

The complaint

Miss C complains that Lloyds Bank PLC won't refund money she lost, after she said she'd fallen victim to a scam.

What happened

I issued my provisional decision on this complaint on 29 June 2022. The background and circumstances to the complaint and the reasons why I wasn't provisionally minded to uphold it were set out in that decision. I've copied the relevant sections from that provisional decision here, and it forms part of this final decision.

Miss C has told us that she met a person online and started a relationship that spanned over around three years. She's told us that early in their relationship her partner had asked her to lend him money, but she had declined. Miss C said she sadly lost her brother in September 2019, and shortly after this she began to spend more time with her partner – visiting him several times at his home. She's told us that she was introduced to his family, friends and neighbours, which convinced her his advances were genuine.

By December 2019, Miss C has said that her partner had gained her trust to the extent that she agreed to enter into a property rental partnership with him. She's told us her partner already had a rental property and so she felt she could trust him with the knowledge and experience he had. She's said she was convinced by her partner to look for a property in a certain area, so they would be able to rent it out to his family. Miss C says she completely trusted her partner and, as a result, she was coaxed to allow the first property purchase to cater for his family. Miss C explains that within a matter of weeks of agreeing to this, a limited company was set up and her partner encouraged her to sign on as a director of the company. She said as she trusted him completely, she agreed to sign documentation without reading it or taking advice.

Miss C was told money was needed upfront for a deposit for the purchase, so she agreed to invest her savings of £35,000 and drew a cheque for this amount, which she gave to her partner. Miss C has said her partner had told her he wanted the money in his account and she trusted him to hold the funds for the property purchase. Miss C's explained she chose to issue a cheque, rather than make a bank transfer, as it was the most convenient method for her at the time and she's never been comfortable with online banking. The cheque was initially returned unpaid, but then cleared Miss C's account on 1 July 2020.

Miss C says after giving her partner the money, she noticed that he was becoming more distant and less and less responsive. Shortly after this she confronted him, after discovering he was with somebody else and she told him she wanted her money back, which she's said at the time he agreed to. Miss C has said she didn't receive the money back and he stopped messaging her thereafter. She's told us that she tried to contact him, but in their last conversation he made threats towards her and her family.

In an attempt to try and recover her money, Miss C decided to proceed with the preliminaries for the property purchase. She was hoping that she'd be able to stop the sale, after her partner had sent the funds for the purchase, and she'd then be able to recover the funds at

the point of exchange/ prior to exchange. Miss C contacted the solicitors and instructed them that exchange shouldn't happen without her authority and signature. The emails and mortgage offer show that the property was being purchased in the name of the company that had been set up, with Miss C and her partner as directors.

It is Miss C's belief that she was engaged in the venture purely for her partners personal gain, so that he could obtain a limited company for himself in order to help him out with his financial problems and that she has been scammed. From what the evidence suggests, the property purchase didn't end up going through.

Miss C has said when she initially raised the matter with Lloyds, she was told there was nothing that could be done as the cheque had been cashed. Miss C believes that time has been lost in trying to recover her money. Lloyds issued its final response to Miss C in September 2020, not upholding her complaint. In summary it said that this was because, due to the method of payment Miss C had used, it was unable to support her in retrieving the funds.

Unhappy with Lloyds response, Miss C then brought her complaint to our service. One of our investigators looked into things, but didn't think the complaint should be upheld. In summary he said this was because a cheque isn't considered a payment service under the Payment Service Regulations ("PSRs"), so it wasn't monitored in the same way as say a faster payment or a debit card payment. He added that even if, when it was going through clearing, the cheque had triggered and led Lloyds to make further enquiries, he didn't think it would have made a difference and Miss C would have still gone ahead with the payment. He said this because, Miss C was a director of the property business at the time, and he didn't think there would have been any reason for Lloyds to challenge her.

Miss C didn't agree with our investigator's opinion. In summary she said:

- *The investigators findings were hypothetical and only a matter of opinion and she maintained that Lloyds should have been able to recover the money from her ex-partner's account.*
- *She had hired a solicitor, to try and help her get the money back, but it is a long process and she doesn't have the funds to pursue it with no certainty of getting her money back.*
- *Directorship of the company was assigned without her knowledge, with her only discovering this much later.*
- *Her partner had suggested that she lend him money previously and there was ever increasing pressure from her partner, after he had learnt that she had some savings.*
- *Her vulnerability was heightened following the passing of her brother.*
- *She thought the funds were being paid into a joint account, where she would still have access to her funds.*
- *She hadn't written the payee details on the cheque, not due to negligence, but because she thought the funds would be paid into a joint account. She only learnt after the cheque had been deposited that her partner had made himself the payee. But he assured her at the time that he would hold the monies on trust, which she trusted he would do.*

- After the cheque had initially been returned, her partner drove her to a branch of Lloyds to resolve things. Where again he reassured Miss C that he would hold the funds on trust until the joint business account had been set up. Miss C says that the person in branch did not make any additional checks or enquiries.
- Lloyds had a duty to protect customers from financial harm as a result of fraud or financial abuse.
- The fraud has consumed her for over a year and she suffers from anxiety and bouts of depression as a result.
- To this day, she's said still doesn't know what happened and whether what her partner said was actually true or false. She believed whole heartedly that her partner was genuine with the investment. But now believes her money was stolen.

As agreement couldn't be reached, the complaint has now been passed to me for a decision.

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 don't currently think that I can fairly instruct Lloyds to refund the payment to Miss C. I realise this will be very disappointing news for Miss C – especially considering how I can see this has been a very difficult time for her and I was very sorry to hear that Miss C's brother had passed away.

I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No courtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

It's understandable having lost such a significant sum why Miss C feels she has been the victim of a scam. But not all cases where individuals have lost significant sums are in fact fraudulent and/or a scam. I have taken account of the Fraud Act 2006, which defines 'fraud' as, amongst other things, dishonestly making a false representation, whether express or implied, in order to make oneself a gain or cause another loss; and a representation is false if it's untrue or misleading and the representor knows that it is or might be untrue or misleading.

I can understand entirely why Miss C feels so strongly about what has happened. But, with what I know and on balance, I can't safely say with any certainty, that there was an intent here to set out to defraud her. I say that as there are a number of factors in the circumstances of this case that do not carry the typical hallmarks of this being a scam. I'll explain why.

Miss C had known her partner for a number of years and had been introduced to his family, friends and neighbours - this is not typical of how fraudsters would usually operate. But, I accept that it is possible for scammers to target both people that they have met only online and people that they have gotten to know through ongoing face to face interactions. So this in and of itself, doesn't exclude the possibility that Miss C was scammed. It is not the

method used by a fraudster that is determinative here, but rather, what their intention was and was it to set out to obtain money by deceiving her.

Miss C has said that directorship of the company was assigned without her knowledge, but I'm mindful she's also told us that she was encouraged to sign on as a director. I think this indicates that it was more likely than not, Miss C was aware that a company was being set up and that she was part of. I'm persuaded this is supported by Miss C telling us that, when discussing the investment with her partner, they spoke about it being joint ownership with a 50 / 50 split. It is not typical for a fraudster to set up a limited company with their victims. I wouldn't expect a fraudster to want to have the obvious longer term ties and links to somebody they intend to defraud, that a limited company would bring – particularly given that in the circumstances of the investment here, there would have been no need for a limited company to have been set up. This suggests to me that there was more likely the intent to genuinely enter into a business venture.

Miss C's partner, at least for a time, was still contactable after she had made the payment and the purchase of the property seemingly didn't fall through until sometime after the relationship with her partner had broken down. This is not typically the case with fraudsters, who more often than not are not able to be contacted after they have taken a victim's money.

It is inherently difficult for a bank or an Ombudsman scheme to determine whether Miss C was deceived into a false relationship which can only have been for the purposes of taking money from her or whether it was a genuine relationship that had broken down. And I'm mindful that Miss C has herself said, that to this day, she still doesn't know what happened and whether what her partner said was actually true or false.

Given that the circumstances of this particular case, don't display the hallmarks most typically associated with this type of scam, on balance, I can't safely say this situation meets the high legal threshold and burden of proof for fraud. Having concluded that I can't safely say this was a scam, there is nothing further for me to consider, as a bank has no obligation to protect its customers from bad bargains/investments or give them investment advice.

A bank does not have to intervene with authorised payments, and cannot be held liable for alleged losses, when there is in fact no fraud or scam, or if the payer has regrets or second thoughts after the event. Indeed, a bank's principal duty is to obey its customer's payment mandate under the terms and conditions of the account contract (and of course the customer's ancillary contract with the third-party payee, e.g. a retailer, creditor, supplier, etc). This position has long been recognised at common law. So, if it fails to comply with a validly executed payment order, the bank could be held liable in damages – as could the drawer (i.e. payer) where the payment method used is a cheque.

Miss C's submissions in parts relates to the 'BSI Code of Practice: PAS 17271: 2017 Protecting customers from financial harm as a result of fraud or financial abuse'. And I'm conscious our investigator, explained in their view that they didn't think an intervention would have made a difference here. Where we have not surmounted the initial hurdle of concluding that something was fraud, I'm not required to make a finding on whether a bank should have been triggered and intervened in a case. In my judgment, these are not relevant to the facts of this particular case, as there is no responsibility for Lloyds to refund Miss C. That said, I am very mindful that Miss C has raised concerns that Lloyds did not do enough to protect her which has contributed to the overall loss that she has suffered. So, for completeness and for the avoidance of any doubt, I think it would be useful for me to add that even if I were to consider this was a scam, which for reasons explained above, I don't. I still wouldn't consider that Lloyds would be liable to refund the money Miss C has sadly lost.

I say this as I would need to be persuaded that the bank's intervention would have made a

difference and prevented the payment from being made. I have to base my findings on the balance of probability – that is, what I think is more likely than not to have happened, taking into account what I know. Here, even if Lloyds had asked Miss C further questions, that I could reasonably have expected it to ask about the purpose of the payment she was making, I think it's more likely than not that she would have still gone ahead and made the payment.

I say that as the payment was intended for a property, that she was investing in with her partner, who she had been in a relationship with for many years. I think it would also have been apparent that a limited company had been set up, that Miss C was part of and, at least at the time, Miss C completely trusted and believed things were genuine.

Overall I think Miss C would have been able to answer any questions Lloyds asked her plausibly and I don't think it's more likely than not the answers she would have given, would have given Lloyds cause for concern that she may be at risk of financial harm.

I'm extremely sorry to hear about what has happened to Miss C. I realise how upsetting this is for her. I can understand entirely, given the significance of her loss, why she believes she has fallen victim to a scam and feels strongly that her money should be returned to her.

However, ultimately, Miss C paid a sum by cheque for what appeared to be – at least at the material time – a legitimate property investment she was engaging in with her then partner. There is no evidence that Lloyds had – or ought reasonably to have had – concerns about the payment she was making. I therefore conclude that it didn't act unfairly or unreasonably when settling the payment instructed by Miss C.

Miss C has my considerable sympathies. She's found herself in an unenviable situation where she's paid a substantial amount of money for an investment that hasn't materialised. And I understand the whole experience has been deeply upsetting for her and I don't underestimate her strength of feeling and the impact this has had on her. But overall, for reasons explained I'm minded to say that Lloyds cannot fairly or reasonably be held liable for Miss C's loss in these circumstances.

I can see Miss C has mentioned she's hired a solicitor and spoken about taking matters through the courts. Miss C doesn't have to accept any final decision I issue, and if she doesn't it won't be binding on her. Subject to any time limits or other restrictions a court might impose, Miss C's right to pursue a legal remedy won't have been prejudiced by our consideration of this complaint.

For the reasons I outlined my provisional decision was not to uphold Miss C's complaint.

I gave Miss C and Lloyds until 13 July 2022 to provide any further evidence or arguments that they wanted me to consider before I made my final decision. Miss C responded and requested an extension, to allow her to assess the matter properly and seek professional advice. Miss C was granted an extension of two weeks, to 27 July 2022, to provide any further submissions.

Lloyds responded to say that it agreed with the provisional decision. Miss C was unable to provide any further submission within the extended deadline and so the case has now been passed to me to decide.

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 see no reason to depart from my provisional finding not to uphold my complaint.

As I said in my provisional decision, I appreciate my findings will be disappointing for Miss C, but for all of the reasons explained in my provisional decision I don't find that Lloyds can fairly or reasonably be held liable for Miss C's loss.

I understand that Miss C wanted further time, in order to provide further submissions. But I'm satisfied that all the key information and considerations of this complaint have been outlined in my provisional decision. And given the length of time this case has been with this service and since the investigator shared his first opinion (just under twelve months ago, at the time of the provisional decision) and as an extension had been granted after the provisional decision, I saw no reason to extend the deadline any further.

I would reiterate to Miss C that it is important to point out that we're an informal and impartial dispute resolution service, set up as a free alternative to the courts. Miss C doesn't have to accept my final decision on her complaint. If she doesn't, it won't be binding on either party and subject to any time limits or other restrictions a court might impose, her right to take legal action against Lloyds won't have been prejudiced by our consideration of her complaint.

My final decision

My final decision is that I don't uphold this complaint against Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 25 August 2022.

Stephen Wise
Ombudsman