

The complaint

Mr S and Miss T complain that Lloyds Bank PLC has declined to refund them fully for payments they made to what they now understand was an investment scam.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here and focus on what I consider is significant to reaching a fair and reasonable outcome here. But in reviewing Mr S and Miss T's complaint about Lloyds, I have carefully reviewed the detailed submissions made by both sides to this dispute.

In short, a friend of Mr S had recommended an investment scheme. It apparently offered returns of 50% per month. Between April and September 2019, Mr S and Miss T sent five payments of £10,000 by Faster Payments transfer from a Lloyds account.

However, their investment later proved inaccessible, and they realised the scheme hadn't been legitimate. In 2022 they reported the scam to Lloyds.

Lloyds looked into what had happened. It accepted Mr S and Miss T had been the victims of an Authorised Push Payment scam (APP scam). It attempted to recover their funds from the account they'd paid, but no funds remained.

Lloyds is a signatory of the Lending Standards Board's voluntary Contingent Reimbursement Model (the CRM Code) which can offer additional protection from APP scams such as this one. But the CRM Code only came into force on 28 May 2019 and doesn't apply retrospectively. Lloyds said the CRM Code didn't apply to the first two payments made by Mr S and Miss T, which both pre-dated the introduction of the code. It said they had authorised both those earlier payments and it had no reason to prevent them from making the transactions in line with their instructions.

For the three final payments, Lloyds said it would reimburse 50% of the amount lost. Under the terms of the CRM Code, it could have done more to protect Mr S and Miss T from this scam. But it said Mr S and Miss T had gone ahead without having a reasonable basis for believing they were investing in a genuine scheme, so the loss should be shared equally. It paid Mr S and Miss T a further £100 to recognise delays in initially handling their scam claim.

Mr S and Miss T didn't accept this outcome. Our Investigator reviewed their complaint. She noted that Lloyds had initially blocked the first payment and spoken to Mr S about it. Lloyds had provided copy of the relevant call with Mr S in which he'd said he was purchasing a tractor, had met the seller in person, trusted it was legitimate, and confirmed he wanted the payment to go ahead. In these circumstances the Investigator didn't think Lloyds could have reasonably prevented the loss that resulted from this payment. Had it intervened in later payments she thought the result would most likely have been the same.

For the final three payments (those covered by the CRM Code) she didn't think Lloyds needed to pay back Mr S and Miss T more than the 50% share it had already returned to

them. This was because she thought Mr S and Miss T should have been concerned about how such exceptionally high rates of return were feasible and the lack of detail about how their funds would be invested. She thought the investment was simply too good to be true and didn't think Mr S and Miss T held a reasonable basis for believing the payments were for a genuine investment.

Mr S and Miss T didn't agree. Mr S said the call recording Lloyds had provided might relate to a purchase of a compact tractor he'd made on a different date but said he couldn't evidence this because he didn't think the dates would match up. They thought it unfair that assumptions were being made about what would have happened had the bank intervened again in relation to a later payment, and that the CRM Code didn't cover the earlier payments – particularly as the second payment was made one day prior to the code's inception.

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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time. Where clear or unambiguous evidence is unavailable, I am required to reach my findings on a balance of probabilities – in other words based on what I find most likely given the information and circumstances before me.

Firstly, Lloyds has a primary obligation to carry out the payment instructions its customers give it. As a starting point, a customer will therefore be assumed liable for a payment they have instructed to be made. There is no dispute that Mr S and Miss T authorised these payments, albeit having been deceived into believing this money was going to a genuine investment scheme. So, on the face of it they are liable for the resultant losses.

As I've mentioned above, the CRM Code can provide additional protection for the victims of APP scams. I'm satisfied that the final three payments made here fall within the scope of the CRM Code. However, the first two payments were made before the CRM Code took effect.

The CRM Code is voluntary and not retrospective, and I cannot therefore require Lloyds to apply it to an earlier transaction even where the difference for the second payment was a matter of just one day.

Payments covered by the CRM Code

There is no dispute that the latter three payments fall within the scope of the CRM Code. But despite offering additional protections, the CRM Code also includes provisions allowing a firm not to fully refund APP scam losses in some situations.

Relevant here, this includes an exception to full reimbursement where the customer made a payment without a reasonable basis for believing that the person the customer was dealing with was legitimate, offering something genuine in return for the payment (so, the investment), or that the payee was the person the customer was expecting to pay.

Lloyds says this exception applies here. It says Mr S and Miss T made the payments without holding a reasonable basis for believing the investment was genuine, so are not entitled to be fully reimbursed. Lloyds accepted a 50% share of the loss acknowledging it hadn't done everything required of it following the introduction of the CRM Code in respect of these three

payments.

As Lloyds has accepted fault in relation to these three payments, and because the extent of any such fault does not determine the redress due under the terms of the CRM Code, the key issue remaining for me to determine here is whether Lloyds has fairly applied the exception to full reimbursement.

I've considered the information submitted by Mr S and Miss T. The returns they were being offered were exceptional. I think the rate of 50% per month, and the expectation it would return £2.7m at the end of the 10-month term, was indeed too good to be true. At the least, this should have prompted Mr S and Miss T to exercise much greater caution before deciding to proceed and before sending significant sums of money. Yet the details they seem to have received about the nature of the investment were very limited. There was no explanation given as to how such a rate of return could be realised or sustained through an investment in gold or cryptoassets.

All considered I don't think Mr S and Miss T held a reasonable basis for believing the payments were going to a genuine investment. On that basis, I'm satisfied Lloyds can fairly rely on the relevant exception to full reimbursement under the CRM Code, and it therefore is not required to reimburse more than the 50% it has already paid Mr S and Miss T.

The CRM Code does not represent the full extent of the relevant obligations or good industry practice but exists to provide additional protection where it is relevant. Nonetheless, I have also considered whether there is any reason that Mr S and Miss T might be entitled to greater reimbursement outside the provisions of the CRM Code. However, I don't find Lloyds breached any of those obligations or should be liable to reimburse Mr S and Miss T to a greater extent than it has already done under the CRM Code. I find that a 50% share of the loss is fair and reasonable in all the circumstances and Lloyds has already paid them this sum.

The payments not covered by the CRM Code

Payments one and two occurred prior to the date the CRM Code started. So as I've noted above, the additional protection the Code offers does not apply to these payments.

Nevertheless, as a matter of good industry practice at the time, I'd expect Lloyds to have been on the lookout for unusual or out of character transactions and intervening in the event it had concerns a payment might result in financial harm through fraud or scam.

Lloyds says it did intervene on that basis in relation to payment one (on 29 April). It has provided a copy of the call it says it had with Mr S about the payment that same day.

During the call recording, Mr S says he's trying to send a payment of £10,000. The Lloyds agent explains to Mr S why his payment was being held, and explains about the risk of scams, including why it was important he was honest in answering questions about the payment so the bank could help protect him.

When Mr S was asked what the purpose of the payment was, he stated it was to purchase a tractor. He said he'd met the seller in person. When asked if he was happy, it was all genuine because a bank transfer was like giving someone cash, Mr S said he was totally fine with that, and trusted this individual. Mr S was asked to confirm his answers and that he hadn't been told by anyone to say anything false, which he confirmed.

Mr S says that he may have been confused, as he had been purchasing a compact digger for exactly the same amount at around that very time. However, when our Investigator asked

him to evidence this, he declined, explaining that the dates likely wouldn't correspond.

However, in determining this case, the reason that Mr S gave the answers he did isn't material to the outcome I have reached. Rather I consider that what matters is whether Lloyds acted appropriately in relation to this and the later payments, given the answers Mr S provided during the call on 29 April.

Having reviewed the call recording, I'm satisfied that Lloyds was entitled to proceed with this transaction and accept what Mr S was telling it at face value. There was no indication that Mr S was confused or otherwise mixing up his story. What he said appeared consistent with the payment instruction he'd given the bank. I find Lloyds had no reasonable basis for concluding his answers were incorrect or false. Lloyds was therefore obligated to carry out the payment instruction in line with the request made.

In relation to the later payments including payment two, it is relevant that these were being made to the same payee. Given the time that had elapsed between payments one and two, I don't find it unreasonable for Lloyds to have drawn the conclusion that the further payments related to the same transaction or that the payee remained trusted. It had no reason to assume otherwise, and the total amount across these five payments does not seem inconsistent with the purpose Mr S had previously told the bank – in other words the typical purchase cost of a tractor.

While I appreciate that Mr S says he actually bought a *compact* tractor at around the same time (presumably at a total cost of £10,000), when he spoke to Lloyds he said the payment was simply for a tractor, and that would have been all Lloyds could have known at the time about what Mr S was buying. So a total price higher than £10,000 wouldn't have been an obvious discrepancy.

Lloyds has a primary obligation to carry out valid payment instructions given by its customers. I don't find Lloyds would have identified further cause for concern about these payments following its discussion with Mr S. Rather, I find Lloyds was required to honour the payment instructions it had been given.

All taken into consideration I don't consider Lloyds could reasonably have prevented these payments or that it was at fault in not intervening again in relation to the later payments. As a result, I can't fairly require Lloyds to reimburse Mr S and Miss T for the first two payments (or to refund a greater proportion of the latter three than it has done under the terms of the CRM Code).

Recovery

Lastly, when Mr S and Miss T reported the scam in 2022, Lloyds took appropriate steps in attempting to recover all five payments. It appears it could have done so more swiftly than it did, but any such delay was brief, and Lloyds has paid Mr S and Miss T the sum of £100 in respect of how it initially handled this. I consider that sum fair in the circumstances. In any event I consider there was no realistic prospect of recovering their money in 2022, given the considerable time that had elapsed since the payments were made. No funds remained for Lloyds to recover, and it appears their money had long since been moved on from the beneficiary account (as would be expected in scams of this type).

Overall, I don't require Lloyds to refund Mr S and Miss T more than it already has paid them. I understand this is not the answer Mr S and Miss T were looking for. They have already explained they are considering now pursuing the matter through court action against Lloyds. However, having assessed all the information and arguments they have provided I have reached the outcome I have based on what I consider to be fair and reasonable in all the

circumstances of their complaint, and while I sympathise with them for the size of their outstanding loss, I cannot fairly require Lloyds to do more than it has already done.

My final decision

For the reasons given above, I do not uphold Mr S and Miss T's complaint about Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Miss T to accept or reject my decision before 13 September 2023.

Stephen Dickie
Ombudsman