

The complaint

Mr Y is unhappy as Lloyds Bank PLC ("Lloyds") hasn't fully reimbursed him the money he lost after falling victim to a scam.

What happened

Mr Y says he was introduced to a cryptocurrency trading company – who I will refer to as T - through a friend. Between 1 March 2021 and 15 March 2021, Mr Y transferred four payments totalling £33,900 to an account under the scammer's control. It seems it was removed from there for what Mr Y believed was further trading with T. For this reason, the case has been considered under the Contingent Reimbursement Model Code (the CRM Code).

Lloyds has refunded £16,950 (50% of Mr Y's claimed losses) under the CRM Code - accepting that the payments were out of character, and it could have done more. But it felt that Mr Y did not have a reasonable basis for believing the opportunity was genuine. Our investigator did not uphold the complaint. He felt that Mr Y performed insufficient research to verify T and there were warnings at the time that this was a scam.

I wrote to Mr Y's representative explaining I broadly agreed with the investigator for similar reasons. I also asked for some further information regarding the source of funds that were invested including what appeared to be money "loaned from a friend" as well as funds from a government loan scheme.

Mr Y's and his representative did not accept my informal view. They said that the scam was very convincing, and the trading account looked professional. Mr Y could see the returns his friend was achieving. Mr Y searched on the internet and didn't find anything concerning.

As the case could not be resolved informally, I now need to issue a 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.

When considering what is fair and reasonable, I'm also required to take into account: relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The starting point under the relevant regulations and the terms of Mr Y's account is that he is responsible for transactions he's carried out himself. However, Lloyds are signatories to the Contingent Reimbursement Model (CRM) Code. The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this, in all but a limited number of circumstances.

Lloyds seek to rely on one of the exceptions to reimbursement.

- Mr Y made the payments without a reasonable basis for believing that they were for genuine goods or services; and/or T was legitimate.

Lloyds has already refunded 50% of Mr Y's losses for its part – so my decision will focus on whether Mr Y should be refunded the other 50% of his losses.

Did Mr Y have a reasonable basis for belief?

I need to consider not just whether Mr Y believed he was sending money for an investment, but whether it was reasonable for him to do so. I've thought about the steps Mr Y took to reassure himself about the legitimacy of the transaction and whether it was reasonable for him to proceed with the payments.

In doing so, I've also taken into account that there is no standard of care or specific responsibilities placed on customers via the CRM Code. And I have taken into account the characteristics of the customer together with the complexity/sophistication of the scam. I appreciate there are no set level of checks expected of a consumer.

Although I don't think the warning provided by Lloyds is enough to be considered an effective warning under the CRM Code, I have considered the contents and whether they ought reasonably to have filtered into Mr Y's reasonable basis for belief. The warning did say:

*Deals that look too good can be scams
Do lots of research - good deals don't find you
See what your friends and family think*

It also advised to *use the FCA* (with a link) *to check an advisor or company*.

Mr Y says his friend (I will refer to as K) recommended the investment and Mr Y seems to have mainly relied on what he told him and the returns he had supposedly made. But as I understand it his friend had not actually received any returns from the investment and had only recently made the initial investment himself.

Mr Y told Lloyds when he first reported the scam, that although he was never given an indication of returns, they could make *high returns quickly* and after the initial investment was made, he could see a profit. Mr Y also initially told Lloyds that he was offered a bonus for bringing people in to invest. Although he's never quoted any promised returns – I think the promise of quick and high returns ought to have made him more wary of caution. Lloyds' warning also mentioned that deals that look too good can be scams.

The warning also said to do lots of research. Whilst the CRM Code doesn't have a set level of checks for the consumer to do, I don't think it's unreasonable when investing large sums of money to check out likely returns and the risks involved. So I do think the deal warranted closer scrutiny.

Mr Y also told us that T continually pressured him into investing by constantly calling him and telling him that he was losing precious time for the investments and that he needed to act urgently. I don't think a genuine company would behave like this.

I've seen some of the messages Mr Y had with the scammer and the language used by the scammer doesn't seem professional and is not what I'd expect of a genuine trader. I therefore think that the nature of the messages, in combination with the other factors, ought reasonably to have caused Mr Y concern.

I appreciate Mr Y may have searched the company online and not found any negative reviews. I've also seen screen shots of the trading app which helped convince him this was legitimate. But I don't think this was enough to ignore the wider warning signs here.

Given this was an investment and not an inconsiderable amount - I consider that Mr Y ought to have had greater concerns about the deal and that, in turn, ought to have led to a greater degree of scrutiny on his part which would likely have revealed this was a scam.

Overall, I'm not persuaded Mr Y had a reasonable basis for believing the payee was the person he was expecting to pay; that the payment was for genuine goods or services; or the person/ business with whom Mr Y transacted was legitimate.

Original source of funds

Even if I found reason not to agree with the overall outcome reached by the investigator, I'm mindful the funds Mr Y used to invest originated from a government backed loan (the loan). He opened a business account with Lloyds in March 2020 and deposited the loan proceeds in June 2020. These funds remained more or less intact until he transferred £10,000 to his personal account on the day of the first transfer to the scammer and a further £10,000 on the day of the second disputed transaction. I appreciate Mr Y's representative does not agree with this approach. I'm afraid it doesn't change my view, that it wouldn't be fair or reasonable to redress Mr Y for using the loan for personal reasons, which is contrary to the scheme.

I also asked about the money which appears to have funded transactions three and four. This was from Mr Y's friend K and was referenced 'loan'. Mr Y says this was repaid to K. The explanation around this seemed quite complex and convoluted - involving his father repaying the money to K for some machinery he owed Mr Y. I'm not entirely satisfied with the repayment explanations. The evidence supplied does not add up to the loaned amounts (only £7,500 of the £15,000) and doesn't show the name of the owner of the account paying the sums to K. I also find it odd that Mr Y still had funds in the loan at the point K lent him money - so it's not clear why he needed to borrow money temporarily from K.

Overall given my findings above - I don't think it would be safe, fair or reasonable to ask Lloyds to refund anything further.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 7 February 2024.

Kathryn Milne
Ombudsman