

The complaint

Mr and Mrs G complain that Lloyds Bank PLC haven't refunded them in full after they fell victim to an investment scam.

What happened

I issued a provisional decision for this complaint on 6 June 2023. Both parties have responded to say they've nothing further to add. I've copied the provisional decision below.

The background to this complaint is well-known to both parties and has been discussed at length prior to the issuing of this provisional decision. Those discussions have included an informal explanation of the outcome I intend to reach. I don't then intend to go over the detailed circumstances of what happened, instead focusing on the key points and what is still in dispute.

Mr and Mrs G are joint complainants. But it is Mr G that dealt with the scammers. And so much of what I say will refer to him alone.

- Mr and Mrs G fell victim to a sophisticated investment scam. Mr G had been contacted by scammers posing as legitimate investment brokers after he searched for opportunities online and submitting his details for contact. He spoke on the phone to different scammers – posing as different members of staff – whom he has described as professional and convincing.*
- The scammers cloned the details of genuine brokers based overseas. Mr G checked the details of the legitimate companies on the Commission de Surveillance du Secteur Financier (CSSF) register.*
- Mr G was told the overseas brokers were backed by a UK firm which appeared on the FCA register, though Mr G didn't check that for any of the firms.*
- The scammers used what Mr G has described as professional looking websites. He was given working login details which enabled him to view his holdings with each scam broker. And each broker had a client onboarding process which included ID and anti-money laundering checks.*
- Mr G began investing in December 2020, starting with a bond. He received interest payments in January and March 2021. He made further investments into other bonds and a trading account between January and March 2021.*
- The investments were as follows:*

Date	Amount	Rate of return	Investment type
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December 2020	£75,000 across five payments	7%	2-year bond
January 2021	£100,000 across six payments	7.5-11%	Managed trading account
January 2021	£50,250 across four payments	4.75%	3-year bond
February 2021	£50,000 across two payments	9.5%	18-month bond

- The bonds Mr G was told he was investing in were all legitimately available as investments, with the details being copied. Mr G was sent links to legitimate websites that listed the bonds.
- Mr G began receiving what appeared to be returns on his investments. The first payment was made in January 2021 with a second coming in early March 2021.
- In mid-March 2021 Mr G was told that one of the brokers was being taken over by another firm and that he'd have to pick one of three options on how to proceed: pay a further £75,000 which would be matched by the broker in order to bring holdings up to the minimum threshold of £250,000; pay an early redemption fee of 20% to have funds returned; do nothing but with the condition that the invested funds would be locked-in and inaccessible for five years. Mr G opted for the increased and matched investment, sending a further £75,000.
- Mr G was told there had been an issue with the payment of his £75,000 and that he'd have to send it again, with the original payment to be refunded at a later date. At this point Mr G realised something was wrong so he checked online for the details of the firm and the scam was uncovered. By this time he'd sent £350,250 to accounts controlled by the scammers.
- Mr G received written warnings when he was setting up each of the new payees and making payments. He was also called by the bank at numerous points to discuss the legitimacy of the payments.
- On one occasion, in early March 2021, the bank explained that the account Mr G was sending money to had been used by scammers. But it allowed the payments to go through as Mr G explained he'd received returns on his investment.
- Mr G reported the scam to Lloyds and it began investigating, considering its obligations under the Lending Standards Board's CRM (Contingent Reimbursement Model) Code. It found that, whilst it had presented Mr G some written warnings and had even discussed payments on the phone, it hadn't done all it ought to have to protect him and Mrs G from fraud.
- Lloyds felt Mr G hadn't carried out enough due diligence and said he ought to bear some responsibility for the loss. On that basis it said it would refund 50% of the loss under the Code and paid back £175,125. Lloyds paid interest on the refund at 8% simple to compensate Mr and Mrs G for the time spent without the money.
- Lloyds contacted the banks the money had been sent to and was able to recover a further £3,530.35 which has been paid back to Mr and Mrs G.
- Mr and Mrs G brought the complaint to this service as they felt they should be reimbursed in full. One of our investigators agreed. She said Mr G had held a reasonable basis for believing the investments and parties involved were

legitimate. So she felt a full refund under the CRM Code was due as no exceptions to reimbursement applied.

- *Lloyds disagreed and so the case has been passed to me for a decision. I've discussed the circumstances with both Lloyds and Mr G at length. Lloyds' position remains principally the same as when it answered Mr and Mrs G's complaint originally. It can be summarised as follows:*
 - *Mr G has previously invested in a loan note. He's also invested into a managed stocks and shares ISA. This demonstrates investment experience.*
 - *The nature of the loan note investment indicates Mr G is accepting of a high- risk investment.*
 - *Mr G has a financial advisor with whom he could've sought advice and discussed the individual investments before sending any money.*
 - *The written warnings presented to Mr G told him to check the FCA website and, if he had done so, he would've seen cloned firm warnings relating to the brokers involved.*
 - *The payee names didn't match the company name Mr G believed he was investing with.*
 - *The rates of return were too good to be true.*

What I've provisionally 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 intend to uphold the complaint, though not for 100% of Mr and Mrs G's loss. I'll explain why.

Should Lloyds have provided Mr and Mrs G with a full refund under the CRM Code?

Lloyds is a signatory to the CRM Code which looks to refund victims of scams in all but a limited number of circumstances. The Code sets out some exceptions to reimbursement which a bank might rely on. The two exceptions of relevance here can be summarised in the form of two questions:

- *did Mr and Mrs G ignore an effective warning given by the bank?*
- *did Mr and Mrs G hold a reasonable basis for believing they were making legitimate payments, to legitimate parties, for legitimate purposes?*

As with the background of this case, I don't intend to go into unnecessary detail with my findings. Importantly, the bank has already recognised it didn't do enough to protect Mr and Mrs G through warnings and intervention. Under the Code, this means it didn't meet the standards for firms and so it bears at least partially responsibility for the loss. It has refunded 50% on that basis. This means there's no need for me to consider either Lloyds' or Mr and Mrs G's liability under the effective warnings exception. As a point of record though, I've not seen evidence to suggest that Mr and Mrs G were given an effective warning at any time, either in writing or verbally.

The only other point I will make about Lloyds' actions here, in terms of protection and intervention, is that it is very disappointing to see that the bank knew at one stage that Mr G was making a payment to an account being used to defraud and scam people. And yet it still allowed the payment to go through. That not only highlights the bank's failure to

protect Mr G here, it also calls into question its understanding of its requirements – and systems in place to – prevent fraud and money laundering more generally. It's also fair to say that Mr G might well have taken some comfort from Lloyds allowing the payments to go through, apparently having been somewhat vetted by the bank.

The remaining dispute is over whether Mr G held a reasonable basis of belief when making the payments. The summary points included in the background of this decision all relate to this consideration, even where the provision of warnings is mentioned. I believe it then makes sense to address Lloyds' objections in turn and so I'll do so below.

In addressing each point it's important to remember that this was a sophisticated investment scam involving cloned firms, convincing client management and on-boarding processes, fake websites and online portals, and the copying of genuine bond information.

- *Mr G has previously invested in a loan note. He's also invested into a managed stocks and shares ISA.*

Lloyds are trying to argue here that Mr G is an experienced investor and so ought to have enough knowledge about investing (how it works, likely rates of return, FCA regulation etc) to adequately protect himself from the scam he fell victim to.

I'm not persuaded by this argument. For one, the scam was a sophisticated one involving cloned firms, professional websites and correspondence, and working online investment portfolios.

Second, the investment activity Lloyds refers to (in terms of the loan note) was undertaken just a couple of weeks prior to the first payment to the scammers. It doesn't then follow that it can be said Mr G had a great deal of investment experience as a result.

The payments made to a stocks and shares ISA also don't demonstrate a high level of investment knowledge or experience. Mr G has explained the ISA is a managed account and I can see that it is a basic and easy to use retail investing platform. I'm not persuaded by Lloyds' argument here.

- *The loan note indicates Mr G is accepting of a high-risk investment.*

It may be that the loan note was a high-risk investment vehicle. But it's unclear to me what impact Lloyds is suggesting this has on Mr G's reasonable basis of belief. I certainly don't think Mr G's decision to invest in the loan note means he was more willing to risk what might have been a scam. Nor do I think it indicates recklessness on his part in being tricked by sophisticated fraudsters.

- *Mr G has a financial advisor with whom he could've sought advice and discussed the individual investments before sending any money.*

Mr G has explained that he did have a financial adviser that he'd spoken to about personal finances some years earlier. But he wasn't involved in any of the discussions about these investments. Whilst it might be considered prudent to consult a financial adviser about investing money it isn't a requirement. And so Mr G's lack of such a consultation doesn't mean he lacked a reasonable basis of belief.

I'm aware there's evidence which shows Mr G did mention speaking to a financial adviser when Lloyds questioned him about some of the payments. Mr G has said he doesn't recall saying that and that he hadn't had such a conversation. It seems unlikely to me that he did have such a conversation. But, if he actually had done, and had he received advice to proceed, that would in fact strengthen his basis for belief.

It's impossible for me to know for sure, but I believe it's more likely than not that when Mr G said he had spoken to a financial adviser, he was probably referring to the

scammer posing as a broker. He had discussed the investment with that person and, given the surrounding circumstances, it seems more likely than not Mr G was referring to him.

There's a lack of evidence on this point, at least in part, due to the fact Lloyds didn't question Mr G further about the investment or who he had sought advice from. An error Lloyds itself has recognised.

- The written warning presented to Mr G told him to check the FCA website and, if he had done so, he would've seen cloned firm warnings relating to the brokers involved.

It is true that written warnings presented to Mr G did give advice to check the FCA register. And even though those warnings weren't effective under the Code, it can fairly be said that they still perhaps have ought to have influenced Mr G's actions.

However, Mr G knew the firms he was dealing with were based in Luxembourg. And he knew he'd checked for those firms on the CSSF register. It's then understandable why he didn't believe there was a need to check the FCA register. There wasn't a clear explanation provided as to why it was important for a firm to be FCA registered or the risks involved if it wasn't.

I've also considered what Mr G would have found had he checked the FCA register. Lloyds has continuously insisted that Mr G would have found cloned firm warnings for the brokers. But this isn't true. Lloyds seem to have been relying on a cloned firm warning for a completely different firm that bears little to no resemblance to the ones involved. It's unclear to me why Lloyds relied so heavily on an unrelated cloned firm listing. And yet it appears to have been one of the main reasons for not refunding Mr and Mrs G in full. It's been disappointing to see that's the case.

There were relevant cloned firm warnings posted on the FCA website in February 2021. This was after Mr G had already been drawn into the scam, was investing, and receiving returns. I wouldn't have expected him to go back and check the firms again as the scam went on, unless there were strong prompts (certainly stronger than he received from Lloyds) to do so.

- The payee names didn't match the company name Mr G believed he was investing with.

Lloyds is correct in what it's said here. The payee name changed with each different investment. Lloyds has said this ought to have been a red flag to Mr G.

I've asked Mr G about this and he's said he didn't think much of the differing payee names; he didn't really know any better. And whilst he had made previous payments to his ISA and the loan note, with the payee names matching the firms involved, I don't find this point ought to have caused Mr G such concern so as to say his reasonable basis of belief doesn't stand up.

There wasn't anything particularly alarming about the payee names. The money wasn't clearly being sent to individuals rather than businesses. And the business names weren't suspicious in of themselves.

The first scam payments were made to the same account as the last, showing the scammers had control of an account for around four months at least. I find that goes some way to help demonstrate the sophistication of the scam.

It's also the case that the first attempt at payment to the scammers didn't work. That meant he was then provided with a different set of account details, with a different payee name. Lloyds has also pointed to this as a red flag.

Mr G has said he did question this at the time and was told he'd been given the wrong

details originally. It's not a detailed explanation but it's also not one that is so far removed from what could be true that I'd now say Mr G ought to have questioned the entire situation he was in, when all else seemed sophisticated and legitimate.

- *The rates of return were too good to be true.*

I understand the point the bank is making here as the promised returns do appear high. Especially when compared to standard savings rates and fixed-term bonds offered by banks.

However, it's important to recognise here that Mr G was presented with legitimately available corporate bonds. The details of these bonds can still be found online and were indeed shared with Mr G on at least some occasions, based on the evidence available.

Looking at these genuine bonds it is clear that the advertised coupon rates match the rates of return that Mr G was promised. And so the argument about those returns being too good to be true fall away as they did appear entirely legitimate.

Mr G has said he saw other firms offering similar rates at the time he invested. If those firms were encouraging people to invest in similar corporate bonds then it's understandable that he would have seen comparable offers.

Did Mr G lack a reasonable basis of belief?

I accept what Lloyds has said in that there were warning signs that all was not as it appeared. However, I'm not persuaded these signs – either individually or cumulatively – lead to a position where Mr G didn't have a reasonable basis of belief from the outset. And so, I don't find it was fair and reasonable to deny Mr and Mrs G a full refund of their loss in the way Lloyds did.

However, I do have to consider how events unfolded as the scam developed. I've thought about whether there were any events which ought to have led Mr G to question what he was doing. I believe there was.

Mr G was told, in mid-March 2021, that one of the firms was being taken over by another. The scammers informed Mr G that meant he would need to take action as a significant change in the terms of his holdings was being imposed.

I find this event to be the point at which Mr G ought to have questioned what was happening. He was being told the terms and conditions governing his holdings with the firm were being changed significantly. I believe it's fair to say it would have been reasonable and appropriate for Mr G to question whether such changes – to what appeared to be regulated investments for significant sums of money – could realistically have been made in this way.

I'm satisfied that the scammer's offer to match Mr and Mrs G's further investment of £75,000 also ought to have led to Mr G questioning what he was being told. Why a firm would offer up such a significant sum of 'free money' lacks a reasonable explanation.

This would also appear to be the point at which Lloyds warned Mr G about the receiving account having been used to scam others. The dates here are unclear, as Lloyds' notes refer to a call to release funds on 3 March 2021. But there were no payments on that date. It seems likely the typed date is wrong and it's actually referring to the payments made from 17 March 2021, given the number of payments that followed and the total value matches the bank's notes on this. And although Mr G might have taken a degree of confidence from the bank allowing the payments through, I believe the two factors together (the unusual developments with the broker and the highlighting of the recipient account by Lloyds) ought to have caused Mr G a good deal of concern.

Had Mr G done some further digging at this point, before he sent any more money, he

would have likely discovered the scam. There were live FCA warnings for all of the firms supposedly involved in Mr and Mrs G's investments at this time and those warnings are easily found in an online search. And when he did carry out further checks a week later the scam was revealed.

I'm satisfied that Mr G's reasonable basis of belief falls away at this point. And so the £75,000 needn't be refunded in full by Lloyds under the Code. Instead, the refund of 50% that has already been paid should stand.

Interest payable on the refund

Lloyds has acknowledged that it ought to have done more to prevent the scam from succeeding. It's agreed that the call with Mr G for the very first payment wasn't good enough. Probing questions weren't asked and important details about the scam weren't brought to light. Had they been, I'm satisfied it's more likely than not the scam would have been revealed and avoided at the outset.

Whilst there were no live FCA warnings at the time, Lloyds ought to have been knowledgeable enough about investment scams to know that any firm engaged in such activity in the UK must be regulated by the FCA. It also ought to have known that if the firms involved did not appear to be FCA regulated then there was a significant risk of the customer being scammed.

Lloyds could have also identified some of the other features it's described as concerning or red flags and discussed those with Mr G too.

These details ought to have been drawn out and discussed with Mr G, with strong warnings against proceeding given. It seems more likely than not Mr G wouldn't have proceeded and the scam would then have been avoided entirely. That means that any interest award ought to be calculated from the date of each payment until the date of settlement.

As for the rate of interest to be used, it seems clear Mr G intended to invest the money in a diverse way. We can't know what he might have invested in or how each investment might have performed. But I don't believe the funds would have been placed into a normal savings account or would have sat in a current account. And so I find the rate of 8% simple interest per year (the same as that already awarded by Lloyds) to be the most appropriate to compensate Mr and Mrs G for being deprived of the money.

Recovery of funds

The evidence suggests Lloyds did contact the receiving bank quickly, but little of Mr and Mrs G's money remained. What was available has already been returned with no impact on how Lloyds calculated the 50 %refund already paid. Given the difficulty in trying to establish which payments the returned funds might relate to, I intend to follow suit with Lloyds and not deduct the returned funds from any further refund. If anything, it seems more likely than not the returned funds related to the final payments made by Mr G, and so wouldn't have impacted the further refund in any case. It seems the risk of any double-recovery of money lost is very remote.

Putting things right

I intend to uphold this complaint and tell Lloyds to:

- Refund the remaining 50% of the payments made between December 2020 and February 2021, that being an amount of £137,625. As Mr and Mrs G received two payments which they were told were returns on the first investment – provided the money hasn't been returned to the original sender –

Lloyds may deduct the total (£690) from the refund.

- *Pay interest on the refund at 8% simple per year from the date each payment was made to the date of settlement.*

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.

I set out my findings in my provisional decision, copied above. Both parties have responded to say they've nothing further to add. And so I see no reason to depart from those findings.

Putting things right

Upon Mr and Mrs G's acceptance, Lloyds should:

- Refund the remaining 50% of the payments made between December 2020 and February 2021, that being an amount of £137,625. As Mr and Mrs G received two payments which they were told were returns on the first investment – provided the money hasn't been returned to the original sender – Lloyds may deduct the total (£690) from the refund.
- Pay interest on the refund at 8% simple per year from the date each payment was made to the date of settlement.

My final decision

I uphold this complaint against Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr G to accept or reject my decision before 19 July 2023.

Ben Murray
Ombudsman