

## **The complaint**

Mr T, as the executor for the late Mrs T's estate. Complains against Lloyds Bank PLC as it won't refund money Mrs T lost when she fell victim to an investment scam.

I'll refer mainly to Mr T throughout, as he is the lead party bringing the complaint and whom we have been corresponding with on behalf of the estate.

## **What happened**

The background to this complaint is well-known to both parties, so I won't repeat it in detail here. But in summary and based on the submissions of both parties, I understand it to be as follows;

Mrs T had resided in a care home since September 2018. Due to her deteriorating health she required 24/7 support and it became clear to Mr T and the rest of Mrs T's family that she would be unable to return to her home. So, to help raise finance, so that Mrs T's care moving forward could be secured, the family sold Mrs T's property in July 2019. Sadly, Mrs T passed away in September 2019.

Following the sale of Mrs T's property and before her sad passing, Mr T has said that he was keen to secure a range of investments, with a view that the returns would ensure Mrs T's finances would be such, that they would last for the remainder of her natural life. Mr T has said he looked at the bond market, which he's said he has used before and has continued to use. He's said he reviewed comparative sites and following this he received a call from somebody, presenting themselves as being from a well-known Investment Firm.

Mr T requested details of the investment be emailed to him so that he could review them. Following this Mr T says he spent time discussing and reviewing the opportunity, which was to invest in bonds, and all seemed to be plausible. He's said the paperwork looked correct and contact with the firm was highly professional. But unknown to him at the time he was dealing with fraudsters, who had cloned a genuine Investment Firm and were using the name of a genuine employee.

Mr T has said that he asked a number of questions about the bonds and was advised that it was covered by the FSCS and that the principle sum was guaranteed. Alongside this, Mr T says he checked the registration of the Investment Firm with the FCA and checked the name of the main contact he was given. Mr T added that at one point he located a number for the main contact and called them, but was told they were out of the office. When the fraudster, posing as the genuine employee, called later in the day Mr T didn't think any more of it.

Believing everything to be genuine Mr T decided to invest. He's said that due to the significant sum he was investing he wanted to ensure matters were handled properly, so, on 18 July 2019, Mr T and his wife attended a branch of Lloyds. Mr T went ahead and made an international payment for £85,000 to the account details he had been provided. Mr T has said that he took documents to the bank and asked if it wanted to see them, he says he recalls the branch staff taking a copy, but not looking at the documents and he's said he doesn't recall much being discussed at all.

A few weeks later Mr T contacted the IFA who handles his pensions. This was to ask the IFA if he could review Mrs T's options for some remaining cash she had and for some investments that she had which were soon to mature. Mr T mentioned the bond to his IFA, who told Mr T he had some doubts about it, as he hadn't heard of it. He suggested that Mr T check it out and call the Investment Firm's security team, on their number, as soon as possible.

Mr T has said he called the Security Team as advised by his IFA and the scam came to light, with the genuine Investment Firm informing him that it had been cloned.

Mr T complained to Lloyds, as he thought it should have checked the payee details at the point the payment was made. Lloyds looked into Mr T's complaint and issued its final response on 28 January 2020, not upholding the complaint. In summary it said when Mr T raised with it that he had been the victim of a scam it contacted the beneficiary bank (the account where the money was sent to) to try and recover the funds, but no funds remained for recovery. It said Mr T said he had checked the FCA website, but there was a warning about this Investment Firm which was added before the payment was made – so it would have expected Mr T to have made extra checks.

Mr T didn't agree with Lloyds position and so brought his complaint to our service. In its submissions to us Lloyds added that it had questioned Mr T, in the branch, around the payment and had completed a 'High Value Checklist' (HVC), but said Mr T was adamant that the payment be processed. It said it had followed all of its processes correctly during the transaction and didn't think a refund was appropriate.

One of our investigators looked into things and thought Lloyds ought to refund the money that had been lost. In summary, our investigator thought the payment being made was unusual, compared with how the account was usually run, and would have appeared as suspicious. He was persuaded there was enough happening that Lloyds reasonably should've been concerned and intervened further than its standard high value checklist. It was our investigator's view that had Lloyds intervened further, it would have prompted Mr T to carry out further checks, which would have resulted in the scam being uncovered and the money not being lost.

Lloyds didn't agree with our investigator's view. In summary, it said Mr T was an experienced investor who had held bonds previously. It added that Mr T had checked the FCA website and was confident he had completed all necessary due diligence, but it repeated that the FCA showed a warning at the time. It said its branch staff's recollections were that it asked several questions about the payment, but Mr T was insistent the payment was genuine and wanted it to be processed. It questioned why Mr T had only spoken to his IFA after the payment had been made, rather than before. It also noted that it thought the rate of return being offered on the bond, of 7.46%, was too good to be true and Mr T had taken a risk. Overall, it didn't think there was any reason for its branch staff to suspect this was anything but a genuine transaction and it didn't think it had made an error.

Our investigator considered the points that Lloyds raised, but it didn't change his view. He didn't think that because Mr T had invested before he couldn't fall victim to a scam. He also said that the FCA warning, that Lloyds had referred to, was applied in November 2019, which was after the payment had been made. He re-iterated that he didn't think the HVC went far enough in this case and that further probing ought to have taken place and that this would have made the difference.

Lloyds disagreed with our investigator's opinion. In summary, it repeated the arguments it had made previously and stated that it thought the Quincecare duty was relevant to this

complaint. It said it was sorry Mrs T had been the victim of a scam, but didn't think it should be held liable for the transaction, it considered the actions it had taken to be fair and reasonable.

As agreement couldn't be reached, the complaint 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.

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.

I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account. That was the case in 2019 and remains so now, and I have taken this into account when deciding what's fair and reasonable in this case. In addition:

- 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 [their] customers" (Principle 6);
- Banks have a longstanding regulatory duty "to take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime" (SYSC 3.2.6R of the Financial Conduct Authority (FCA) Handbook, which has applied since 2001).

And over the years, the FSA and its successor the FCA have published a series of papers setting out non-exhaustive examples of good and poor practice found when reviewing measures taken by banks to counter financial crime:

- The 2012 thematic review paper 'Banks' defences against investment fraud – Detecting perpetrators and protecting victims' ("the 2012 paper") sets out such non-exhaustive examples. And I am satisfied that the findings of this thematic review and SYSC 3.2.6R are of relevance to both sending and receiving banks. For example, the 2012 paper considered banks' efforts to counter fraud where both the customer is the fraudster and also where the customer is the victim, in light of the regulatory obligation to counter the risk that regulated firms might be used to further financial crime, including fraud.
- The FSA also explained in the 2012 paper that whilst it focused on investment fraud it was of some relevance to other types of fraud as well. Specifically, it said "we have

a regulatory remit to tackle investment fraud, which has prompted our particular interest in this area, although the lessons of this report can be applied to banks' handling of other types of fraud and criminal conduct affecting their customers".

- Firms are required to comply with legal and regulatory anti-money laundering and countering the financing of terrorism requirements. At the material time, those requirements included maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage money laundering risk, e.g. through customer due-diligence measures and the ongoing monitoring of the business relationship (including through the scrutiny of transactions undertaken throughout the course of the relationship);
- The law itself also 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'). I am mindful, however, that the courts have interpreted Quincecare narrowly and the circumstances of this complaint are different to that case and I am not suggesting Quincecare applies in this case, only to make the point that the broad legal position that a bank is expected to process payments that a customer authorises is not absolute and Quincecare (like the other matters I have referred to here) is an example of that.

In addition, as a matter of good industry practice at the time, I consider firms should in any event have taken proactive steps to:

- Identify and assist vulnerable consumers and consumers in vulnerable circumstances, including those at risk of financial exploitation (something also recognised by the FCA in recent years and by the British Bankers Association's February 2016 report 'improving outcomes for customers in vulnerable circumstances');
- Look to identify and help prevent transactions – particularly unusual or out of character transactions – that could involve fraud or be the result of a scam.
- In relation to branch transactions – follow the Banking Protocol when available.

It seems clear from this that standards of due diligence and good industry practice have existed for a long time – including at the time of the disputed events in this case. Taking all of these things into account, I consider that at the time of the payments, Lloyds should fairly and reasonably have:

- monitored accounts – and any payments made or received – in order to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams;
- maintained systems to look out for unusual and uncharacteristic transactions, or other indicators that its customers were at risk of fraud (amongst other things), particularly given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer;
- taken additional steps or made additional checks in some circumstances – irrespective of the payment channel used – before processing a payment; or in some cases, to have declined to make a payment altogether in order to help protect customers from the possibility of financial harm from fraud.

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.

So in this case, I need to decide whether Lloyds acted fairly and reasonably in its dealings with Mr T, when he made the transfer and when he reported the fraud, or whether it should have done more than it did.

Mr T has accepted that he authorised the payment. Because of this, Lloyds had an obligation to follow Mr T's instructions. But there are some situations in which it should reasonably have had a closer look at the circumstances surrounding the transfers - as I've explained, I consider that as a matter of good practice Lloyds should've been on the lookout for unusual and out of character transactions.

I've first thought about whether I think Lloyds should have intervened. Lloyds has a difficult balance to strike in how it configures its systems to detect unusual activity or activity that might otherwise indicate a higher than usual risk of fraud. But having reviewed the payment Mr T made, I'm persuaded that it wasn't typical of how the account was usually run and so, I think it ought to have caused Lloyds to be concerned that Mr T might have been at risk of financial harm.

Having looked through the bank statements, for the account from which the payment was made, I can see the payment Mr T made to the fraudster was considerably higher than any previous payment that had been made in the months leading up to the scam. Alongside this, it was an international payment to a new payee. I think there was enough going on that Lloyds ought to have been concerned. With this, I think it should have taken steps to conduct additional checks before processing the payment. The activity on the account was not typical of the usual account activity and represented a possibility that Mr T may have been at risk of financial harm.

Lloyds has said its branch staff did ask Mr T questions about the payment and has evidenced a HVC that was completed at the time, which it says shows the conversations had and questions asked. But having looked at the HVC, I've seen it indicates that Lloyds merely asked Mr T where the money was going and what was the purpose, then gave a general statement about unrelated scams involving the impersonation of police and bank staff. In my judgment, considering Mr T was making an unusual value transfer, internationally to a new payee, I'm persuaded it should have done more to satisfy itself that he wasn't at risk of financial harm.

Lloyds were aware that the purpose of the payment was to invest in bonds. At the time, Lloyds should have been well aware of the possibility of legitimate financial businesses being impersonated or 'cloned'. And, given that scams of this nature often target people seeking fixed-rate bonds, such as this one, Mr T's mention of investing in such a product ought to have prompted further questions.

I'm not persuaded that because Mr T had made investments before that he ought to have been more attuned to this type of scam, I don't think he could fairly and reasonably have realised that legitimate companies could be cloned in this way. Lloyds has far superior knowledge of what scams like this look and feel like. It would have been straightforward for Lloyds to talk to Mr T about the prevalence of these types of scam and to what they look and feel like. And I think it fairly and reasonably could have informed him of the steps he needed to take to protect himself against this kind of fraud. Specifically, that he ought to find the firm on the FCA register and contact it through the contact details listed there to confirm the existence, or otherwise, of his investment.

Had Lloyds carried out these actions I don't believe Mr T would have gone ahead with the payment. I say that as he had tried to be cautious by researching the company he intended to invest with. And so, I believe it's fair and reasonable to conclude he would have taken on board the significant new information and warnings from a professional banker, particularly at the mention of potential scams of a similar nature. I think this is supported by what follows, with Mr T's IFA making the very same suggestion and Mr T acting on the suggestion quickly, which ultimately uncovered the scam. I believe that is further reinforced when considering Mr T's personal circumstances, in that he was investing for the ongoing care of his mother and so it seems he would have been particularly intent on doing the right thing.

Overall, having considered everything carefully I don't think Lloyds went far enough with its intervention prior to Mr T making the payment. Had it of done, I don't think Mr T would have gone ahead with the payment and it follows that the money wouldn't have been lost.

I've thought about whether Mr T should bear some responsibility in terms of his actions. However, it is clear that up to and including the time of the payment authorisation he was in the dark and simply did not appreciate that he may have been at risk. He thought he was investing his money through a legitimate company. I am satisfied he was simply the unwitting and blameless victims of a clever fraudster. And Lloyds was the professional in financial matters.

### **Putting things right**

I've found that Lloyds ought to have stepped in to question the payment and that, had it done so, the scam would have been prevented. As such, Lloyds should now;

- pay the estate of the late Mrs T the money lost, being £85,000 and;
- pay interest on that loss at 8% simple per year, calculated from the date of loss to the date of settlement.

### **My final decision**

My final decision is that I uphold this complaint against Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs T to accept or reject my decision before 18 March 2022.

Stephen Wise  
**Ombudsman**