom of what happened and, more importantly, why. Asking questions helps us to understand why a scam was successful and what was credible and plausible about the situation presented. Someone not engaging with our legitimate enquiries isn't helpful for our investigation. I nevertheless accepted that Ms M couldn't really shed any more light on why she found the scammer's stories credible and took that into account, alongside the other evidence, some of which I thought ought to have alerted her to something not being right.

Ms M entered into a 'loan agreement' with the scammer on 29 March 2017 for £60,000. I considered the content of the so-called loan agreement and there were 'clauses' within the agreement that I thought Ms M ought to have had cause to question.

There was reference to the governing laws – the agreement said it would be construed in accordance with and governed by international laws, and that the agreement was made valid in all countries worldwide. I thought this ought to have struck Ms M as odd, particularly as she works in the legal profession herself, albeit in a different field. International laws are those which govern relations between nations, not loan agreements. And I wasn't aware of any agreement that was valid in all countries worldwide simply because it said so; a loan agreement is usually governed by the laws of one particular jurisdiction, such as England and Wales. As a legal professional, I didn't think Ms M needed any particular expertise in loan agreements to see there was something not quite right. Had she thought about it more carefully, I thought she would have realised something wasn't quite right and discovered that the address listed for the borrower didn't exist with that house number and post code (as per Royal Mail).

Ms M has said she has been criticised for allowing or not correcting reference to international laws and she is being penalised more severely than others because of her legal profession. Ms M doesn't believe her job is relevant nor does it discharge a bank's obligations to its customer.

I have never made the finding that Ms M's profession means a bank's obligations are discharged. But I equally don't think it's fair to simply ignore someone's profession, particularly if it has a part to play in the matter at hand. Ms M was presented with a 'legal' document. And as a legal professional she would have more knowledge than a layperson in legal matters. I remain of the view that had she given more thought to the agreement, she ought to have realised something wasn't quite right.

At the time of granting this 'loan' to the scammer, Ms M said she was sent a bank statement showing he had funds of over £2 million. As a matter of common sense, I thought this begged the question of why the scammer needed to borrow funds at all from Ms M. In her submissions she said the account was held with a well-known high-street bank and he would repay the loan when he was able to access the bank in person. But I questioned why he

would need to go to the bank in person to access funds. I knew in a call in May 2017, Ms M told Lloyds the scammer had had his bank card stolen, but I found that shouldn't have prevented him from accessing his account before that or at all, either by telephone or online, or if that wasn't possible why he couldn't borrow the funds from his bank; particularly as it would have known he was good for repayment. Given the substantial funds Ms M said the scammer had, I thought this also ought to have alerted her to something being wrong.

Ms M has made reference to being aware of people having cash flow problems or difficulty in accessing funds on demand or in emergencies. I think Ms M may be missing the point I'm making. I fully accept people have cash flow problems and that money might be hard to come by quickly. But that doesn't explain why Ms M thought she was the only avenue by which funds could be obtained. If a person has £2 million in the bank, even if they have trouble accessing it, a bank would know they are good for repayment, so this still raises the question of why if money was genuinely needed it couldn't have been borrowed from the bank itself. I remain of the view the purported existence of these funds ought to have alerted Ms M to something being amiss.

Although I found there was evidence that ought to have caused Ms M to question the situation she was in, I considered whether Lloyds could, or should, have done anything more to help prevent Ms M falling victim to a scam.

As set out, I only considered the loan Lloyds granted and the subsequent transaction to the scammer. That said, I felt it relevant to point out that Ms M's first payment to the scammer for £10,000 was stopped by Lloyds's fraud prevention systems, so it did intervene at that point, although the payment was ultimately sent.

Ms M applied for the Lloyds loan on 28 March 2017 online. When doing so, she didn't complete the purpose of the loan, choosing a miscellaneous option. Ms M has argued that she has been criticised for completing the loan application this way. I haven't criticised Ms M, it is merely a statement of fact – she applied for a loan and chose the miscellaneous option – I offer no opinion about this, one way or the other.

The following day Ms M attempted to send the payment to an account held in America. This transfer was stopped by Lloyds' fraud prevention systems and her account suspended.

Ms M called Lloyds to get her account reinstated. During this call, Lloyds told her the payment had been stopped as it had a higher than usual risk of being fraudulent. She explained she had taken out a loan the previous day to pay legal costs. Lloyds read out a script of various fraud methods, including pretending to be the bank, or a broadband provider, to receiving messages over social media from people pretending to be friends or family that needed help (amongst others). Ms M was asked if she was concerned about anything she had heard, but she told Lloyds she was satisfied it was genuine. Lloyds also asked:

Can you confirm this payment was requested by you without any instruction from a third party?

Ms M replied – yes, yes.

However, I didn't think that was true. Ms M had been contacted by the scammer and had been told he'd been in an accident and needed funds to cover hospital fees and damages. So she had been asked to make the payment by a third party, although this might have been

in the context of 'borrowing' the money. I also noted that I thought this could also arguably come under the fraud example of being asked to make a payment by friends or family. Had Ms M answered this question honestly, that might have prompted further questions from the bank.

Ms M questions whether something being arguable is a proper basis for any finding of fact. Again I think Ms M is missing the point. Lloyds had stopped the payment as it thought it was fraudulent and it asked her questions, but I didn't think she wasn't honest in her response. My primary reason for finding that wasn't in relation the being asked to make a payment by friends or family, but that she had clearly been asked to make a payment by a third party – the scammer - but she didn't tell the bank that.

Later during the call, Lloyds asked Ms M to confirm the payment was for legal fees which she did. It asked further questions about whether she was sending the payment directly to the law firm and whether she had spoken to them verbally about the payment (this prompted another script to be read about hijacking email accounts of law firms). Ms M confirmed that to be correct. However, again, that wasn't strictly true. Although the payment was required in part for damages it was also required for hospital fees.

Despite knowing the payment had been stopped because it looked fraudulent, and this was the second payment that had been stopped (and conversely also the second payment to the scammer), Ms M made it clear she wanted the payment to be sent. She didn't answer the bank's questions honestly or in full, leaving out details of what the scammer had told her (the full picture didn't come to light until Ms M reported the scam). By not doing so, in the knowledge the bank thought the payment fraudulent, I didn't think she had helped the bank to help her.

Ms M has argued the bank should have done more to stop the payments being sent. But this isn't a case of the bank doing nothing to intervene and simply following Ms M's payment instructions. Rather the bank had stopped the payment before it was made, likely because it was a lot of money and was unusual for the account and so it looked fraudulent. Ms M wasn't entirely honest with the bank in her responses to questions asked, despite knowing why the payment had been stopped. Based on the answers she gave, I'm not persuaded there was more the bank could have done.

I nevertheless considered that if the bank had done more, such as question Ms M about the purpose of the legal fees, whether that would have uncovered the scam and I think didn't it would have done, or broken the spell for Ms M.

I said this because of the content of a call which took place on 22 May 2017, when Ms M was attempting to send £60,000 to the scammer. That payment had been stopped and the account suspended as Lloyds's fraud prevention system had been triggered again. Ms M was asked what the payment was for. She told the bank her 'partner' was stuck in Cyprus and needed to unload cargo from a ship, but duty needed to be paid and he'd had his bank card stolen; she was therefore lending him the funds needed to cover that. She also spoke of her frustration as they wanted the ship unloaded so her 'partner' could 'come home'.

In particular, I referenced Ms M's description of the scammer as her 'partner'. I accepted relationships came in all guises and this may very well have been how Ms M viewed the scammer. But I thought reference to 'partner' reasonably suggested something more than only having met someone online – particularly when Ms M spoke of him 'coming home'. So I found that even if the bank had asked more questions about the legal fees during the call of

29 March 2017, I thought Ms M would simply have said her partner had incurred legal fees. I didn't think Ms M would have shared any more detail than that; or that she would have volunteered that she had met him online and I didn't think there was a reasonable line of questions the bank could have asked which would have uncovered that.

In support of my finding was the remainder of the call with Ms M on 22 May 2017. What she told the bank then was far from the full picture as she reported it when notifying the bank of the scam. She left out that the scammer had been incarcerated and held in a detention centre and he needed a flight to Cyprus to unload the ship – hence the need for £60,000. And she was again asked if she was making the payment under instruction from a third party and she again answered 'no', even though I thought she was.

The events the scammer gave to Ms M – accidents and an urgent need for funds for various reasons – are a hallmark of romance scams. Ms M was clearly under the scammer's spell such that she believed what she was being told. Throughout her dealings with Lloyds during this matter she hasn't told the full story and hasn't answered questions honestly. So even if I agreed with Ms M that the bank should have intervened further in the loan and subsequent payment, I don't find her position would be any different to what it is now – I don't think further questions from the bank would have prompted responses from Ms M that would have helped uncover the scam.

In the circumstances, I don't think it would be fair and reasonable to find the bank is to blame for what unfolded. It follows that I'm not asking the bank to reimburse the transactions I have considered, and I make no award against it.

my final decision

For the reasons given, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 27 April 2021.

Claire Hopkins
ombudsman