

## **Complaint**

Mr and Mrs C are unhappy that Lloyds Bank PLC won't reimburse them after they fell victim to an investment scam.

## **Background**

In May 2021, Mr C was researching potential investment opportunities. He ended up on the website of what appeared to be a credible investment management company. He filled out an enquiry form and was later called by a representative of the company who asked whether he would be interested in speaking to one of their brokers.

He agreed and spoke to an individual who claimed to have a great deal of investment management experience but was looking to build up a practice built around private clients. Mr C was invited to put his money into an account and this individual would identify specific investment opportunities. He was told that he would own any underlying asset that was purchased on his behalf – so, for example, if an investment was made into shares in a limited company, Mr C would own those shares.

Unfortunately, Mr C wasn't communicating with a legitimate investment adviser at all, but a scammer. Over a period of four months, he made five international payments from their joint Lloyds account, in total transferring just over £150,000 into the control of the scammers.

Each investment purported to be a bespoke share purchase based on a specific piece of market intelligence identified by the broker. The first payment was for £3,666.02. He was told that this was for a stake in a well-known brand that was issuing shares to the public for the first time. This investment appeared to have performed well and this persuaded Mr C to make much larger investments in the months that followed.

It was only when Mr C attempted to withdraw some of the proceeds of his investment that he realised he must have fallen victim to a scam. He notified the police and Lloyds. Lloyds was able to recover around £28,000 from the receiving account for the fifth (and final) payment Mr C had made. It agreed to refund 50% of the third and fourth payments he made in connection with the scam and the remainder of the fifth payment.

It didn't agree to refund the rest of Mr and Mrs C's losses. It said it didn't think Mr C had done adequate checks to ensure that he was dealing with a legitimate company. It thought he should've carried out more research before making the transfers. In summary, Lloyds thought it was fair to consider Mr and Mrs C partially responsible for their losses.

Mr and Mrs C didn't agree with that and so referred their complaint to this service. It was looked at by an Investigator who didn't uphold it for broadly the same reasons as Lloyds when it responded to the complaint. Mr and Mrs C disagreed with the Investigator's opinion and so the complaint has been passed to me.

## **Findings**

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

I issued a provisional decision on this complaint on 24 February 2023. I wrote:

*It's common ground here that Mr C authorised the payments. He was tricked by the fraudsters into making the payments in the belief that he was participating in a genuine investment opportunity. I accept that these were authorised payments even though Mr C was the victim of a fraud. And although he didn't intend the money to go to fraudsters, he is presumed liable for the loss in the first instance.*

*However, taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Lloyds should fairly and reasonably:*

- Have been monitoring accounts, and any payments made or received, to counter various risks, including money laundering, countering the financing of terrorism and preventing fraud and scams.*
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk (among other things). This is particularly so given the increase in sophisticated fraud and scams, which banks are generally more familiar with than the average customer.*
- In some circumstances, irrespective of payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make the payment altogether.*

*Broadly speaking, Lloyds was expected to be on the lookout for payments that were unusual or out of character and displayed indicators that there was an enhanced risk of fraud. I've looked at the statements on the account for the 12 months prior to the beginning of the scam. The first payment was relatively small and so I wouldn't have expected Lloyds to have acted at that point. However, by the time Mr C authorised the second payment, it should've recognised that the risk of fraud was greater than normal. The payment was for over £10,000 and international. It was significantly larger than most of the payments from this account.*

*I can see from the statements that Mr C had recently made large payments to a car dealership that were on the same scale as the scam payment. That may have served to make the scam payment stand out less. However, Mr and Mrs C didn't frequently make payments of that size and it was a coincidence that that payment was close in time to the scam payments. In addition, the car dealership payment was to a UK bank account whereas the scam payments were international.*

*The only previous international payment was the first one made in connection with the scam the month before. In the round, I think the combination of these two factors meant that Lloyds should reasonably have identified this payment as an indicator that Mr and Mrs C were potentially at risk of financial harm.*

*As such, I'm persuaded that Lloyds shouldn't have processed this payment without first speaking to Mr C to check he'd taken reasonable steps to protect himself from the risk of fraud or scams. This was quite a sophisticated deception designed to imitate the activity of a genuine investment manager. It wouldn't have been quite as straightforward for an employee of the bank to confidently identify it as a scam.*

*However, some basic steps could've been recommended to Mr C that would've enabled him to protect himself. For example, he could have been asked whether he'd*

*checked the website of the Financial Conduct Authority to see if this business was authorised. Since it wasn't authorised to provide advice or investment services in the UK, a Lloyds employee could've advised him that it was likely he wasn't dealing with a legitimate company. Given the sums involved, I find it highly unlikely that Mr C would've gone ahead with these payments if the risk had been explained to him. At the least, I think he'd likely have been prompted to carry out further enquiries and, as a consequence, wouldn't have proceeded with this or future payments.*

*I've also considered whether Mr C can be considered partially responsible for his losses here. In doing so, I've considered what the law says about contributory negligence but also borne in mind the fact that I must reach a decision based on what I consider to be fair and reasonable in the circumstances. Taking all of this into account, I'm satisfied that Mr C was not contributorily negligent here and was simply the unwitting and blameless victim of a sophisticated scam.*

*I've come to that conclusion for several reasons. First, the contact he received from the scammer wasn't unsolicited. It appears to have been in response to Mr C completing a form on a website. The scammer's website isn't online anymore. However, I've seen a screenshot of the home page and it looked to have been built with a plausible corporate aesthetic. Certainly, the mere presentation of the website wouldn't have been enough to put Mr C on notice that this might not be a legitimate firm.*

*Mr C wasn't promised an unrealistic return. It was clear from the way things were explained to him that any return on his investment would be dependent on the performance of the share price of the companies he believed he was investing in. In addition to this, Mr C was persuaded that he was dealing with a legitimate firm by a whole array of fake customer verification processes and formal documentation. For example, he was directed to the Hong Kong register of public limited companies which suggested this company had been trading for around ten years. The email communications between Mr C and the scammers and the formal documentation that he was sent to accompany individual share purchases didn't contain clear red flags.*

*Lloyds has suggested that Mr C shouldn't have invested without first checking the FCA website. However, I think it's important to acknowledge the significant asymmetry of knowledge there is between the parties here. Mr C explains he didn't know that this would have been a useful check to complete, and I don't find this implausible or careless. I don't think knowledge of the FCA's role in maintaining the register of all authorised persons or how to find it on its website can fairly be assumed of all consumers – but I find it reasonable to expect Lloyds to know, and to have directed Mr C to check it.*

*Furthermore, since there was no warning on the FCA website indicating that this company was a scam, he'd have needed to understand the significance of not finding the company on the register. He had been told by the scammers that he was dealing with a company incorporated in Hong Kong, so it is conceivable he may have assumed that it was subject to a different regulatory regime. An employee of the bank could've made the difference here by explaining to Mr C that, if the company wasn't listed on the FCA register, it couldn't lawfully offer investment advice to people in the UK and that the fact it was doing so should be regarded as a major warning sign. Overall, I'm satisfied there was no contributory negligence on Mr C's part and that he was simply the unwitting and blameless victim of a manipulative fraudster.*

I said that I was likely to direct Lloyds to refund payments made from the second payment onwards. I also said any applicable interest should be calculated in the following way:

*Mr C has told us that he would've still invested his money and that he was looking for something that would deliver a better return than mainstream savings products would offer him. In assessing what would be fair compensation, I consider that my aim should be to put Mr C as close to the position he would likely be in if he had found an investment product suitable to his needs, rather than falling victim to the scam. It is not possible to say precisely what he would have done with the money, but I am satisfied that what I have set out below is fair and reasonable given Mr C's circumstances and objectives when he invested.*

*To calculate whether any additional interest is payable, Lloyds should calculate what the value of the refunded payments would be today if they'd been invested in line with the following two benchmarks:*

- For half the funds, it should calculate what the value would've been by looking at the FTSE UK Private Investors Income Total Return Index.*
- For the other half of the funds, it should work out the value by looking at the average rate for fixed-rate bonds. Lloyds should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the funds on an annually compounded basis.*

*I have chosen this method of calculating interest because:*

- Mr C wanted some capital growth with a small risk to his capital.*
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.*
- The FTSE UK Private Investors Income Total Return index is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.*

Lloyds disagreed with my provisional decision. It said

- A warning was published on the website on the South African financial regulator three months before Mr and Mrs C made their investment. If they'd looked up the company online, they'd have found this information.
- The price at which they buying shares was too good to be true. If they'd looked up the share prices online of the companies in question, they'd have realised that they were acquiring shares at significantly below market value.
- Mr C should've carried out more research before agreeing to invest. He might not have been aware of the role of the FCA, but if he'd searched for advice on protecting himself when looking to invest, he'd have found multiple resources advising that he check its website and what to look for.
- Given the value of the investment Mr C was making, he should've sought advice from an independent financial advisor.
- The emails that were sent by the scammers to Mr and Mrs C don't look like they were sent by a legitimate investment company. For example, they don't have the usual text in the footer that one would expect.

- There were no online reviews of this investment company on third party review platforms. This lack of information was a red flag.

Lloyds also queried the basis of the interest calculation I'd recommended. It wanted to know why I was proposing linking the calculation to the perform of UK indices, given that Mr C believed he was buying shares in US listed companies with the apparent assistance of a broker based in Hong Kong.

I've considered its response carefully, but I'm not persuaded to depart from the findings I set out in my provisional decision. I'll explain why.

Broadly summarised, Lloyds' challenge to my provisional decision is that Mr C should've carried out more detailed research before agreeing to go ahead with the investment. I've considered the specific examples it's highlighted. But I've also kept in mind that there was a meaningful imbalance in the knowledge of the parties here. I'd expect an employee of the bank to have a greater knowledge of the risk of investment scams and to advise Mr C on the steps he could take to protect himself.

Lloyds has referred to the warning published by the South African regulator and suggested that, if Mr C had carried out further online research, he'd have found this. It's difficult to know if that's true. A search for the scam company on Google currently produces nearly 30,000 results. At the time of writing, it is highly ranked as a result on the most popular search engines when searching for the name of the scam company. However, those rankings are dynamic and continuously changing. I can't know for certain how prominent it would have been back in May 2021.

I accept that, if Mr C had carried out more thorough research about the valuations of the firms he believed he was investing in, it's possible he'd realised that something was amiss. But once he believed that he was dealing with a legitimate investment firm, it wouldn't have been unreasonable for him to trust their advice. After all, that was the reason he wanted to invest his money in this way – to take advantage of the expertise of a third-party.

Lloyds has also argued that Mr C should've carried out more research before deciding to proceed with the investment. Specifically, it argues that he should've looked up advice on how to protect himself from a scam. However, as I've already concluded that there wasn't anything that ought to have put Mr C on notice that the company he was dealing with might not be legitimate, I wouldn't have expected him to carry out detailed research on that point.

Lloyds has argued that, given the large value Mr C was investing, he should've sought independent financial advice. The difficulty I have with this argument is that, from Mr C's perspective, he was seeking independent financial advice. He had a significant sum of money that he wanted to invest and had detailed discussions with someone he believed would invest that money on his behalf.

Finally, I've also considered the fact that the emails from the scammers didn't have a typical disclaimer in the footer and that the investment company didn't have any reviews (positive or negative) on third-party review sites. On balance, I'm not persuaded that these things alone ought to have been a clear indicator to Mr C that he was at risk of fraud.

I've also thought again about the question of how to calculate how much interest (if any) should be applied to any award paid to Mr and Mrs C. As I explained in my provisional decision, the aim of the calculation should be to put Mr and Mrs C in the position they would have been in if they'd found an investment product suitable for their needs. Mr C had funds to invest and was researching potential investment opportunities. If he hadn't fallen victim to this scam, I think it's likely he would've invested it in some way that was consistent with his

risk appetite. He told us that he was willing to take a small amount with his capital at the time and so I think the approach outlined in my provisional decision is a fair way of calculating this.

### **Final decision**

For the reasons I've set out above, I uphold this complaint. If Mr and Mrs C accept my decision, Lloyds Bank PLC needs to:

- Refund the money Mr and Mrs C lost to the scam from the second payment onwards.
- Calculate whether any additional interest should be awarded by following the guidance set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 28 April 2023

James Kimmitt  
**Ombudsman**