

complaint

Mr W is unhappy that Lloyds Bank PLC has refused to refund £50,000 lost as part of a scam. He believes the bank should have done more to prevent him falling victim to the scam in the first place.

background

I issued a provisional decision on Mr W's complaint on 20 November 2019. After considering all the evidence and arguments presented by both sides, I was minded to conclude it would be fair and reasonable for Lloyds to refund the losses that Mr W has suffered as a result of this scam.

Rather than repeating all I said in my provisional decision about the background and circumstances of Mr W's complaint again here, I attach a copy of my provisional decision to this final decision. My provisional decision forms part of this final decision and it details in full how and why I reached my preliminary conclusions. It also details in full the redress I was minded to order and why.

Mr W's response to my provisional decision

Mr W accepted my provisional decision. He said, *"I have been determined to fight my case and I am extremely grateful for the hard work, attention to detail and comprehensive explanation of your provisional decision. Moreover, your provisional decision has given me hope that my life can begin over again and that I may be able to redeem my mortgage with my life savings and provide an inheritance for my children."*

Mr W also made a number of points in response to what was set out in my provisional decision, including:

- he was sure that he only told the bank the transfers were for *"family, personal reasons"* and that the whole process of sending the money only took five or six minutes
- a strong disagreement with the version of events given by Lloyds staff member - *"I also totally refute stating that I was transferring the money for a better interest rate and I am disappointed in the staff member's version of events"*
- he was *"absolutely adamant"* that he wasn't read the full scams script
- that he was *"extremely anxious and worried"* when making the transfers
- Mr W questioned why a senior member of staff hadn't been brought in to ask him about the transfers on day one - given their value and that they were out of character for him
- Mr W confirmed he'd not been asked for any evidence of where he was sending the money and also confirming he wasn't advised about the possible effects of removing funds from an ISA; and
- he also agreed that he would have been unable to answer some basic questions challenging the purpose of the transfers and that such questions would likely have revealed the scam before he'd sent any money.

Lloyds' response to my provisional decision

Lloyds didn't accept the provisional decision. It took this position for a number of reasons.

It questioned Mr W's recollection of events in branch and referred to his complaint letter to the bank dated 1 June 2018. It pointed out Mr W had said he was asked by the cashier if he really wanted to transfer the funds and was he under any pressure to do so. It also pointed out Mr W had said he was told by the fraudster to say the accounts he wished to transfer his money to were in his own name. And that Mr W had said he did wish to proceed and that he wasn't under any pressure.

Lloyds believes this letter from Mr W is evidence that it asked the right questions when Mr W requested to make the transfers. Lloyds also believes this letter demonstrated Mr W was read the scam script which referred to the type of scam he was falling victim to.

Lloyds considers Mr W's letter showed that the bank did engage in a "deeper" level of questioning through discussing "*the potential other offerings within [the bank]*."

Lloyds maintains that it asked sufficient questions when Mr W said he wanted to make the transfers and that it believed he gave plausible answers, - even when pressed for more detail and given specific information about the scam he was falling victim to. It said that transfers of this kind - from a customer's account to another provider - happen on a regular basis.

The bank did refer to the use of the Banking Protocol and when it would invoke this. It said it would only do so when a member of staff was left with underlying concerns – which it says wasn't the case here.

It also said that it couldn't invoke the Banking Protocol for all high value transactions as a matter of process as police would not be able to respond to all such instances. Lloyds made the point that it does invoke the Banking Protocol when it feels it is right to do so.

my findings in light of both parties' responses

I've considered all the available evidence and arguments to decide what's fair and reasonable in all the circumstances of this complaint. I've taken account of all that was on file before my provisional decision as well as the arguments made by both parties since.

Having done so, I remain of the view, on the balance of evidence, that Lloyds didn't do enough to protect Mr W at the point he was making the transfers. And this is my principle reason for upholding Mr W's complaint.

I set out in my provisional decision that I believed, whether it was Mr W's version of events that was more accurate or the bank's, the outcome would remain the same. I remain of the view that, in either version of events, Mr W was not asked enough specific questions, as described in my provisional decision, designed to get into the detail of the transfers.

I don't agree with Lloyds that Mr W's recollection that the fraudster told him to say the money was being transferred into an account in his name, as detailed in his letter of 1 June 2018, sufficiently supports its case, or that it's inconsistent with Mr W's evidence that he told the cashier he was ultimately going to use the money for personal or family reasons. But, either way, I don't on the balance of evidence believe sufficient meaningful questions, designed to get into the detail of a potential scam, were asked of Mr W that day.

Lloyds stated in its response to my provisional decision that its staff member went “deeper” than the standard scam script and discussed “*the potential other offerings within LBG*”. However, Lloyds has only previously said that Mr W and the cashier discussed the seemingly comparatively lower interest rates on offer from Lloyds at the time – which is not quite the same. Indeed, the tone of that part of the discussion appears, on the face of it, to have been quite informal. I say this because the bank’s staff member’s recollections of this part of the conversation with Mr W, provided on 9 July 2018, are described in the following way:

“The payments were going to his TSB acc and his RBS acc for better interest rates and they chuckled as other banks do have better rates with Lloyds recent cuts”

So, on the evidence I’ve seen, I’m not persuaded it’s more likely than not that such an exchange on Lloyds interest rates, between Mr W and the staff member, represented meaningful additional questioning designed to get into the detail of a potential scam.

I said in my provisional decision that I believed Lloyds should have given Mr W a more tailored response to his request to transfer a total of £50,000. I said how I believed that the reading of a generic scam script would not necessarily break the spell for someone that’s already been convinced they’re acting in their best interests and, in Mr W’s words, “*extremely anxious and worried*”. And that can be particularly true when the customer believes that branch staff might be involved. This position and understanding is recognised in Lloyds’ own internal guidance. A standard script, simply being read out, can have little impact on a consumer that’s caught up in a scam.

There’s little in Lloyds’ response to the provisional decision – or in the evidence it had already provided – that persuades me it did much, if anything, more than read the standard scams script. And I can’t be sure it actually did that - certainly Mr W continues to strongly refute there was any mention of safe accounts or the involvement of branch staff. But in any event, whether the script was read or not, I remain of the view that Lloyds didn’t do enough to protect Mr W from financial harm for the reasons stated in my provisional decision.

As I said in my provisional decision, there is a balance to be struck and there are limits to the depth of questioning a bank can pursue. I am not suggesting Mr W should have been subject to an ‘interrogation’. However, £50,000 is a lot of money – it was for Mr W. I believe that Lloyds ought fairly and reasonably to have asked more questions - essentially to challenge the purpose of the payments and ask for more meaningful detail - than it seems on balance happened that day. And this is whether Mr W’s or Lloyds’ version of events occurred.

I can’t say whether it would have been necessary for the bank to call the police on the day Mr W was making the transfers. And I’ve not said that it absolutely should have taken that action. I understand the bank’s point that it can’t call the police simply because there’s a high value transfer requested in branch.

But I am persuaded that the bank should have asked more questions and probed further at the time than, on the balance of evidence, I can see it did. I believe had it done so Mr W would, more likely than not, have been unable to satisfactorily answer the bank’s questions – as was the case the following day – and it would have then been reasonable to contact the police.

This service has seen training material from UK Finance, featuring the police, regarding the Banking Protocol where it quotes the strapline of "*if in doubt, call us out*". So it's clear that the police, and the industry as a whole, understand there will be times when a consumer's actions are entirely legitimate and yet the Banking Protocol will be fully invoked as the bank may have concerns.

I'm upholding Mr W's complaint and I see no reason to depart from the outcome set out in my provisional decision. I order Lloyds to:

- refund Mr W the £50,000 loss;
- pay Mr W the interest he would have earned on the £50,000 had it remained in his ISA account, from the date of withdrawal to the date of settlement*;
- pay Mr W £300 in compensation for the distress and inconvenience he experienced.

Lloyds should be mindful of the considerations around the type of account Mr W's loss originates from – and the restructuring of it – as set out in my provisional findings.

my final decision

I uphold this complaint against Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 26 March 2020.

Pat Hurley
ombudsman

*If Lloyds Bank PLC deducts tax from the interest element of this award, it should provide Mr W with the appropriate tax deduction certificate so he might submit a claim to HMRC if applicable.

Copy of Provisional Decision

complaint

Mr W is unhappy that Lloyds Bank PLC has refused to refund £50,000 lost as part of a scam. He believes the bank should have done more to prevent him falling victim in the first place.

background

what Mr W says happened

Mr W says he received a phone call at around 9:00am on 10 May 2018. Mr W has an ex-directory number and the call was to his landline telephone number. The caller claimed he was from Lloyds' 'Payment Verification Department'. Mr W says he checked the caller ID against his debit card and saw it was the same telephone number as his bank. Unfortunately however, unbeknown to Mr W, the caller was in fact a fraudster.

The fraudster, posing as the bank, questioned Mr W about two transactions. He said Lloyds had flagged them as suspicious – one was a payment of £456 to a DIY retailer and the other a payment for £1,608 to an electronics store. Mr W told the fraudster he didn't recognise the transactions.

Mr W is a carer for his 91 year old mother, who has mild dementia, and also a volunteer coastguard officer. He says that "*attention to both that day*" – caring for his mother and "*an emergency call out*" for work - meant he was "*in a hurry to leave*" his house at the time of this call.

Mr W says that the fraudster told him he would "*make further checks*" and get back to him.

Mr W then received a series of calls from the fraudster(s) throughout the course of the day - with the scam unfolding further each time. Mr W says he spoke to a number of people - all claiming to be from different departments from within the bank. He found himself becoming "*more alarmed*" with every call.

As things turned out, all the calls from the fraudster(s) that day were, ultimately, merely chapters of a story that culminated in Mr W being told that Lloyds branches in the Great Yarmouth area were "*under investigation*". Mr W says he was told that he was "*one of about fifteen customers where bank staff had compromised accounts*".

Mr W says he was instructed by the fraudster that "*the only way to safeguard*" his money was to go to his nearest Lloyds' branch and transfer his ISA savings to 'safe accounts' with two other banks. Mr W was told that these accounts had been set up in cooperation with those banks to stop internal fraud. The fraudster said the police were involved and arrests were imminent. Mr W recalls being told it was "*important*" he "*should not contact any bank staff to avoid compromising the investigation*" – otherwise he would lose his and other customers' savings.

Mr W says that "*under extreme psychological pressure*" he followed the fraudster's instructions and went to a nearby branch, where he attempted to set up two transfers from his ISA account.

The payments were to two different banks and for £25,000 each. The money had to be transferred from Mr W's ISA to his current account to enable the transfers. Mr W made both transfers on the same day, at the same time and with the same staff member from Lloyds.

Mr W says that, throughout all this, the fraudster was listening on his mobile phone.

Mr W remembers that the staff member did ask him some questions about the transfers. He says she asked him what their purpose was. He also remembers being asked if he was being pressured into making them.

Mr W, acting under the instruction of the fraudster, cannot recall exactly what he said in response to the staff member, but he believes he said the transfers were for *“family or personal reasons”*. He recalls he was extremely anxious and worried about losing his money by tipping off the branch staff – who he had been led to believe were the ‘criminals’ in this. Mr W says the whole process took 5 or 6 minutes to withdraw the money from his ISA and process both payments.

On the following day, Mr W received another call from the fraudster – again to his landline telephone. And again he says it seemed to be from the Lloyds telephone number. He was told his account was subject to another attack and that he would have need to transfer out his remaining funds. Mr W went back to the branch to carry out the transfer. Once more, Mr W says he was told by the fraudster to keep his mobile phone on.

Mr W remembers that the branch was much busier this time. In view of this, a member of Lloyds staff, that Mr W believes was the manager, approached him in the *“long queue”* to see if he could help. Mr W says the manager took him to one side and Mr W told the manager he wanted to make a payment of £20,000. The manager asked what the purpose of the transfer was – to which Mr W remembers giving the same or similar response as the previous day. Mr W also recalls being asked by the manager whether he had a reference number and who owned the receiving account.

However, Mr W only had £18,000 in his account and Mr W says the manager wasn’t convinced by his answers. He says the questions were *“more rigorous”* than the day before and he *“couldn’t keep up the pretence”*. Mr W says he was also asked some questions by the deputy manager of the branch. Mr W says he *“finally broke down – all the previous time believing one or more bank staff”* might be accessing his bank account.

The manager enacted the Banking Protocol and called the police. Mr W says he then realised he’d been the victim of a scam - the questioning of the manager, along with the arrival of the police, had broken the spell cast by the fraudster.

Lloyds’ initial response of 14 June 2018 to Mr W’s complaint

Lloyds’ input to the events naturally starts when Mr W attended its branch for the first time on 10 May 2018.

It says it questioned Mr W that day about the purpose of the transfers when he asked for them to be made. Lloyds obtained the recollections of the staff member who served Mr W on 10 May 2018. These recollections seem to have been provided in ‘summary form’ by Lloyds, and confirmed by the branch manager, rather than in the staff member’s ‘own hand’. The staff member says Mr W told her he was transferring the money because he wanted a better interest rate – a different reason to the one Mr W says he gave. She says she remembers that they chatted about this as Lloyds had recently lowered its rates

The staff member also says she read Mr W the bank’s ‘scams script’ The script says:

[REDACTED]

The staff member recalls that Mr W appeared calm and showed no signs of distress. Lloyds says that a [REDACTED] would have been completed and Mr W was asked for suitable identification to complete the transfers. The staff member accordingly completed the two transactions totalling £50,000.

Lloyds is satisfied that the correct processes were followed by its branch staff on 10 May 2018 and has not therefore agreed to reimburse Mr W with the £50,000 he lost.

In respect of the attempted transaction on 11 May 2018, Lloyds said the same staff member from 10 May 2018 helped prevent this. In its letter to Mr W of 14 June 2018, Lloyds said:

"The following day you have returned to the branch to request more money be transferred. The same process has been followed whereupon you have advised that the money was being transferred to your family. [Staff member's name] recognising that you had completed large transfers the day before has highlighted this to her colleague as a concern. At this point, the decision was made not to proceed with the transaction and the branch manager alerted"

I understand this to mean that Lloyds believes that Mr W came into branch on 11 May 2018 and was served by a different staff member to that of 10 May 2018. But the staff member who had served him on 10 May 2018 told the colleague, who served Mr W on 11 May 2018, that Mr W had been in the day before making large transfers. And Lloyds believe this interaction played a part in the scam being uncovered.

In summary, Lloyds was satisfied that "*everything possible*" was done to prevent Mr W becoming a victim of fraud. It does not agree that more robust questioning on 10 May 2018 would have overcome the "*deep mistrust*" of Lloyds' branch staff "*instilled*" in Mr W by the fraudster and prevented the fraud that day.

Correspondence between Mr W and Lloyds following Lloyds' letter of 14 June 2018

Mr W disagreed with Lloyds' version of events and the outcome overall.

Mr W is adamant he was not read the scam script in full. He strongly refutes there was any mention of the parts about funds being unsafe, or that the bank/police would never tell someone to move money to a safe account. He says if there had been that would have been enough for him to question what he was doing and ask for help. Mr W says he "*definitely*" wasn't read the full scam script.

Mr W is sure he didn't say he was looking for a better interest rate elsewhere. He maintains that on both occasions he said he was either sending the money to friends or family, or that it was a personal matter.

Mr W says, had the level of questioning on 10 May 2018 been of the same level as on 11 May 2018, the scam would not have succeeded. To highlight the level of questioning that took place on 10 May 2018, Mr W says the transfer of £50,000 from his account, including the transfer in from his ISA, only took 5 to 6 mins. Mr W says he recalls being "*very surprised*" how easy it was to transfer such a large amount of money.

Mr W requested that Lloyds obtain CCTV of the incidents to prove what happened on both days. He is adamant this would show "*proper protocols*" were not followed on 10 May 2018.

Mr W disputes that things happened as he believes Lloyds said on 11 May 2018. He says he didn't speak to the same member of staff on the second day and only dealt with the branch manager.

In response to Mr W's points, Lloyds did not change its mind that it had done all it could on both 10 and 11 May 2018.

It remained satisfied that the events of 10 May 2018 had not given its branch staff member "*cause for concern*".

Also, given that Mr W has interpreted Lloyds letter of 14 June 2018 as inferring the same staff member he had dealt with on 10 May 2018 had again served him on 11 May 2018, Lloyds clarified to Mr W that this was not the case. It confirmed that the staff member of 10 May 2018 had only been involved '*indirectly*' on 11 May 2018, rather than directly with Mr W.

Mr W brought his complaint to this service as he was unhappy with the outcome reached by Lloyds.

my provisional 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 February 2016 report '*improving outcomes for customer's 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
- in relation to branch transactions – follow the Banking Protocol when available.

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.

So, taking all of this into account, in this case I need to decide whether Lloyds acted fairly and reasonably in its dealings with Mr W when he transferred £50,000 out of his account in two transfers, or whether it should have done more than it did.

Key question to answer in this case

I believe it's accepted by all that Mr W was the unwitting victim of a deeply unpleasant and callous fraud. Indeed, Lloyds itself described what happened to Mr W as "*an extremely elaborate and convincing deception that has resulted in a significant financial loss*".

So the key question I need to answer, in deciding what's fair and reasonable in this case, is whether Lloyds, when Mr W transferred two payments of £25,000 in quick succession in one its branches on 10 May 2018, took sufficient steps, in all the circumstances of the transfers, to help protect Mr W from the possibility of financial harm.

On the balance of evidence, I don't currently think it did and will explain why.

According to UK Finance's figures for 2018, financial fraud in this country has now reached in excess of £1 billion a year. Approximately a third of this comes from authorised push payment fraud (APP) – a rate of around £1 million a day. And this is a figure that has sadly been growing. It's against this backdrop that initiatives such as the Banking Protocol came into existence.

One of the objectives of the Banking Protocol is, of course, to disturb this growing pattern of fraud and provide more protection to consumers – who have been under threat from sophisticated forms of fraud, with social engineering at its heart, more than ever before. It's also the case, as I touched upon in my relevant considerations section above, that banks are generally more familiar with fraud - and therefore better placed to help spot it - than the average consumer.

I think it's fair to say that the primary concern of the Banking Protocol is consumer protection rather than, for example, to help financial businesses avoid liability. So the skill of bank staff and the types of questions that get asked in the particular circumstances of a transaction – and most notably when a consumer wishes to withdraw or transfer an unusually large or out of character sum amount of money - will be important.

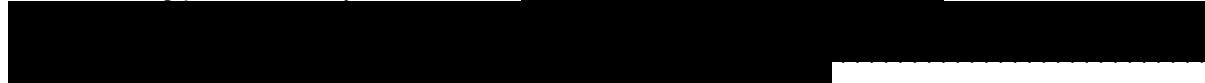
In saying this, I expect most people understand there are a limits to how far a bank can or should go when asking questions. And of course most bank customers won't be fraud victims.

But, equally, neither is a generic script or commentary about fraud, read out to a consumer already socially engineered, anxious and in the midst of a fraud, likely to be sufficient in all circumstances. This is a point I will return to later in this provisional decision.

Nor indeed would just one or two questions, which are not designed to get into the detail of why that consumer wanted to move their money, always be enough. This is particularly so as it's well established that fraud victims have often been coached into believing that bank branch staff are the 'criminals' in the episode and will, therefore, have been fed a 'cover story' for why they are withdrawing or transferring money.

The quality and specifics of the questions that get asked in the individual circumstances point is important. Through the careful design of the fraudster, the intention of the consumer, as I am satisfied it was in Mr W's case, will not be to answer 'honestly' when asked. And banks know this is how such frauds work. The consumer has a different objective at play - saving their money from being stolen - which they've been convinced would be better met by the 'cover story' provided by the fraudster.

This is a point I note Lloyds acknowledges in some of its internal guidance on the practical application of the banking protocol. It says staff should



Though this extract is from, I believe, August 2018, it's my view that it was in any event good practice at the time Mr W made the transfers and is in keeping with the Banking Protocol that applied at the time.

So, it's through these lenses that I have considered whether Lloyds has been able to demonstrate that, in all of the circumstances, it did enough when Mr W visited its branch on 10 May 2018.

I've thought carefully about whether it would be fair and reasonable to conclude that there were enough of the 'hallmarks' of a potential fraud present on 10 May 2018 – for Lloyds to have had reasonable grounds for some concern and ask more questions than it appears to have done that day.

In all the circumstances of this case, I'm satisfied on balance there was. The £50,000 withdrawal from Mr W's savings account and onward transfer of that money to two new payees were unusual and out of character transactions for Mr W. And I think this warranted further questions than the evidence I have seen suggests were asked – this is whether Mr W's version of events (in particular about the reason he gave for the transfers and the reading of the scam script) is correct or the bank's.

£50,000 is, by any reasonable definition, a sizable sum of money. It certainly was for Mr W and, as noted above, he had to transfer money from his ISA savings, with the help of the staff member, to make the payments. Yet, even if Lloyds' version of what happened on 10 May 2018 is correct (and the conversation was about moving savings to get better interest rates), it does not appear Lloyds asked Mr W further specific questions designed to establish the detail of the transfers he was making.

For example, there appears to have been no discussion about any potential tax implications Mr W might have incurred by removing £50,000, at extremely short notice, from his ISA.

Mr W could've been asked such things as the type and product name of the account he was moving the money to and what the new rate was – but I haven't seen any evidence he was. And potentially, given the nature of 'safe account' scams, it might have been appropriate to ask for some evidence to link Mr W with the accounts he was transferring his money to.

Nor does Mr W seem to have been asked why he was splitting the money between two accounts. That also seems potentially unusual if someone is looking to pursue a better rate elsewhere. Perhaps even why not all of his savings were being transferred given the allegedly favourable rates of interest. These are other points which I think the bank might fairly and reasonably have touched upon with some additional questioning. Banks don't need to be certain a fraud is happening to ask additional questions – they do need to be on the lookout for signs of things being not quite as presented.

Given what's set out in the Banking Protocol - around questioning the customer about transactions, being alive to potential cover stories and considering the elements of known scams – I think the questions asked on day two by the branch manager would have been more in line with the kind of reasonable and specific questions to have asked Mr W on day one.

And given what happened on day two – albeit it with the additional material factor of the payments from the previous day - it appears, and I think it's more likely than not, that such questions would have led to a different outcome.

From the evidence I've seen, I think it's more likely than not that Mr W wouldn't have been able to persuasively answer basic questions about where he was transferring the money on 10 May 2018. I believe his answers would, more likely than not, have left staff concerned and this would ultimately, whether through further questioning or through the involvement of the police, revealed that Mr W was being scammed.

If, alternatively, Mr W's version of what happened on 10 May 2018 (that he was transferring the money for personal or family reasons) is correct then, again, I don't think Lloyds should have accepted that without further additional questions designed to get into the detail. And again, I think further questioning would, more likely than not, have revealed the scam.

Lloyds says that [REDACTED]

■ However, it has been unable to provide Mr W's 'copy' of this from the time. Lloyds also says as part of the discussion it read a full scam script that day - though Mr W strongly disagrees with this. I've thought carefully about this and, ultimately, I think Lloyds should have given Mr W information about scams in a more tailored and responsive way on 10 May 2018 than, on balance, I believe happened in all the circumstances - whether the script was read in full or not.

The Banking Protocol recognises that such scam scripts may not be enough to break the spell cast by a fraudster. It recognises that:

- often the bank will have to ask more detailed and specific questions to determine whether the customer might be a victim of fraud; and
- that customers are often convinced by the fraudster's story and so ultimately it may be necessary to escalate the matter to the Police for customers to realise or accept that they are the victim of fraud,

So, in light of the heightened environment banks and their customers are now operating in when it comes to fraud - as detailed elsewhere in this decision – and the purpose of the Banking Protocol and what I consider to have been good practice, I think Lloyds ought fairly and reasonably to have viewed Mr W's request on 10 May 2018 with some suspicion and caution and asked more questions than, even by its own account, it did. And I am, on the balance of evidence, currently satisfied the fraud would more likely than not have been prevented if it had.

I accept, as I have said elsewhere in this decision, there is a balance to be struck and there are limits to the depth of questioning a bank can pursue. I am not suggesting Mr W should have been subject to an 'interrogation'. However, £50,000 is a lot of money – it was for Mr W. I believe that Lloyds ought fairly and reasonably to have asked more questions - essentially to challenge the purpose of the payments and ask for more detail - than it seems on balance happened that day.

On a final point, I recognise that the growth of financial fraud in this country puts bank staff in difficult positions. They have to make judgements in the moment and they won't get it right every time. But my present view is that Lloyds ought fairly and reasonably to have done more than it did on this occasion and that Mr W's complaint should succeed – this is whether his version of what happened on 10 May 2018 is accurate or whether the bank's is.

putting things right

I'm presently satisfied that if Lloyds had acted fairly and reasonably it could have prevented the losses Mr W incurred. And therefore, in the circumstances, that Lloyds should fairly and reasonably compensate Mr W for this.

For the reasons given, I'm currently minded to decide it would be fair and reasonable for Lloyds to refund the losses that Mr W has suffered as a result of this scam.

In addition, Mr W has told us that he risks losing his house as a result of what happened to him in May 2018 and that the events of those two days are never far from his mind. He's said his emotions have ranged from anger to confusion and that he's felt close to a breakdown. I can fully empathise that this has been a terrible time for Mr W, so I've thought about whether an award for distress and inconvenience is fair in this case.

As the financial loss Mr W incurred from this unfortunate episode ought in my view, more likely than not, have been prevented by Lloyds – for the reasons I have given - I'm therefore also currently satisfied that a payment for distress and inconvenience would be fair and reasonable in all the circumstances. In deciding what's fair compensation, I have also taken into account that these events ultimately occurred in the first place through the actions of a scammer.

So I intend to order Lloyds to:

- refund Mr W the £50,000 loss;
- pay Mr W the interest he would have earned on the £50,000 had it remained in his ISA account, from the date of withdrawal to the date of settlement;
- pay Mr W £300 in compensation for the distress and inconvenience he experienced.

I'm conscious that Mr W's loss comes from an ISA. There may then be tax implications for him and the £50,000 can't be re-credited to an ISA account in one go. But Mr W should be able to use his allowance for this financial year and next to re-credit potentially as much as £40,000 quite quickly. There'll then only be £10,000 outstanding to deposit later.

Mr W has told us he intends to use the money next year to pay off his mortgage and so there aren't any long term implications of the money not being in an ISA account. And it appears Mr W would still be within his tax-free personal savings allowance so shouldn't be disadvantaged.

If Mr W feels there are further implications for his savings and the amount of tax he pays he should let me know so those factors can be taken into account.

If Lloyds is able to backdate the funds and/or re-establish the account in another way then it should let Mr W know.

my provisional decision

I intend to uphold Mr W's complaint against Lloyds Bank PLC.

I now invite both parties to provide me with any further evidence or information by 11 December 2019.

Pat Hurley
ombudsman