

The complaint

A company, which I will refer to as M, complains that Lloyds Bank Plc failed to give correct advice when M's representative (a Mr P) rang to check if some card payments M had recently taken had been authorised. M says the bank's poor advice caused it to be subject to chargebacks totalling £23,456.92 – which M would like to be refunded.

What happened

I understand that there is no dispute about what happened here; the dispute is about whether M should be liable for the chargebacks.

All parties agree:

- M is a company that supplies and installs equipment. It had a longstanding merchant acquiring agreement with Lloyds, allowing M to take card payments from its customers.
- In July 2023 M was approached by a potential new customer, who I will refer to as the fraudster. (It is now obvious to both M and Lloyds that the potential new customer was indeed a fraudster using a false name, but neither of them knew that in July 2023.)
- The fraudster called to make payments to M totalling more than £13,000. These were Card Not Present (CNP) transactions. Mr P had some concerns about the payments, and rang Lloyds on 20 July 2023 to discuss the matter. He said he was worried about “being done out of £13,000” and wanted to know “at what point we're safe to release the goods”. Lloyds' agent asked him to call back the next day.
- The following day, 21 July 2023, Mr P rang Lloyds back. He asked if the payments had gone through, and a second agent confirmed that they had. Mr P explained “the customer wants the goods urgently so we were obviously hang on a minute, we were not sure that it sounds completely kosher so we just wanted to make sure that we would not get stung by it really”. The agent repeated that the payments “look like they've gone through”.
- M then allowed the fraudster to collect the purchased equipment from M's premises.
- On 24 July 2023 the same fraudster made three further card payments to M, totalling around £9,500, to purchase additional pieces of equipment. M's representative called Lloyds on 27 July 2023 to “check if the three payments that we took yesterday ... [have] been approved by the card provider”. Lloyds' agent said “yes, I can see they have gone through successfully; they should be in your account”.
- As before, M then allowed the fraudster to collect the purchased equipment from M's premises.

- A short time later, the genuine owner of the card used to make the payments noticed transactions in M's favour that they did not recognise. They raised chargebacks, which were successful. There was nothing that either M or Lloyds could have done to defend the chargebacks at that point; nobody doubts that the payments were made by a fraudster who did not have permission to use the card.
- In September 2023 M complained to Lloyds about the chargebacks. It said that had asked Lloyds to check the transactions, but the bank never mentioned the risks of chargebacks. M asked Lloyds to refund the full amount of the chargebacks, a total of £23,456.92.
- Lloyds did not uphold M's complaint, so the company referred the matter to the Financial Ombudsman Service.
- One of our investigators looked at this complaint and recommended that it should be upheld. He said M had called Lloyds for advice on transactions that it had clear concerns about, but Lloyds failed to highlight any risks, and failed to make it clear that it was not answering the question raised. Our investigator considered that Lloyds' actions directly led to M carrying out transactions that it was unlikely to have completed otherwise.
- Our investigator concluded that Lloyds should pay M £17,348.88 plus interest at 8% simple on that figure, calculated from the date of the chargebacks to the date they are refunded. He thought £17,348.88 was a fair amount because that was the cost to M of the goods that it supplied to the fraudster (the full chargeback amount of £23,456.92 included elements for VAT and profit).
- M accepted our investigator's recommendations, but Lloyds did not. The bank asked that the matter be referred to an ombudsman.

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, my conclusion is the same as our investigator's; Lloyds should pay M £17,348.88 plus interest at 8% simple. Interest should run from the date of the chargebacks to the date of the refund. I set out my reasons in full below.

I have first considered the agreement between Lloyds and M, and looked at what it says about chargebacks. Lloyds publishes its standard terms online, and they are available at <https://www.lloydsbank.com/business/take-payments-with-cardnet/existing-customers.html> .

As Lloyds correctly points out, the terms and conditions of its agreement make clear that M will be liable in circumstances like these. In particular:

- Clause 7.2 says that "Card Not Present Transactions accepted by you may be subject to Chargeback rights set out in clause 19".
- Clause 19 refers to the summary of chargeback rights set out in Lloyds' Operating Agreement, and says "If a Card Issuer exercises its right not to settle or to undertake a Chargeback, we will be entitled to Chargeback the Transaction immediately, and without notice". The Operating Agreement explains that one reason for chargebacks is "Cardholder did not authorise the Transaction (primarily CNP [Card Not Present])".

Transactions”, and points the reader to guidance to reduce chargeback risk. In this case there is no doubt that the genuine cardholder did not authorise the transactions.

- Lloyds’ Operating Agreement includes a section headed “Important” (on page 132 of 169), which says:

“Under no circumstances can goods purchased by mail or telephone be handed Point of Sale to, or collected by, the Cardholder. If a Cardholder wishes to collect the goods, then they must attend your premises in person and produce their Card. Any Sales Voucher already prepared must be destroyed and a Point of Sale Transaction processed.”

That section concludes with further instructions about cancelling/refunding any previous Card Not Present transactions.

In my view, the instructions Lloyds gives in that section of its Operating Agreement are aimed at precisely the situation M found itself in. If M had followed Lloyds’ instructions, the risk of fraud would not have been completely eliminated – but it would have been vastly reduced.

However, the terms and conditions between Lloyds and M do not determine this complaint. They are relevant, but they are not the end of the matter.

My role as an ombudsman is to come to an outcome that is, in my opinion, fair and reasonable in all the circumstances of the complaint. Those circumstances include the agreement between M and Lloyds – but they also include everything that led up to the chargebacks, including M’s telephone conversations with Lloyds. I consider that the key questions here are:

- Did Lloyds clearly explain the position during the 20 July 2023 phone call?
- If not, did M rely on Lloyds’ explanation?
- If M did rely on Lloyds’ explanation, was it reasonable for M to have done so?
- Did M suffer loss as a result of an error by Lloyds?

I consider each of those issues below.

Did Lloyds clearly explain the position during the 20 July 2023 phone call?

Having listened to the call between Mr P and Lloyds on 20 July 2023, it is clear that he was looking for reassurance that he was “safe to release the goods”. The agent said:

“I ... have to ask you to call again tomorrow, to make sure that the payments have been given the all ok and that that there are no issues, the last thing I want to do is say they are all ok, you release the goods, and they bounce or something like that”.

I am satisfied that it was impossible for Lloyds to have ever given the reassurance that Mr P was looking for. Lloyds could not possibly have known on 20 July 2023 that the person Mr P was dealing with was a fraudster, and it could not have reasonably given any reassurance that the transactions would not be charged back. But nothing about that was going to change between 20 and 21 July 2023. If Mr P called the next day – as he did – then it would still not

have been possible for Lloyds' agents to have given any reassurance that the payments would not later "bounce", or be charged back.

In the overall circumstances, I consider that the information Lloyds' agent gave in the 20 July 2023 phone call was misleading. The agent correctly said that the reassurance Mr P wanted could not be given on 20 July 2023, but they wrongly implied that it could be given the following day. They said they could not confirm on 20 July 2023 that the payments would not "bounce", then implied that another agent would be able to give that confirmation on 21 July 2023. (Here, I don't see a material difference between the terms "bounce" and "charge back", and I don't think Mr P would have done so either.)

I consider that Lloyds' agent should simply have told Mr P that Lloyds could not give the reassurance Mr P wanted. In hindsight I think it would also have been helpful if they had referred Mr P to Lloyds' Operating Agreement, or at the very least made some mention of the fact that Lloyds publishes guidance on how merchants can reduce their risk of fraud as well as the merchant's liability if fraud does take place. But I think the key point here is that the agent wrongly implied that Mr P could get the reassurance he wanted if he called back the following day.

I want to be clear that I am not saying that Lloyds should have warned the customer away from the transaction. Lloyds would have had no idea on 20 July 2023 that the transaction was fraudulent. I am simply saying that Lloyds should have told Mr P that the reassurance he was looking for was not possible, and then left it to Mr P and M to decide whether they wanted to accept the risks associated with the transaction, and in particular the risks of CNP transactions.

I have also listened to the later calls, on 21 and 27 July 2023. In my view, the questions M's representatives asked Lloyds' agents during those calls were clear – they simply asked whether the transactions had gone through – and Lloyds' agents gave accurate answers. I don't think Lloyds had any obligation do to more than simply answer M's questions during those calls, but I do note that M's representative made comments during the 21 July 2023 call about not wanting to be "stung", and being worried that the transactions were not "kosher". In hindsight I think those comments gave Lloyds another opportunity to refer M to its published information about reducing the risk of fraud. Had Lloyds done so, that might have prompted further questions from M and allowed the misleading impression M had been given on 20 July 2023 to be corrected.

Did M rely on Lloyds' explanation?

M has told us that there were a number of unusual things about the initial transactions, which is why they called Lloyds on 20 July 2023. The purchaser was a new customer with a large order, and they wanted to purchase equipment only (when M usually both supplies and installs the equipment that it sells). The purchaser called to make payment with a card then collected in person, which is not the way that M usually carries out its business.

One of M's directors later told us that he was particularly concerned about the payments due to their size. He explained that the possibility of such a high loss meant he wouldn't have sold the equipment if there had been even a 1% chance the payments would be recalled, and that M can't afford to simply swallow the loss. If the chargebacks stand, it is likely that M will have to reduce its staffing levels.

Looking at the circumstances as a whole, and paying particular attention to Mr P's 21 July 2023 comment about not wanting to be "stung", I am satisfied that M did rely on Lloyds' explanation. I don't think M would have released any of the goods to the fraudsters if Lloyds had explained that there was a possibility of a chargeback (or "bounce back").

Was it reasonable for M to rely on Lloyds' explanation?

Whilst I am satisfied that M did in fact rely on Lloyds' explanation, that doesn't necessarily mean that M's reliance was reasonable.

Lloyds has said that M would have been aware of the possibility of chargebacks well before the 20 July 2023 telephone call, because it makes all of its customers aware of that possibility as part of its terms. It has also said that chargebacks can be defended, so even if the agent had explained the chargeback process in its entirety that would not necessarily have dissuaded M from going ahead with the transactions.

I note:

- Lloyds' agreements with M make absolutely clear that liability for fraudulent transactions falls on the merchant and not on Lloyds (and not on the genuine cardholder). As I've said, the terms of those agreements are relevant to this complaint but they do not determine it. Lloyds is right to suggest that if M's representative Mr P had had the agreement in mind during the 20 July 2023 phone call, he would have known that it was not possible for Lloyds to say whether payments would be charged back.
- However, I think it is unlikely that Mr P did have the agreements in mind at the relevant time. Lloyds appears to have provided the relevant documents to M some time ago. I don't know exactly when the bank last provided the documents, but one of M's staff has speculated that they might have received a booklet in 2016. The documents were always available online if M had searched for them, but that is not the same as the bank proactively providing the documents to M. Our investigator asked Lloyds if it had reminded M about the risk of chargebacks at any time after M first entered into the agreement, and it appears the bank did not do so.
- When M allowed its customer (the fraudster) to collect goods after making Card Not Present payments over the phone, M went directly against the instructions in Lloyds' Operating Agreement. As I've said, those instructions were aimed at precisely the situation that M found itself in – and the risk of fraud would have been substantially reduced (but not eliminated) if M had done what Lloyds had told it to do.
- Whilst Lloyds is right to say that chargebacks can sometimes be defended, there was no way that M was ever going to be able to defend these particular chargebacks. A fraudulent CNP transaction is never going to be defensible under the chargeback scheme rules, and Lloyds would have known that (even if it didn't know that the particular transactions were fraudulent). Given Mr P's question about being "safe to release the goods", I don't think Mr P had actual knowledge that chargebacks in relation to fraudulent CNP transactions could not be defended.
- I consider that the behaviour of M's representative, in going ahead with the transactions despite what I see as obvious red flags, was risky. They did not know that the fraudster was a fraudster, but they did know that the fraudster was a new customer who wanted to make large transactions in unusual circumstances, and who was putting pressure on them to act quickly.
- Having said that, Lloyds was the expert here; M and its representatives were not. Lloyds has told us that M has not had any previous chargebacks, so it is unlikely that M's representatives were familiar with the process. The Operating Agreement

explains that merchants can “call our knowledgeable UK-based team with any questions about your Cardnet service or this Manual”, and in this case M’s representative’s suspicions led him to call Lloyds. I think it was reasonable for him to have expected knowledgeable and complete answers to his questions.

- I consider that it should have been obvious to Lloyds’ agent on 20 July 2023 that Mr P did not have the information he needed to make an informed decision about whether to allow M’s customer to collect the goods. It’s certainly arguable that Mr P should have had that information – as I’ve said, Lloyds provided it to M some years earlier – but his question made it obvious that he thought Lloyds could tell him that whether it was “safe” for him to release goods. Mr P was wrong, but it is not unusual for customers to be wrong, and/or to misunderstand key parts of their agreements. Lloyds had a clear opportunity to tell Mr P about the risks, or alternatively to refer Mr P to the Operating Agreement which gives a further explanation of the risks as well as providing specific instructions for handling CNP transactions where a customer later wishes to collect goods.

Having considered all of the evidence, in this particular case I think it was reasonable for M’s representatives to believe that, over the course of the three telephone conversations I have discussed, Lloyds had told them they were “safe to release” the goods.

I want to stress that my findings are specific to the individual circumstances of this complaint; it does not set a precedent for future complaints with different circumstances – even if those future complaints were to be made by the same complainant. In particular, I do not want M’s representatives to believe that M can continue to ignore the instructions in Lloyds’ Operating Agreement and then use the ombudsman service to remove any chargeback risk. If I had thought that M and its representatives understood the risks associated with what they were doing my findings in this complaint would have been very different.

Did M suffer loss as a result of an error by Lloyds?

I am satisfied that M would not have allowed the fraudster to take the goods if Lloyds had not given Mr P inappropriate reassurance on 20 July 2023. M clearly suffered loss as a result, but I don’t think M’s loss is the amount of the chargeback – I think our investigator was right to calculate M’s loss as the cost price to M of the goods that M sold. Lloyds should not be required to reimburse M for its lost profit; if everything that happened as it should there would have been no sales and therefore no profit. Lloyds should therefore refund M’s costs, plus interest at 8% per year simple as set out by our investigator.

Putting things right

For the reasons given by our investigator and expanded upon above, I consider that Lloyds should pay M £17,348.88 plus interest at 8% simple on that figure, calculated from the date of the chargebacks to the date they are refunded.

I acknowledge that the full amount of the chargebacks was £23,456.92, but that figure included VAT and profit. I am satisfied that M’s loss here was £17,348.88, which was the cost to M of the equipment that it lost.

My final decision

My final decision is that I uphold this complaint and order Lloyds Bank Plc to pay compensation to M as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask M to accept or

reject my decision before 23 October 2024.

Laura Colman
Ombudsman