

complaint

Mr L complains that Clydesdale Bank Plc won't refund money he lost when he was the victim of a scam.

background

Mr L was involved in an online relationship with a woman we now know to be a scammer. The woman told him she had inherited a significant amount of money from her father, but that taxes needed to be paid on the money before it would be released to her. Mr L therefore went into a Clydesdale branch to take out a loan for £15,000, so he could send her the money to pay the taxes.

Clydesdale accepted Mr L's loan application and Mr L then withdrew £14,150 of the funds from the loan as cash and used this cash to make a series of payments to accounts the woman had given him the details for.

The scam was ultimately uncovered shortly after these payments were made, when Mr L tried to make a further payment and a member of staff in the US bank where he tried to make the payment said the woman was known to them and was a scammer. Mr L then reported the scam to Clydesdale, complained that it hadn't warned him of potential scams when he applied for the loan and asked that the money he'd lost be refunded to him.

Clydesdale investigated but said Mr L gave the purpose of the loan as legal expenses and it was his responsibility to decide if he wanted to proceed with it or not, so it didn't agree to refund the money he'd lost. Mr L wasn't happy with Clydesdale's response, so referred his complaint to our service.

One of our investigators looked at the complaint and felt Clydesdale should have been concerned that Mr L was at risk of financial harm and warned him about the risks of sending money to someone he'd never met in person before processing the loan application. And he felt that, if Clydesdale had done this, the scam would've been discovered and Mr L wouldn't have lost the money. So they recommended Clydesdale refund the money Mr L had lost. Clydesdale disagreed, so the complaint has been passed to me.

my findings

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

It's not in dispute that Mr L applied for the loan himself or authorised the subsequent payments to the accounts the scammer had given him details for. So, although he didn't intend for the money to go to a scammer, under the Payment Service Regulations 2017, the starting position is that Mr L is liable for the loss and Clydesdale doesn't have to refund him.

However, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Clydesdale 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 (among 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.

Mr L says that when he went into the Clydesdale branch to apply for the loan, he told the staff he wanted the money to pay the taxes on the woman's father's will so the money she'd inherited could be released to her. He says he showed the staff an email he'd received from the woman which explained the situation with her father's will, as well as the legal documents the woman had sent him showing her being appointed administrator of her father's estate. Mr L also says he told the staff his relationship with the woman had been solely online up until that point, but that he would be flying out to meet her in the US once the taxes were paid.

I've seen copies of the email and the legal documents, as Mr L has also sent them to us. I've not seen anything to suggest Mr L has ever hidden the purpose of the loan or given an incorrect explanation of why he wanted it or his relationship with the woman. And while Clydesdale says Mr L told it the purpose of the loan was legal expenses, I don't think this contradicts what he's said as paying the taxes on a will could be categorised as legal expenses. So I think it's likely Mr L did tell Clydesdale about the true purpose of the loan and his relationship with the woman when he applied for the loan.

Given this information, and as paying to release money from someone else's will and sending money to someone they've never met in person are both well known types of scam, I think Clydesdale should have identified that Mr L was potentially the victim of a scam. I think it should then have warned him about the prevalence of romance scams and the risks of sending money to someone he'd not met in person.

As Clydesdale is in a position of knowledge and authority in financial matters, I think these warnings would've carried considerable weight with Mr L. I think the warnings would've caused the scam to be discovered, as it was when the member of staff in the US bank warned Mr L about the possibility of a scam. And I think Mr L then wouldn't have taken out the loan and wouldn't have sent the money from the loan to the scammer.

After the loan was granted, Mr L withdrew £14,150 of the money from the loan in cash. He then went to a local money transfer company and made a payment of £4,991.10, the most he says the company would send, to an account the woman had given him the details for.

Mr L then made another payment the following day, this time of £4,925.10 plus £74.90 in fees, through another money transfer company at the airport. He then flew to the US but, after he arrived, he found out the payment of £4,925.10 hadn't been successful and so this amount was returned to him by the money transfer company in the US.

Mr L says he made several attempts to send the rest of the money from the loan to the account the woman had given him the details for, and ultimately sent two payments a few days later through a US bank for \$5,487 and \$5,600. I've seen receipts for these two

payments. And at this point it appears Mr L had sent all the cash he had withdrawn from the loan.

As there had been a delay in sending some of the money, Mr L says the woman told him he needed to make a further payment. So he went into a different branch of the US bank two days later and made this further payment of \$6,035 using money from a credit card. Shortly after this further payment was made, a member of staff at the US bank told Mr L the woman was known to them and was a scammer.

The scam was then discovered and the US bank was able to recover the \$6,035 payment. This was given to Mr L as a cheque, which he says he deposited back into his account when he returned to the UK. I've also seen that the £4,991.10 payment was refunded to Mr L by the money transfer company. But Mr L has said the US bank wasn't able to recover the \$5,487 or \$5,600 payments.

As the £4,991.10 payment has been refunded to Mr L by the money transfer company, he hasn't lost this amount and I don't think it would be reasonable to ask Clydesdale to also refund it. The £4,925.10 payment was also returned to Mr L, as the payment was unsuccessful, and so he hasn't lost this amount either. And the \$6,035 payment didn't come out of the money from the loan, and has been refunded to Mr L in any event, so he also hasn't lost this amount.

But the payments of \$5,487 and \$5,600 did come out of the money from the loan and haven't been recovered, so Mr L has lost these amounts. And as Mr L had withdrawn the money from the loan in cash, and had been using separate sources of funds for his expenses while in the US, I'm satisfied these two payments represent the entire £14,150 cash he withdrew from the loan, less the £4,991.10 that was refunded by the money transfer company.

So Mr L lost those two payments. And if Clydesdale had warned Mr L that he was potentially the victim of a scam, as I think it should have done, I think the scam would've been discovered, Mr L wouldn't have taken out the loan and he wouldn't have lost the two payments he did.

Putting things right

In order to put things right, Clydesdale should:

- Remove any record of the loan from Mr L's credit file
- Refund any interest and charges applied on the loan to date, and make sure no interest and charges are applied moving forwards
- Reduce the balance of the loan by the £9,158.90 Mr L lost (calculated as the £14,150 cash he withdrew, less than £4,991.10 refunded to him for the first payment)
- If this refund and balance reduction means Mr L has paid more than he should have towards the loan, these excess payments should be refunded to him, plus 8% simple interest from the time he made the payments to the time they're repaid
- If there is still an outstanding balance following this refund and balance reduction, Clydesdale should get in touch with Mr L and arrange a fair repayment plan
- Pay Mr L £250 as compensation for the distress and inconvenience he's suffered

my final decision

I uphold this complaint and require Clydesdale Bank Plc to put things right by doing what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 30 July 2021.

Alan Millward
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