

The complaint

Mr and Mrs S complain that Lloyds Bank PLC (Lloyds) won't refund a payment they made after falling victim to a scam.

What happened

In December 2019, Mr and Mrs S were looking for renewable energy investments online and found a company I'll refer to as C. Mr and Mrs S checked C's website, downloaded brochures and left their contact details. They were contacted by someone purporting to work for C and were interested in an investment option to buy bonds relating to wind energy.

Mr and Mrs S says the people they spoke to at C had good knowledge of the European market and recent UK policy changes in respect of onshore and offshore wind farms. And that they had extensive phone conversations with them about the business model and the investment strategy. Following those calls Mr and Mrs S did online research and found schemes C had referred to existed and were successful.

Mr and Mrs S say the return C offered was 10.1% which was slightly higher than the rest of the market, but inline with other returns they'd seen offered including from FCA regulated companies.

Mr and Mrs S say they completed research before proceeding with the investment including:

- speaking to industry experts who assured them this sort of return on windfarms was entirely feasible.
- asking more experienced investors they knew to check the financial accounts of the parent company of C.
- asking a friend who was an experienced investor if the investment appeared genuine.
- checked reviews on independent investor forums which appeared ok.

Mr and Mrs S say they knew C wasn't authorised by the Financial Conduct Authority (FCA) and were told by C this was due to them "offshoring their business in a tax haven". They say during the calls they were provided rationale for C's business model including being based in a foreign European country for tax purposes and only using the UK to market their bonds. But that the bonds were primarily for government backed wind energy schemes in North America and the investment would be held in Escrow, so they felt the risk to their investment would be small even if the returns weren't guaranteed.

Mr and Mrs S say they also felt confident in the way they'd found the investment and the checks they'd made as they'd done the same previously for a smaller investment with another firm – for which they received quarterly dividends.

On 19 December 2019, Mr S and Mrs S made their payment to C in branch for the amount of £70,000.

In January 2020, the beneficiary bank Mr and Mrs S had sent their payment to contacted Lloyds. That Bank told Lloyds knows there were concerns about transactions into the

beneficiary account, so Lloyds got in touch with Mr and Mrs S to ask if they could've been the victims of a scam. Lloyds recommended that Mr and Mrs S raise a fraud claim and started an investigation including trying to recover Mr and Mrs S's funds from the beneficiary bank.

Within a week the beneficiary bank let Lloyds know that no funds could be recovered.

Mr and Mrs S were in contact with Lloyds between January and May 2020, trying to get their money refunded. In May 2020 Lloyds issued their final response, letting Mr and Mrs S know they wouldn't be refunding them.

Lloyds is a signatory of the Lending Standards Board Contingent Reimbursement Model (CRM Code) which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances.

Lloyds' response to Mr and Mrs S didn't address whether they'd considered the fraud claim under the CRM Code, it simply said that as it was an authorised payment Lloyds wouldn't be refunding it. Lloyds did say they'd tried to recover the funds from the beneficiary bank but were unsuccessful. And that the service Mr and Mrs S had received from them was poor, so Lloyds made a payment of £250 to Mr and Mrs S's account in recognition of this.

Mr and Mrs S weren't happy with Lloyds' response, so they brought a complaint to our service.

An investigator looked into Mr and Mrs S's complaint. In response to our information request, Lloyds told us they felt Mr and Mrs S weren't entitled to a refund under the CRM Code as an exception applied in their case. Lloyds say Mr and Mrs S didn't do due diligence before making their investment, and that they'd ignored an effective warning.

The investigator upheld Mr and Mrs S's complaint, saying the warning provided by Lloyds wasn't specific to the scam Mr and Mrs S fell victim to - meaning the warning wasn't effective. And that Mr and Mrs S had a reasonable basis for believing the investment was genuine, therefore Mr and Mrs S were entitled to a full refund under the CRM code, as well as interest on the refund at the account interest rate.

Lloyds disagreed with the investigator's opinion saying:

- Mr and Mrs S didn't complete due diligence.
- The returns quoted were too good to be true when compared to other investments at the time.
- Mr and Mrs S didn't do sufficient checks on Companies House, and if they had, they should've had concerns regarding supposed profitable investment claims of income and dividends.
- C shows as registered and based in the UK, as such as a financial firm they had to be authorised by the Financial Conduct Authority (FCA), which they weren't.

As Lloyds disagreed, the case was passed to me to review.

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.

As I've said, Lloyds is a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Mr and Mrs S have been the victims of, in all but a limited number of circumstances.

Under the CRM Code, a firm may choose not to reimburse a customer if it can establish that an exception applies. Lloyds has argued that two of those exceptions apply in this case:

- 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 those don't apply here.

Did Mr and Mrs S ignore an effective warning?

Lloyds say that a High Value Checklist (HVC) was completed at the time Mr and Mrs S made the payment of £70,000 in a branch. They don't have the one that was completed with Mr and Mrs S, however they've given us a copy of a blank one they say would've mirrored the one completed. There are no records of exactly what was discussed in branch, but Mr S says he was asked questions about the purpose of the funds - which he answered honestly. Lloyds internal notes suggest that a scam leaflet may've been given, but it's not clear if it was.

The CRM Code sets out criteria that an effective warning should meet which includes a need for it to be *specific* and *impactful*.

The warning script set out on the blank HVC isn't specific to the scam Mr and Mrs S fell victim to. It says:

"I need to advise you that there are a number of different scams some customers are falling victim to. For example:

- *Fraudsters may contact you by, telephone, email, knocking on your door or via social media. Often fraudsters claim to be from trusted organisations such as Police, HMRC, FCA, your Broadband Company or the Bank's fraud team:*
- *We also know fraudsters impersonate beneficiaries of payments for such things as a house purchase, by sending them an email which looks to be from the company they have been dealing with providing incorrect payment account details to divert money to an account they control*

It's important that before making this payment we are both happy it is not in relation to a scam. Please be aware that if this transaction is later found to be fraudulent your money could be at risk"

This warning has no relevance to the scam Mr and Mrs S fell victim to. Mr and Mrs S had made contact with the investment firm first, leaving their contact details and asking for further information about an investment opportunity. So, the contact they received was expected and came from the firm they'd left their details with. They were in regular contact with C for

months before making the payment, so I can't see that this warning would've been impactful in Mr and Mrs S's circumstances or situation.

The next section on the HVC contains some questions to ask the customer including:

"if this is for an investment have you checked the company for example through the FCA website or checked reviews".

It's likely that Mr and Mrs S would've answered yes to this question as they had checked the FCA website and found C wasn't listed. But there are no set follow-on questions, or wording that suggests Mr and Mrs S would've been given guidance or a specific warning about the risks associated with investing in a company that isn't FCA registered. The form does suggest that if the answer to this question is no, the staff member should refer to a senior colleague. But there is nothing to show what discussion was then held, or what Mr and Mrs S were told.

In this case Mr and Mrs S say they asked C why they weren't registered with the FCA and were satisfied with the explanation about C being based offshore. But I think if Mr and Mrs S were told or warned not to proceed with the payment without doing further checks, it's unlikely Mr and Mrs S would've proceeded with the payment. I say this based on the extensive checks they had done before deciding to make the investment.

And I'm conscious that Mr and Mrs S weren't aware of cloned investment firms, or that illegitimate investment opportunities are advertised online. Lloyds was the expert in this regard, and I can't see that there was any warning given in relation to this type of scam, or about cloned investment firms.

So, I'm not satisfied that Mr and Mrs S were given an effective warning by Lloyds.

Did Mr and Mrs S have a reasonable basis for belief in making the payment?

Lloyds also raised concerns that Mr and Mrs S didn't do due diligence before making the investment, and therefore didn't have a reasonable basis for believing the investment was genuine. However, I disagree for the following reasons:

- Mr and Mrs S were given brochures and paperwork from C, all of which were very professional. They were also able to see a website for C, which has since been removed. All of the communication and documentation I've seen from C, looks legitimate and doesn't show any warning signs that this might not be a genuine investment or firm.
- Mr S worked in a sector that was involved in renewable energy, so had knowledge around the renewable energy sector. And Mr S has told us he tested out what he was told by employees of C by researching online the information he was given, as well as by asking them questions to test their knowledge. Mr S says they appeared knowledgeable about the sector and the investment, and that he saw no warning signs.
- Mr S says he did check the FCA website and saw that they weren't registered. So, he questioned C about this. He says the explanation they gave about being based offshore didn't seem unusual, based on previous experience he had in investigating a firm through his employment which he says had a similar offshore structure.
- Mr S also discussed the investment with other, more experienced investors, that he knew. He says that they suggested the investment looked genuine, so he had confidence in investing.

- Mr S also had a friend look C up on Companies House and says they reassured him that C had a consistent record of submitting accounts and that the balance sheet was healthy – which reassured him about the legitimacy of C.
- The returns that Mr and Mrs S were cited of 10.1% wasn't unusual in the renewable sector at the time of the investment. Mr and Mrs S say they saw other similar investments offering 9 or 10% returns, and from what I've seen I'm not persuaded that the return should've caused Mr and Mrs S concerns.

The CRM code doesn't require Mr and Mrs S to do checks, unless there are warning signs or anything that may indicate the transaction isn't legitimate. But from what I've seen, there wasn't anything that should've suggested to Mr and Mrs S that this investment wasn't legitimate.

So, I'm not satisfied that Lloyds have evidenced that Mr and Mrs S didn't have a reasonable basis for belief in making this payment under the CRM Code.

I'm aware that Lloyds considers too high a standard has been applied to what is expected of it in terms of identifying payments that might indicate a consumer is at risk of financial harm; and it has referred to 'the Quincecare duty' in support of its argument.

I am mindful that the courts have interpreted Quincecare narrowly and the circumstances of this complaint are different to that case. Our 'fair and reasonable' remit also enables us to take account of regulatory and industry standards beyond the narrow legal duties considered in that and other court cases. In any event, I am not suggesting Quincecare applies to this case, however the broad legal position that a bank is expected to process payments that a customer authorises is not absolute – and Quincecare (along with regulators' rules and guidance, relevant codes of practice and good industry practice at the time) is an example of that.

Should Mr and Mrs S have done more to mitigate their loss?

I've also considered whether Mr and Mrs S should bear some responsibility by way of contributory negligence.

But it's clear that Mr and Mrs S weren't aware of scams involving cloned information firms. The paperwork they received looked professional, and all of the information they were given by C built on Mr and Mrs S's confidence that the investment was genuine. Also, Mr and Mrs S took reasonable steps to verify information they were given, including asking people they considered more experienced to undertake checks for them. From what I've seen, I don't consider there were obvious warning signs that Mr and Mrs S ignored, and I don't think they acted unreasonably in making the payment.

The level of customer service Mr and Mrs S received

Mr and Mrs S aren't happy with the level of service they've received from Lloyds. Lloyds have acknowledged that the service they provided Mr and Mrs S could've been better and paid them £250 in recognition of this.

From what I've seen Lloyds could've provided more timely updates to Mr and Mrs S and have provided incorrect and contradictory information at points. On that basis, I think the £250 already paid is a fair award and I won't be asking Lloyds to pay any more - in regards to the level of service they've provided.

In summary

Having considered everything, I'm not satisfied that Lloyds have shown an exception under the code applies to the payment Mr and Mrs S made. Therefore, Lloyds should refund Mr and Mrs S in full under the CRM code and pay interest on that refund at the account rate of interest – for the account the funds were taken from.

Putting things right

To put things right I'll be asking Lloyds Bank PLC to:

- refund the payment of £70,000
- pay interest on this refund at the account interest rate (where the funds were taken from), from the date Lloyds should've refunded Mr and Mrs S under the CRM Code until 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 Mr S and Mrs S to accept or reject my decision before 21 March 2022.

Lisa Lowe
Ombudsman