

The complaint

Mr T is unhappy Lloyds Bank PLC won't refund him the money he's lost after falling victim to a scam.

What happened

Both parties are aware of the circumstances of the complaint and the details were clearly set out by our investigator when she wrote to the bank upholding Mr T's complaint in part. As such, I won't repeat them all here. In summary:

- Mr T, having sold his business, had funds he wished to invest and, in early March 2020 he searched online for investments with good interest rates. Mr T has explained that at the time, he understood that investment interest rates were dropping – due to the pandemic and so, he searched for corporate bonds which he believed paid higher interest rates.
- Mr T registered his details online. He was called by two firms. However, Mr T decided to proceed with the firm I'll refer to as firm A. In his contact with firm A, Mr T spoke to two individuals purporting to work for the firm. He was initially told about the firm and that it was authorised by with the Financial Conduct Authority (FCA) and he then spoke with a more senior colleague who discussed the corporate bonds available. Mr T was told about two corporate bonds available – one which was paying interest at 9.625% and the other paying interest at 11.5%.
- Mr T was sent literature and he says, after having carried out some online research, he felt happy to invest. Mr T didn't invest straight away following the initial contact due to him falling ill. It was a few weeks later when he completed an application.
- The fraudsters informed Mr T of the Financial Compensation Scheme (FSCS) and of its limits. Mr T proceeded to open two bonds: one for himself for £85,000 and another in his wife's name also for £85,000. Having been asked to make an initial payment of £17,000, Mr T sent this amount on 27 March 2020. He made this payment to the beneficiary details he was given, which he was told was in the name of firm A. Mr T then made eight further payments totalling a further £178,000 between 30 March 2020 and 10 April 2020. These payments were made to a different payee. In total Mr T sent £195,000 to the fraudsters.
- For completeness, Mr T invested another £100,000 into a bond in his name. Some of the payments outlined above were made towards this investment but further payments were also made from an account Mr T held with another bank. The payments made from Mr T's other account will be considered under a separate case with our service against the other bank. Therefore, in this decision I will be focussing only on the payments Mr T made from his Lloyds account.
- Mr T didn't receive the contact from the fraudsters that he was expecting – setting him up with online access to his accounts. And when he hadn't heard anything for a couple of months, he became concerned. Mr T was unable to reach the fraudsters

and when he searched online, he came across a warning that had been posted on the FCA website on 16 April 2020 which indicated the firm had been cloned.

- Mr T contacted Lloyds on 22 July 2020 to ask for help. Lloyds contacted the receiving banks but unfortunately no funds remained.

Lloyds is a signatory of the Lending Standards Board Contingent Reimbursement Model (CRM) Code which is designed to reimburse customers that have fallen victim to an APP scam. The starting position under the Code is for a customer to be refunded in all but a limited number of circumstances. Lloyds says one or more of those exceptions applies in this case.

I am also mindful that when Mr T made these payments, Lloyds should fairly and reasonably also have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things).

And in some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

When Lloyds considered the matter, it said an effective warning was provided on each payment to alert Mr T to this type of scam. It also says a warning was provided that the name of the intended recipient didn't match the name that the accounts were in when he made payments to the two receiving accounts. This was on the first payment Mr T made on 27 March 2020 and the second payment on 30 March 2020. Lloyds raised that there was an FCA warning in place before Mr T made the first payment, which indicated firm A's authorisation was removed on 12 March 2020. Lloyds also felt the interest rates were too good to be true and that there were negative reviews online which ought to have caused Mr T concern. In summary, it felt Mr T could've taken more caution and carried out further checks before making the payments.

Mr T disagreed with Lloyds and referred his complaint to our service. One of our investigators considered the matter and thought the complaint should be upheld in part. In brief, she wasn't satisfied Lloyds had established that Mr T had ignored an effective warning. However, she also didn't think Mr T had met his requisite level of care under the CRM Code. On this basis, she recommended Lloyds reimburse Mr T 50% of his loss under the provisions of the CRM Code, along with paying interest at the Club Lloyds account rate at the time the payments were made.

Mr T accepted our investigator's view, but Lloyds didn't agree. In summary, Lloyds maintains Mr T is liable for his loss as he didn't complete the due diligence required before making the payments. It reiterates that the rate of return for the bonds offered were way higher than market average and so feel this was 'too good to be true' and should have been a warning to Mr T. It says there were negative reviews of the firm online – most of which pre-dated the payments Mr T made. It again highlighted the 'no match' result for Confirmation of Payee (CoP) and say he failed to acknowledge the warning the bank tried to give him about the account details not matching. In addition to this, Lloyds add that Mr T ignored an Account at Risk (AAR) warning and nor did he read the warnings on its Fraud Hub Page. Lloyds isn't convinced that, even if it had shown Mr T these warnings on the initial payment page, that he would have taken heed of them.

Lloyds considers the ruling in *Philipp v Barclays Bank* to be relevant to this case – a court decision that the Quincecare duty should not apply where the transfer is properly and lawfully authorised by the customer. Lloyds in response to our investigator's view has

referred to intervention – commenting that the payments Mr T made were with his normal spending pattern. Therefore, it feels there was no reason for bank intervention. Even if there had been intervention, Lloyds' doesn't think this would've likely deterred Mr T from making the payments.

Having carefully considered the bank's response, our investigator's view remained unchanged – largely for the reasons she'd previously set out. However, she did acknowledge the recent Phillip v Barclays Bank judgement where the judge took a different view about the Quincecare duty. Whilst she didn't suggest the Quincecare duty applied to this case, she acknowledged that this service had a duty to resolve complaints based on what we think is fair and reasonable in all the circumstances of the case – taking into account not just the law but also the regulators' rules and guidance, relevant codes of practice and what we consider to have been good practice at the time. This includes the CRM Code, which Lloyds is signed up to.

Our investigator clarified that she'd not argued Lloyds ought to have contacted Mr T about the payments and ask him questions about them. But she did consider that each of the payments made were remarkable enough to have warranted an effective warning and referred to the requirements for firms under the CRM Code. She concluded each payment Mr T made was significant enough in value for Lloyds to have identified a scam risk and provided an effective warning. And whilst she recognised, Mr T had made similar payments in March 2020, this was following the sale of his business. Prior to this, the account was not used to make such high value payments.

Our investigator explained that under the CRM Code, where the sending firm has failed to meet the standards for firms, and the customer has not met their requisite level of care, each liable party will accept equal responsibility. Therefore, her view remained the same that both Lloyds and Mr T should share liability 50:50.

As Lloyds continued to disagree with our investigator's view on the complaint, it's been passed to me for 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.

Having done so, I uphold this complaint in part. I will now explain why.

The starting point in law is that Mr T is presumed liable for any transactions on his account that he authorises. He did authorise all the payments that are the subject of this complaint, even though he did so under false pretences and as a result of a scam.

But that's not the end of the story. Lloyds is signed up to the CRM Code and so ought to refund victims of authorised push payment (APP) scams in all but a limited number of circumstances. And it is for the firm to establish that a customer failed to meet their requisite level of care, as set out in the Code.

Lloyds has said that one or more of the exceptions to reimbursement apply in Mr T's case. And I agree that is the case, which is why I'm not telling the bank to do any more than was recommended by the investigator.

The relevant exceptions to reimbursement are, broadly:

- where it can be demonstrated that a customer ignored an effective warning given by the bank
- where the customer made payments without having a reasonable basis for belief they were for legitimate goods and services.

Did Mr T meet the requisite level of care required of a customer under the CRM Code?

I've first thought about whether Mr T have a reasonable basis for belief for all the payments he made. Having carefully considered all the circumstances of this complaint, I agree with both Lloyds and our investigator, in that I don't find Mr T had a reasonable basis of belief that the payments he was making were legitimate and in turn I'm not satisfied he has met his requisite level of care under the CRM Code.

Lloyds has raised Mr T didn't complete the due diligence required of him before making the payments he did. I do appreciate there were elements of the scam which were convincing, for example, the paperwork he received appears in line with what he would have expected to receive in connection with genuine investments of this type. He was also asked to complete an application process - again which would have appeared typical for an investment. And Mr T also had dealings with more than one individual which gave him the impression he was dealing with a busy organisation which convinced him he was dealing with a genuine firm.

However, Lloyds highlight there were warnings on the FCA register at the time and negative reviews which ought to have caused Mr T concern. I can see there wasn't a cloned firm warning about firm A added until April 2020, which was after Mr T made the payments. But there was information on the FCA register on 12 March 2020 which confirmed the firm was no longer authorised.

Mr T says on 9 March 2020 he looked up the firm online and didn't see anything of concern. However, I'm not persuaded Mr T did this level of research into the firm. I say this because Mr T was in court the same day in relation to a serious matter and so, I think it's unlikely that he also would've researched a possible investment on the same day. But in any event, even if I'm wrong about this, I'm satisfied there were some other red flags that I feel he should've been concerned about before proceeding with the payments.

The rates of return offered were quite high in comparison with what was available elsewhere. I understand Mr T felt this was because they were corporate bonds. However, I note there is some discrepancy as to the term of the bonds within the paperwork. Given the rates of return I think Mr T ought to have looked more closely at the paperwork before proceeding.

I also cannot ignore that the fraudsters asked Mr T to make payments to two different beneficiary accounts with two different banks. I've not seen any plausible reason as to why Mr T was asked to make payments to two different payees. In addition, while Mr T says he was satisfied he was making payments to firm A, Lloyds has provided information which shows he was presented with a 'no match' CoP result for the first payment, and the subsequent payment.

Given that Mr T was provided with two negative CoP results, I can understand why Lloyds feel this ought to have caused him concern. These results ought to have prompted Mr T to question whether he was paying the correct firm, even more so by the time he made the second payment given this was inexplicably going to a different payee.

As I've explained, I'm not persuaded Mr T had undertaken much independent research prior to making the payments, and at this point I think he should've checked that he was dealing with a legitimate business. It's also important to note that the possibility of a scam wasn't the

only risk – the message shown indicates that it could be the wrong account number and so there was the risk that firm A might have made a mistake when providing the account details to Mr T. So I'd have expected him to consider the possibility that there had been a mistake with the account details and I've seen no evidence to persuade me Mr T did any further checks upon receiving the no match CoP results.

I've thought about what Mr T has told us about previous payments he made under his business – that most times the information about the payee was that the account could not be found when he knew it existed and so he had no concerns - I'm afraid I cannot agree this was a reasonable conclusion to draw in this particular set of circumstances. I'm persuaded the 'no match' result could and should have led Mr T to take steps to check the payment details and conduct further research into the firm he was trying to invest through.

With all the above in mind, thinking in particular about the rate of returns offered and the discrepancies relating to these rates within the paperwork the fraudster provided, and the negative CoP results, I think Mr T should've done more checks, and on doing so, I'm persuaded he'd have realised this was a scam. I say this because I think Mr T would've realised that the firm he believed to be legitimate and authorised was not in fact authorised. This would've prompted him to call the genuine firm in turn realising he was dealing with individuals impersonating the firm.

It follows that I'm not satisfied Mr T has met the requisite level of care under the CRM Code.

As I've concluded Mr T didn't meet the requisite level of care, I've gone on to think about whether Lloyds met the standards required of it under the CRM Code.

Did Lloyds meet the standards required of it under the CRM Code and did it present Mr T with an effective warning?

In the particular circumstances of this case I'm satisfied Lloyds ought to have provided effective warnings. This is because I think it ought to have identified a scam risk given Mr T was paying large amounts of money to new payees, and it seems to me Lloyds accepts this position given it provided warnings and has said Mr T ignored effective warnings.

I don't find that the warnings given by Lloyds met the definition of an effective warning. The requirements for this are set out in the Code under standards for firms.
The CRM Code says:

SF1(2)(e) As a minimum, Effective Warnings should meet the following criteria

- (i) Understandable – in plain language, intelligible and meaningful to the Customer
- (ii) Clear – in line with fair, clear and not misleading standard as set out in Principle 7 of the FCA's [Financial Conduct Authority] Principles for Businesses
- (iii) Impactful – to positively affect Customer decision-making in a manner whereby the likelihood of an APP scam succeeding is reduced. This should include steps to ensure that the Customer can reasonably understand the consequences of continuing with an irrevocable payment;
- (iv) Timely – given at points in the Payment Journey most likely to have impact on the Customer's decision-making;
- (v) Specific – tailored to the customer type and APP scam risk identified by analytics during the Payment Journey, and/or during contact with the Customer

I'm not satisfied the warning that was presented to Mr T meets all those requirements. The warning isn't specific to any one type of scam and more information on the specific scam types is only accessible through an optional link to the Fraud Hub page. So this information

isn't prominently displayed and therefore lacks the clarity and impact required of an effective warning.

The warning Mr T saw did not bring to life what investment scams looked and felt like - more specifically it didn't highlight any of the common features of these types of scams and in particular, a cloned firm scam and just how sophisticated these can be. It also doesn't set out what steps Mr T could specifically take to protect himself against the common features of investment scams or cloned firm scams – as required under the CRM Code. The generic warning simply tells the customer to check the account details with a trusted source, yet the importance of this isn't explained, and there's no indication what such a trusted source could be in the circumstances. Overall, I'm not persuaded the warning Lloyds' provided when Mr T made the payments met the standards set out in the CRM Code.

In this case, Lloyds has referred to the fact the warning was provided alongside a 'no match' CoP result. I think it is important to distinguish an 'effective warning' and negative CoP results under the CRM Code. Effective warnings are intended specifically to address the risk of, and enable customers to protect themselves from, APP scams. An effective warning must, as a minimum, meet the definition under the Code – that is to be understandable, clear, impactful, timely and specific.

Messages accompanying negative confirmation of payee results, though sometimes mentioning the possibility of fraud, are primarily intended to warn customers that payment details do not match (as was the case here) so as to warn customers about the risk of misdirecting a payment. And while I acknowledge Lloyds provided a warning (albeit I have already explained why I don't find this to have been an effective warning) and a negative CoP result within the same payment journey, I don't find the two together to be sufficient to amount to an effective warning in this particular case.

I've also carefully considered Lloyds position that it isn't convinced that a warning would've made a difference or that Mr T would've taken heed of them. However, I don't agree. While I'm persuaded that the 'no match' CoP result could and should have led Mr T to taking steps to undertake more research and check the payment details at the time of making the payments (which I've explained above), I don't think I can safely say that Mr T has acted with such recklessness or negligence to find he would have ignored an 'effective' scam warning. I've not seen anything that suggests Mr T had any experience or knowledge about what a cloned firm scam looked and felt like. And, I'm mindful there were aspects of the scam which were persuasive and mirrored that of what a genuine investment firm would do. I don't find that Mr T has demonstrated a clear disregard for risk – nor was it the case that he had concerns and yet decided to proceed in any event.

Had Lloyds provided an effective warning – bringing to life an investment scam, explaining that they can be sophisticated – i.e. that firms can be cloned - and setting out steps Mr T could take to protect himself, I think he'd have done further research. I'm particularly persuaded this would've been the case coupled with the no match CoP results – I accept Mr T didn't act in the way he ought to have done in response to the CoP results, but I'm satisfied he'd have taken a different course of action had the no match CoP results been provided within the same payment journey as an effective warning. The two combined would've been much more impactful in my opinion and I'm persuaded the scam would've been exposed for the reasons I've previously explained. I think Mr T would've recognised he wasn't dealing with a legitimate firm.

And so, as I'm not satisfied Lloyds provided effective warnings, it follows that it failed to meet the standards required of it under the Code. Therefore, Lloyds is liable for 50% of the loss here. And for completeness, while it doesn't affect the outcome of this case, given I've

concluded Lloyds did not provide effective warnings, I do not think Mr T ignored any effective warnings.

Is there anything else Lloyds ought to have fairly and reasonably done?

Having carefully considered this, I agree with our investigator. I don't think the payments Mr T asked to make were so unusual or out of character from the previous account activity, whereby I would've expected Lloyds to have intervened beyond providing effective warnings.

My final decision

My final decision is that I uphold this complaint in part. I think both parties ought to share some responsibility for the loss.

I therefore require Lloyds Bank PLC to:

- Refund Mr T 50% of his loss and;
- Pay interest on 50% of the loss, from the date Lloyds declined Mr T's claim under the Code, until the date of the settlement (less any tax lawfully deductible). Lloyds should send Mr T a tax deduction certificate if he asks for one. The interest should be calculated at the rate of Mr T's Club Lloyds account at the time, as this is an interest-bearing account.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 28 April 2022.

Staci Rowland
Ombudsman