

The complaint

Ms K is unhappy that Lloyds Bank Plc won't reimburse her for the money she lost when she fell victim to a scam.

What happened

Ms K fell victim to a safe account scam. Her details were compromised via a phishing text, Ms K realised what had happened straight away and called her credit card provider – which I'll call "A" to report that her card had been compromised. The next day Ms K was contacted by an individual claiming to be from A who said that due to the phishing incident her phone may be compromised, meaning that all her bank accounts could be at risk

Ms K says she was told that she needed to move her money from Lloyds into accounts she held with two Electronic Money Institutions – "R" and "W" – and then from there on to new "safe" accounts that were being set up. Unfortunately, and unknown to her at the time, Ms K was actually speaking with fraudsters.

Believing that she was genuinely dealing with A, Ms K ended up moving significant funds from her accounts with Lloyds into her accounts with R and W, and then from R on to the scammers. In total, Ms K transferred £275,000 out of her Lloyds accounts over three days

Ms K realised she had been the victim of a scam when R asked her about whether she had downloaded any remote access software, and this rang alarm bells for her. She reported the matter to Lloyds and to R (she had ultimately not made any payments out to the scammers from her W account). Lloyds logged the fraud, but told Ms K that it wouldn't be reimbursing her for the payments she had made from her account, although it did pay her £75 to recognise that it could have dealt with her complaint more quickly. Lloyds says that the payments were to accounts in Ms K's own name, and feels R should bear responsibility for the loss as that is where the payments were made to the scammers from. Lloyds has also said it feels it asked appropriate questions, and gave appropriate warnings, when it did discuss payments with Ms K.

Unhappy, Ms K referred the matter to our service. One of our Investigators looked into the complaint. Overall, they considered that while Ms K had authorised the transfers (albeit as a result of a scam) Lloyds should have done more to intervene from the first payment. They felt Lloyds could have done more to question Ms K about what was going on and to explain what relevant scams might look like. It was our Investigator's view that, had Lloyds done so, it was more likely than not the scam would've unravelled, and the loss would've been prevented. Our Investigator also considered that Ms K wasn't partly to blame and shouldn't bear any responsibility for the loss. They did though feel that Lloyds and R should share responsibility for the loss.

Our Investigator recommended Lloyds refund Ms K 50% of the scam payments made from her Lloyds accounts. They also recommended Lloyds pay 8% interest on that amount.

Ms K accepted the Investigators findings, but Lloyds disagreed. It did not feel it was reasonable for it to bear responsibility for any of the loss, given that the payments to the

scammer where not made from Ms K's Lloyds accounts. It also stated that the first payment made as a result of the scam was not unusual enough for it to have intervened, and maintained that when it did intervene it asked appropriate questions and gave appropriate warnings, and that Ms K had not been honest with it at that point about what she was making the payments for.

As no agreement could be reached, the case has now 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.

Having done so I've reached the same conclusion as our Investigator, and for the same reasons.

It's not disputed that Ms K authorised the payments that are in dispute. So as per the Payment Service Regulations 2017 (which are the relevant regulations in place here) that means Ms K is responsible for them. That remains the case even though Ms K was the unfortunate victim of a scam.

Because of this, Ms K is not automatically entitled to a refund. But the regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams.

Taking the above into consideration, I need to decide whether HSBC acted fairly and reasonably in its dealings with Ms K, or whether it should have done more than it did.

At the start of this scam Ms K held a current account and a savings account with Lloyds, both accounts were well established and used regularly, so there was a significant transaction history for Lloyds to compare any new payments to. And Ms K did, on occasion, make high value payments and transfers from her accounts. I also acknowledge that the payments in dispute here were made to accounts with R and W in Ms K's own name, and so would have appeared less risky overall to Lloyds. However, just because a payment is to an account in the consumer's own name that does not mean it bears no risk at all, and I would still expect Lloyds to keep an eye out for particularly high payments or those that bore other hallmarks of potential fraud, even if those payments were made to another account belonging to their customer.

I say this because this kind of payment journey – where payments are made from an account with one bank, to accounts in the same consumer's name at other banks or e-money providers, and then on to buy cryptocurrency – is increasingly a feature of scams. And I would expect Lloyds to have an awareness of how these scams operate and be aware of what it should be looking out for to help protect its customers.

On its' own, I agree that the first payment, while for a reasonably large amount, may not have been enough to flag to Lloyds that something might be wrong given the way Ms K used her account. However, before this first payment there was a period of extremely unusual activity that I think would have meant that by the time of this large transfer out of Lloyds, it should have been on notice that something untoward might be going on. Specifically, prior to the first scam payment, Ms K first attempted several large transfers from her savings account – which appear to have failed – and then made over 20 small transfers (of between

£100 and £750) from savings to her current account, before making the £23,000 payment from her current account to her account with R.

Given that the initial failed transfers do appear to have flagged with Lloyds as unusual – the notes from its conversation with Ms K the next day asks about these payments – I think the behaviour that followed should have been seen as potentially concerning. And I don't think it was then reasonable for Lloyds to allow Ms K to transfer £23,000 out of her Lloyds current account without any further intervention. I think Lloyds should have contacted Ms K directly to ask her some questions before allowing this payment to go through, despite the fact that the payment was going to Ms K's own account with R. Lloyds did ultimately speak to Ms K, but not until the next day, after around £50,000 had already been transferred out of her Lloyds accounts.

Had Lloyds intervened at this early stage, then I think it is more likely than not that the scam would have been uncovered. I acknowledge that Ms K had been told by the scammers that Lloyds may be involved in what was happening with her account, and as a result, when questioned later she did not give the true reason for the payments she was making. However, I do think there was enough going on at the time of the first payment that, even if Ms K had not given the true reason for the payment, it would have been reasonable for Lloyds to provide some general information about common scams, including safe account scams. And given that this would have been in the very early stages of the scam, and that Ms K clearly did have some suspicions about what was going on (she messaged A the next day to ask if they did have a fraud claim open for her and expressed some concern about whether the person she was speaking to was legitimate) I think that a clear warning about scams, including information about hallmarks of those scams, would likely have broken the spell here, and Ms K would have realised that she was the victim of a scam and would not have made any payments. So I think Lloyds could have prevented the losses Ms K incurred.

I acknowledge what Lloyds has said about the conversations it had with Ms K later on in the scam but the call transcripts I've seen don't, I feel, show that Lloyds went into any detail about what common scams could look like. And while Lloyds has provided a sample copy of the checklist it says is used during high value branch payments, it's not provided any records of that checklist being used with Ms K, or shown what answers Ms K gave to the questions it contains. In any case, these interventions were later on in the scam, when Ms K would have been deeper under the spell of the fraudsters, and I think Lloyds should have intervened much earlier on.

I do though need to bear in mind that Ms K also chose to refer a complaint about R's role in the scam payments. So given that we've been asked to consider R's role in what happened, and that our findings were that R could also have done more to prevent the disputed payments being made, I consider it is fair for liability for Ms K's loss to be shared between Lloyds and R. Lloyds feels that R should bear all the liability for the loss. But, for the reasons explained above, I don't consider that the fact there were further accounts in the payment journey before the funds were ultimately sent to the scammers means that Lloyds is absolved of any responsibility for the loss incurred here.

In reaching my conclusions about what is fair and reasonable in this case, I have also considered whether Ms K should bear some responsibility for her loss. It's clear that this was a very sophisticated scam, where the scammers appear to have known a great deal about Ms K's accounts, and appeared to be calling her from a legitimate banking institution. Given this background, and the enormous pressure Ms K was under to do what she was told by the scammers to 'keep her money safe', I can see why she took the actions she did. So I don't think she was partly to blame for what happened. It follows that I don't consider it fair to say Ms K should bear responsibility for some of the loss here.

I've also thought about whether Lloyds could have done more to recover the funds after Ms K reported the fraud. I'm satisfied that Lloyds could not have done more here. Ms K had transferred money to her own account with R before the funds were subsequently transferred on to the scammer. So while Lloyds had an obligation to notify R of what had happened, it wouldn't have the same obligations as the bank responsible for the eventual transfer to the scammer's account.

So, in summary, I consider when Ms K made the first transfer to R, Lloyds could have done more to protect her from the risk of financial harm. Had Lloyds contacted Ms K directly before allowing this payment to be made, I'm persuaded it is more likely than not the scam would have come to light, and Ms K wouldn't have lost out on the funds she then went on to transfer. I do though consider that R should share responsibility for the loss.

So I consider it fair and reasonable for HSBC to refund 50% of the payments made from Ms K's Lloyds accounts, along with interest at our standard compensatory rate of 8%.

Putting things right

To resolve this complaint Lloyds should:

- Refund 50% of the scam payments (representing a refund of £137,500)
- Pay 8% simple interest per annum on this amount, calculated from the date of each payment until this complaint is settled.

My final decision

I uphold this complaint. Lloyds Bank PLC should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 22 February 2024.

Sophie Mitchell
Ombudsman