

The complaint

Mr and Mrs W complain that Lloyds Bank PLC ('Lloyds') won't refund the money they lost after falling victim to a scam.

What happened

In 2020, Mr and Mrs W decided to downsize their family home and invest the surplus to fund their retirement. Mr and Mrs W looked at investment options on a comparison website but can't remember which website it was. The website included a number of options, including some from companies that Mr and Mrs W weren't familiar with. Mr and Mrs W liked the rates offered by an investment firm I'll refer to as C, who Mr and Mrs W had heard of and believed was a trustworthy firm. Mr and Mrs W clicked the link on the comparison website and were taken to a website for C which showed various investment options. After leaving their contact information, they were contacted by someone who said they worked for C.

Unfortunately, scammers had cloned a genuine investment firm and used their logos, documentation, and other information to fool investors into believing they were investing with the genuine firm.

After receiving various documents, Mr and Mrs W decided to invest in a three year fixed rate bond which offered a 2.85% return per annum. Mr and Mrs W had to complete an application form and provide identification documentation, which was similar to the process they've followed previously when investing with genuine UK investment firms.

Mr and Mrs W were given bank details for a US bank account and were told that the payee (who I'll refer to as K) was the clearing agent for C. Mr and Mrs W wrote to Lloyds on 20 August 2020, asking them to make the payment on their behalf.

Lloyds contacted Mr and Mrs W about the payment on 21 August 2020, however Lloyds don't have a copy of the call recording and there are no notes to say what was discussed. The payment was made from Mr and Mrs W's joint account on 21 August 2020 for £170,000 plus a charge for the international payment.

Three months prior to the bond maturing, Mr and Mrs W tried to contact C using the contact information they had – but were unsuccessful. Mr and Mrs W then called the genuine firm, who said they hadn't heard of the employees that Mr and Mrs W had dealt with for their investment. When the bond matured, and they still hadn't received any contact, Mr and Mrs W got in touch with the police who told them they had been the victim of a scam.

Mr and Mrs W contacted Lloyds and raised a fraud claim, asking Lloyds to recover their funds. Lloyds contacted the beneficiary bank, which is based overseas, but struggled to get a response. Ultimately the beneficiary bank told Lloyds that the account holder had closed their account and no funds could be recovered.

Lloyds declined to refund Mr and Mrs W, explaining that while Lloyds are signed up to the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code), the payment isn't covered as the CRM Code doesn't apply to international payments.

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

An investigator looked into Mr and Mrs W's complaint and upheld it in full. The investigator recommended that Lloyds refund Mr and Mrs W the £170,000 and pay interest on that refund at 8% simple interest per year. The investigator felt the payment was unusual and out of character, so Lloyds should've identified a potential scam risk and had a discussion with Mr and Mrs W about the payment. Had this conversation happened, the investigator thought it was likely that the scam would've been uncovered, and Mr and Mrs W's loss could've been prevented.

Lloyds didn't accept the investigator's opinion, however, they revised their position and offered to refund Mr and Mrs W 50% of their loss and agreed to pay interest as recommended by the investigator.

Lloyds say Mr and Mrs W should share responsibility for their loss as they didn't take reasonable steps to validate the information they were given and that such checks would most likely have indicated that Mr and Mrs W weren't dealing with the genuine investment firm.

Mr and Mrs W didn't accept Lloyds' offer and asked for an ombudsman to review their complaint.

Having reviewed the complaint, I reached the same answer as the investigator. However, the investigator hadn't recommended that Lloyds refund the international payment charge that Mr and Mrs W paid, which I feel would be fair. So, I contacted Lloyds to let them know I would be adding this to the redress recommendation and asked Lloyds for their thoughts. Lloyds confirmed that they accepted the changed redress, so I've reviewed the case in order to issue 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.

Lloyds are a signatory to the 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. However, the CRM Code only applies to payments between GBP denominated UK domiciled accounts. In this case, Mr and Mrs W made an international payment to a non-UK domiciled account. So, I can't apply the CRM Code to Mr and Mrs W's payment.

In broad terms, the starting position in law is that Lloyds are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations (PSR's).

But Lloyds also has to be on the lookout for, and help to prevent, payments that could involve fraud or be the result of a scam. In some circumstances, irrespective of the payment channel used, Lloyds should 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 from fraud.

Should Lloyds have prevented Mr and Mrs W's loss?

Having reviewed Mr and Mrs W's bank statement, I'm satisfied that this payment was so unusual and out of character that Lloyds should've intervened and asked probing questions.

I appreciate that Mr and Mrs W may have made larger payments on one of their other Lloyds accounts, but this is not the case for the account used to make this payment. Any previous large transfers made on this account were transfers to Mr and Mrs W's own accounts. Also, this was an international payment for a significant amount of money.

While Lloyds did have a call with Mr and Mrs W in setting up the payment, there aren't any call notes or a call recording to show what was discussed. Based on the payment specifics, I think the type of questions Lloyds should've asked would've included how Mr and Mrs W found the investment, whether Mr and Mrs W had checked the FCA's website and why they were paying an offshore clearing agent in order to make an investment with C. I also think Lloyds should've explained to Mr and Mrs W what they should be checking on the FCA's website and why it was important to check – as this is likely to have uncovered the active warning about C being cloned. Lloyds feel that Mr and Mrs W should've realised that using a clearing agent for investing with C was unusual, however as the professionals in this matter, I think this is something that Lloyds should've highlighted to Mr and Mrs W as part of their discussion and explained why it's concerning.

I think a proper discussion at the time this payment was made would've uncovered the scam and prevented Mr and Mrs W's loss. So, I'm satisfied that Lloyds should refund Mr and Mrs W in full.

Should Mr and Mrs W share responsibility for their loss with Lloyds?

From what I've seen, I'm not satisfied that Mr and Mrs W should share responsibility for their loss with Lloyds - I'll explain why.

- While Mr and Mrs W have invested in bonds previously, they did so through "high street" banks. I don't consider that this meant they were experienced investors whereby they should've picked up on the same small concerning indicators that Lloyds, as the professionals, would have.
- Mr and Mrs W believed that a comparison website would vet the products they advertised. Also, they weren't aware of "fake" comparison websites or what sort of checks they should do on the website to ensure its authenticity.
- The interest rate that Mr and Mrs W were being offered on the investment wasn't too good to be true. Mr and Mrs W say the rate was slightly higher than that offered by high street banks but was less than was being offered by investment firms they hadn't heard of. Mr and Mrs W also thought they were taking the safe option by choosing to invest through a large reputable investment company.
- All the documentation that Mr and Mrs W received appears "superficially" to be genuine and support that they were taking out a bond through C, a company they believed they could trust.
- Mr and Mrs W weren't aware of the FCA's website or why checking a company on the website is important.
- I appreciate that Mr and Mrs W were told to make payment via K, which wouldn't make sense for an investment with C. But, Mr and Mrs W weren't aware that it wouldn't be standard practice for C to have a clearing agent or that they should complete checks on a clearing agent, as it was referenced in what they considered to be genuine documents from C. A basic online search about K, brings up no search results which would be concerning for a business with supposed links to C.

Overall, I'm not satisfied that Mr and Mrs W should've picked up on the items Lloyds says point to this being a scam. I'm satisfied that Mr and Mrs W were convinced they were genuinely dealing with C and had no concerns based on the information they had received. So, I don't think a deduction should be made to the refund I'm asking Lloyds to pay.

On that basis, I'm satisfied that Lloyds should refund Mr and Mrs W in full including any fee Mr and Mrs W were charged for making an international payment. And, as Mr and Mrs W have been without the use of these funds, Lloyds should pay interest on the refund at 8% simple per year, calculated from the date of the payment until the date of settlement.

Putting things right

To put things right, I require Lloyds Bank PLC to:

- refund Mr and Mrs W in full including the international payment charge
- pay simple interest on that refund of 8% per year, calculated from the date of the payment until the date of settlement.*

** If Lloyds considers they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr and Mrs W how much they've taken off. Lloyds should also give Mr and Mrs W a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.*

My final decision

My final decision is that I uphold this complaint against Lloyds Bank PLC and require them to compensate Mr and Mrs W as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 17 July 2024.

Lisa Lowe
Ombudsman