

## **The complaint**

Mr F is unhappy Lloyds Bank PLC hasn't refunded him £9,996.81 he lost to an investment scam.

## **What happened**

The details of this case have been clearly set out by our investigator when he wrote to the bank upholding Mr F's complaint. As such, the facts are well-known to both parties, so I don't need to repeat them at length here. In summary:

- Mr F sent £9,996.81 via online banking to an account controlled by a fraudster on 2 September 2019.
- He did so on the premise he was investing money with a legitimate investment company.
- The company had in fact been 'cloned' by the fraudsters. They'd set up a website that appeared professional and genuine but was in fact fake.
- The fraudsters had used details of a genuine investment firm to make the scam more convincing, including copying FCA registration numbers.

The case was considered under the Contingent Reimbursement Model Code (CRM). This is a voluntary scheme Lloyds has signed up to, designed to reimburse customers that have fallen victim to a scam. The starting position under the Code is for a customer to be refunded. A firm might choose not to refund if it establishes that a customer has not met their requisite level of care. In making such an assessment, a firm may consider whether the customer:

- ignored an effective warning;
- made the payment without having a reasonable basis for belief that it was for legitimate purposes; *or*
- has been grossly negligent.

Lloyds did refund Mr F 50% of his loss when he reported the scam. It did so on the basis it hadn't provided him with effective warnings about scams at the point he made the payment. Lloyds declined to refund the remaining 50% as it felt Mr F hadn't done enough to check the legitimacy of whom he was paying.

It also contacted the receiving bank to try to recover the money. But no funds remained in the recipient account.

Mr F brought his complaint to our service as he wasn't happy with Lloyds' decision. One of our investigators looked into it and recommended the complaint be upheld.

Our investigator found Mr F had a reasonable basis for believing he was pursuing a legitimate investment. He noted the sophistication of the scam; how convincing the website was; and the fact that a genuine authorised/regulated firm had been cloned. He also noted

that, whilst there were now warnings about the cloned firm on the regulator's website, they hadn't been present at the time Mr F had fallen victim.

The investigator said Lloyds ought to have fully reimbursed Mr F at the time he made his claim and so should refund the remaining 50% of his loss in order to settle the complaint together with interest on the refund at the simple rate of 8% a year from the date it declined his claim to the date of settlement.

The investigator's findings were sent to both parties on 28 April 2020 with a deadline for responding of 12 May 2020. That deadline has passed and, about four months later, the bank has still failed to respond. As such, the case has been escalated to me for a final 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'm upholding it.

Our statutory rules provide – at DISP 3.5.8 to 3.5.15 of the *Financial Conduct Authority Handbook* – that we may give case-management directions and fix or extend deadlines; and that we may:

*...reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested;*

And that...

*If a respondent fails to comply with a time limit, the Ombudsman may: (1) proceed with consideration of the complaint; and (2) include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.*

I've therefore concluded that, in the absence of a response from Lloyds to the investigator's initial assessment, it is fair and reasonable to proceed on the basis of the evidence we already have and/or to take account of Lloyds' failure to reply to the investigator's opinion.

I've considered whether, under the CRM, Mr F ought to have been fully reimbursed when he notified Lloyds of the scam. In doing so, I've considered whether or not he met his requisite level of care. I believe he did, for substantively the same reasons the investigator has already explained, so it would have been fair and reasonable for Mr F to have received a full refund at the time.

Although most of Mr F's distress or inconvenience probably resulted from the criminal acts of the fraudsters, I think Lloyds could have done more to protect him from the impact of this given its obligations under the CRM and its statutory duty to co-operate with our complaints process (*DISP Rule 1.4.4 of the Financial Conduct Authority Handbook*). I therefore consider £300 compensation for distress or inconvenience to be appropriate. I'm aware that compensation hasn't previously been awarded. But given where we are in the complaint journey, and the fact compensation for distress and inconvenience is a matter of discretion, I believe it should fairly be paid in this case and without reverting back to Lloyds for comment before awarding it.

## **Putting things right**

For the reasons set out by the investigator and above, I've decided that Mr F ought reasonably to have been fully refunded under the CRM. I therefore direct Lloyds to pay Mr F:

- the remaining 50% of the money he lost – i.e. £4,998.41 – within 28 days of receiving notification of his acceptance of my final decision; plus
- interest at the simple rate of 8% per year on that amount (less any tax properly deductible) from the date Lloyds declined Mr F's claim under the CRM to the date of settlement; and
- £300 compensation for distress or inconvenience – also within 28 days of receiving notification of his acceptance of my final decision, failing which interest will thereafter accrue at the same rate until payment.

## **My final decision**

I uphold this complaint against Lloyds Bank PLC and direct it to pay the redress I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 23 September 2020.

Ben Murray  
**Ombudsman**