

complaint

Mr and Mrs G's complaint is that Lloyds Bank PLC didn't stop funds from leaving their account when they were the victim of a scam. They also don't think Lloyds did enough to recover their funds from the beneficiary bank.

background

Mr and Mrs G made two separate transfers to a scammer for what they thought was a chalet:

- 6 December 2017: transfer of £273
- 7 December 2017: transfer of £3,613
- Total transferred: £3,886

Mr and Mrs G had no reason to suspect anything was wrong until they arrived at the address of the chalet and found that it didn't exist. Upon reporting the matter to the local police, the website they used to arrange the chalet was taken down.

Mr and Mrs G reported the fraud to Lloyds on 27 December 2017. Lloyds raised the issue with the beneficiary bank on the same day. Mrs G had to chase Lloyds on several occasions and says an advisor was rude to her during one of these calls.

Lloyds set up two separate complaints, one for each payment. They sent Mr and Mrs G a letter on 26 January 2018 for one of the complaints explaining no funds remained in the beneficiary bank. But they closed the second complaint in February 2018 without telling Mr and Mrs G, as the beneficiary bank hadn't responded to their information requests.

Upon reviewing the two complaints, Lloyds recognised it hadn't handled them very well and offered Mr and Mrs G £300 compensation for the impact their errors had. But they didn't agree they should refund the £3,886 because Mr and Mrs G authorised the payments and Lloyds followed their instructions. Mr and Mrs G rejected the offer and still felt Lloyds should reimburse the £3,886.

Our adjudicator assessed the complaint and didn't think Lloyds' system failed in its obligations when it didn't flag the payment as potentially fraudulent. And she felt Lloyds had done enough to try and recover the funds from the beneficiary bank. She did agree Lloyds could've handled the complaint itself better but felt the £300 already offered was fair in the circumstances.

Mr and Mrs G didn't agree with the adjudicator's findings and said they expected a refund of at least half of what they had lost to the scammer. As an informal agreement couldn't be reached, the case has been passed to me for a final decision.

my findings

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

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards;

codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Having done so, I think Lloyds acted fairly and reasonably in allowing the two transfers to leave Mr and Mrs G's account. And I think it took appropriate steps to try and recover the funds from the beneficiary bank. I do agree that it made errors when handling the complaint, but I think the £300 already offered is fair. I'll explain why.

In broad terms, the starting position in 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.

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'); and
- 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
- good industry practice at the time,

This means that, particularly with the increase of sophisticated fraud and scams in recent years, there are circumstances where a bank should 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.

In this case, I need to decide whether Lloyds acted fairly and reasonably in its dealings with Mr and Mrs G when they transferred the £3,886, or whether it should have done more than it did.

Mr and Mrs G made two separate transfers to the scammer over two days. They have accepted that they authorised the transfers themselves. Because of this, Lloyds were under an obligation to follow these instructions. I've considered whether Lloyds should reasonably have had a closer look at the circumstances surrounding the transfers.

Looking at the statements for the account, I don't think the payments were particularly unusual or suspicious in comparison to Mr and Mrs G's normal account activity. There isn't anything remarkable about this payment in terms of either its value or payment type; Mr and Mrs G had made several other transfers, including payments to international accounts. So, I think the fact that Lloyds' systems didn't flag this payment as suspicious was fair and reasonable given the circumstances.

Mr and Mrs G notified Lloyds on 27 December 2017 that they'd been the victim of a scam. Lloyds has provided evidence to show they contacted the beneficiary bank for each complaint as follows:

Payment one

- 27 December 2017, contacted beneficiary to request a refund of the funds,
- 11 January 2018, chased beneficiary bank,
- 23 January 2018, chased beneficiary bank,
- 24 January 2018, beneficiary bank confirmed no funds remained.

Payment two

- 27 December 2017; contacted beneficiary to request a refund of the funds,
- 10 January 2018, chased beneficiary bank,
- 25 January 2018, chased beneficiary bank,
- 22 February 2018, closed case due to no response.

Considering this, I think Lloyds contacted the beneficiary bank within a reasonable period of time to request a refund of the funds. It should be noted that this is on a best endeavours basis, so there's no guarantee of a refund. And I think Lloyds did enough to chase the beneficiary bank for a response. So, I don't think it needed to do anything more in the circumstances.

As I previously mentioned, I do agree that Lloyds could have kept Mr and Mrs G better informed of the status of their complaints and they've acknowledged their advisor didn't act appropriately during a telephone call with Mrs G. They've offered £300 in recognition of this which I think is fair in the circumstances.

I do empathise with Mr and Mrs G's situation and I appreciate this isn't the outcome they were hoping for. But after carefully considering everything available to me, I think Lloyds' decision not to refund Mr and Mrs G in this instance was fair and reasonable. It followed Mr and Mrs G's instruction to make the two transfers totalling £3,886 and I haven't seen any reason why it should not have done this. And I think it took sufficient steps to try and recover the funds in a timely manner once it was notified of the scam.

my final decision

I don't uphold this complaint.

Lloyds Bank PLC isn't required to refund the £3,886. It is up to Mr and Mrs G to decide if they would like to accept the £300 offered to them for the distress and inconvenience the delays and bad service have caused them.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs G to accept or reject my decision before 28 December 2019.

Rebecca Norris
ombudsman