

The complaint

Mr and Mrs H complain that Lloyds Bank PLC won't refund all the money they lost when they were the victims of a scam.

What happened

In late 2022, Mr and Mrs H were looking to buy a motorhome. They'd looked on a number of listings websites, as well as at local dealerships, before finding one they were interested in on an online marketplace. And after carrying out some checks on the motorhome, they contacted the seller and paid a deposit of £2,000 to reserve it.

The seller then contacted Mr and Mrs H the following day saying they had to return their deposit as a dealer had offered to pay the full price for the motorhome that day. Mr and Mrs H said they still wanted the motorhome, so agreed to pay the full price that day as well. And, after the seller accepted, Mr and Mrs H sent another payment of £13,500 to pay the remaining balance.

Mr and Mrs H had agreed to collect the motorhome a few days later. But when they arrived at the address the seller had given them, the motorhome wasn't there and they were told they had been the victims of a scam. Mr and Mrs H then reported the payments to Lloyds and asked it to refund the money they had lost.

Lloyds investigated and accepted it could have done more to protect Mr and Mrs H when they made the second payment. But it also thought they could have done more to protect themselves, and it thought it had done enough when they made the first payment. So it offered to refund 50% of the second payment they made. Mr and Mrs H weren't satisfied with Lloyds' response, so referred a complaint to our service.

One of our investigators looked at the complaint. They thought it was reasonable for Mr and Mrs H to have made the first payment without doing more, but that they could have done more to protect themselves before making the second payment. So they recommended Lloyds also refund the first payment Mr and Mrs H made. Lloyds agreed to do this, but Mr and Mrs H disagreed with our investigator so the complaint has been passed to me.

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.

In broad terms, the starting position in law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

Lloyds is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one Mr and Mrs H fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made
- The customer made the payment without a reasonable basis for believing that:
 - o the payee was the person the customer was expecting to pay;
 - o the payment was for genuine goods or services; and/or
 - o the person or business with whom they transacted was legitimate

There are further exceptions within the CRM code, but these don't apply here.

Were Mr and Mrs H vulnerable, under the CRM code?

The CRM code says that, where a customer is vulnerable, the bank should refund them in full – regardless of whether any of the exceptions to reimbursement apply. And it defines a customer as vulnerable if it would not be reasonable to expect them to have protected themselves from the particular scam they fell victim to.

Mr and Mrs H have argued that Mr H had a number of significant medical conditions he was taking medication for at the time, and that this medication compromised his ability to make decisions. Any my intention isn't to diminish the difficulties these conditions or the medication can cause, and I don't underestimate the impact they had.

But, based on what I've seen here, it appears Mr and Mrs H were able to carry out a number of independent checks and ask the seller a number of questions about the history and condition of the motorhome. So I don't think their circumstances were such that they were unable to protect themselves from this particular scam.

And so I don't think they meet the definition of vulnerable from the CRM code, and I think the exclusions to reimbursement could still apply here.

Did Mr and Mrs H have a reasonable basis for belief when making the payments?

Lloyds has now agreed to refund the first payment Mr and Mrs H made of £2,000, and so I have focused my decision on the second payment they made of £13,500.

Lloyds has argued Mr and Mrs H didn't have a reasonable basis for belief when making this payment, because they didn't do enough to protect themselves before making it. And while I appreciate they have been the victims of a cruel scam, I do think there were a number of things about what was happening and what they were told that should have caused them significant concern.

From the independent valuations our service has carried out on the motorhome Mr and Mrs H thought they were buying, it appears that the seller was listing it for sale at significantly below market value. It appears to have been listed at around 50% of the usual market value for a vehicle of the same age, make and model. And as Mr and Mrs H say they had looked at several other websites and visited several dealerships while looking to buy a motorhome, and had owned other motorhomes in the past, I think it's reasonable to have expected them to have noticed this.

I also don't think the explanation the seller gave Mr and Mrs H for why the motorhome was listed at this price was particularly plausible or convincing. They've said they were told the motorhome was eight years old and the seller wanted it sold. But the age of a vehicle is already taken into account in the usual market value. And I don't think wanting to sell a vehicle, even wanting to sell it quickly, is a plausible or convincing explanation for selling it at around 50% of its value. So I think this should have caused Mr and Mrs H significant concern that the price the motorhome was being listed at was too good to be true.

Mr and Mrs H also don't appear to have asked the seller for any further photos or videos of the motorhome, beyond those shown in the listing. And they don't appear to have asked for, or been shown, any further documents proving that the seller owned the motorhome they were selling. And given the amount of money they were paying for the motorhome and that they weren't able to see it in person beforehand, I think it's reasonable to expect Mr and Mrs H to have confirmed that the seller actually owned it before sending the money.

Mr and Mrs H have said they saw a number of posts from satisfied customers of the seller on the online marketplace, who gave positive feedback. But the screenshots of the advert for the motorhome I've seen show it was a classified listing on the online marketplace, where feedback for the seller is not shown. So I think it's likely they didn't see any feedback or reviews about the seller. And I think this lack of feedback should have caused them some concern, and certainly shouldn't have offered any reassurance that what was happening was genuine.

Mr and Mrs H were also told by the seller the day after they paid the deposit that the only way they could complete the sale was to pay the full remaining balance that day. And while I appreciate they were told there were other people interested in the motorhome, I think being asked to pay the full price before seeing the motorhome in person should also have caused them concern.

I sympathise with the position Mr and Mrs H have found themselves in. And I appreciate that they carried out several checks to try to confirm the sale was genuine. But I think there were a number of things here which should have caused them significant concern. And I don't think the checks they did or the seemingly genuine information they were given should have been enough to overcome the concerns I think they should have had.

So I think Lloyds has established that Mr and Mrs H made the payment without a reasonable basis for belief that it was genuine. Lloyds has therefore established that one of the exceptions to reimbursement under the CRM code applies here, and it does not have to refund Mr and Mrs H all the money they lost.

Did Lloyds meet its obligations under the CRM code?

Even though I don't think they had a reasonable basis for belief when making the payment, Mr and Mrs H may still be entitled to a refund of some of the money they lost if Lloyds didn't meet its obligations under the CRM code – one of which is to provide effective warnings when it identifies a scam risk.

Lloyds has accepted that it should have identified a risk here and didn't do enough before allowing this second payment to go through. So it has accepted that it didn't meet its obligations under the CRM code.

Where one of the exceptions to reimbursement applies, but a firm also didn't meet its obligations, the CRM code sets out that the customer is then entitled to a refund of 50% of the money they lost.

As Lloyds has already offered to refund 50% of the money Mr and Mrs H lost as a result of this second payment, I think this is a fair and reasonable outcome to this complaint and I don't think it would be fair to require it to refund anything further.

Did Lloyds do enough to recover the money B lost?

We expect banks to take reasonable steps to try to recover the money their customers have lost, once they are made aware of a scam. But Lloyds's evidence shows it contacted the bank the payments were sent to within a reasonable amount of time, to ask for the money to be returned. So while unfortunately the bank the money was sent to wasn't able to return any of the money, Lloyds has done all I would expect it to have done.

Compensation

Lloyds has offered to pay Mr and Mrs H £60 as compensation for how the scam affected them. And, from the evidence I've seen, I think this is a fair and reasonable offer and I don't think it would be fair to require Lloyds to pay anything further.

My final decision

For the reasons set out above, I uphold this complaint in part and require Lloyds Bank PLC to:

- Refund Mr and Mrs H the first payment they made as a result of this scam – totalling £2,000
- Refund Mr and Mrs H 50% of the second payment they lost as a result of this scam – totalling £6,750
- Pay 8% simple interest on these refunds, from the date it initially responded to their claim until the date of settlement
- Pay Mr and Mrs H £60 compensation, if it has not already done so

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 28 March 2024.

Alan Millward
Ombudsman