

The complaint

Mr and Mrs M are unhappy because Lloyds Bank PLC (“Lloyds”) did not reimburse them after falling victim to an ‘authorised push payment’ (“APP”) scam.

While the complaint was referred by both Mr and Mrs M, to make my decision easier to read, I refer only to Mr M as he made the payment that is in dispute. I mean no discourtesy in taking this approach.

What happened

The background to this complaint is well-known to both parties, so I won’t repeat it all here. But briefly, and based on the submissions of both parties, I understand it to be as follows.

Mr M was looking to purchase a car. Mr M used a car brokering service (whom I’ll call “C”) that purported to purchase motor vehicles for its customers. Mr M paid an initial fee of £395 to C and after some unsuccessful bids Mr M spotted a car that he was interested in. Mr M registered his interest and C sent Mr M a ‘buy it now’ invoice for £14,150 for the purchase of the vehicle.

On the invoice, Mr M noted that the account details quoted were different to the account details he had previously paid the £395 fee to. Mr M says he queried this with C. He says he was advised that it was a different bank account but that these were the correct details and the account he was paying received transfers quickly. So he went ahead and made the payment of £14,150 on 8 June 2021.

Later on in the day Mr M tried to get an update from C without any reply. He’s told us the next day he discovered the car he had thought he had paid for through C under the ‘buy it now’ invoice was still showing as for sale - listed as up for auction.

Mr M says C told him that it ‘could not secure the vehicle’ but it didn’t refund him. He’s told us he was given various excuses by C as to why it couldn’t provide a refund.

Mr M contacted the car auction who sold the car. The car auction confirmed to Mr M that the car was sold during a live online auction a few days after Mr M had paid C and the car was sold for less than the price Mr M paid C.

Unhappy that he didn’t have the car he thought he had paid for, or a refund, Mr M contacted his bank to report the matter.

Lloyds initially told Mr M to wait to see if C would provide a refund.

When Mr M didn’t get a refund, and after receiving some advice, he contacted Lloyds again.

Lloyds considered the complaint under the Lending Standards Board Contingent Reimbursement Model (“CRM Code”). This is a voluntary code that Lloyds has signed up to and it requires firms to reimburse customers who have been the victims of APP scams in all but a limited number of circumstances.

The circumstances where a firm may choose not to reimburse include (so far as they might be relevant to this complaint) where the firm can establish that:

- the customer ignored an 'effective warning' by failing to take appropriate steps in response to that warning; or
- where in all the circumstances, the customer made the transfer without a reasonable basis for believing that: the payee was the person the customer was expecting to pay, the transfer was for genuine goods or services, and/or that the person or business with whom they transacted with was legitimate.

When assessing whether it can establish these things, the firm must consider whether they would have had a 'material effect on preventing the APP scam'.

Initially Lloyds reimbursed Mr M in full for the first payment of £395. And it accepted liability in part for the second payment and re-imbursed 50% of the £14,150 payment Mr M made – so £7,075.

When Mr M received the £7,075, he contacted Lloyds to find out what the payment amount was for. Mr M says he wasn't provided with the best service at this point, and it wasn't clear what was being refunded and why or what the next steps were. Mr M says he was told that Lloyds was waiting on information from the receiving bank (the bank whom the payment was made to) and a review by a manager.

Ultimately Lloyds did review the matter. And in doing so concluded it had refunded Mr M in error. Lloyds noted that under the CRM Code civil disputes aren't covered. Lloyds considered this was a civil matter between Mr M and C. Lloyds agreed that it wouldn't seek to recover the funds it had already paid Mr M.

One of our investigators looked into the complaint, and at that time, she also thought the matter might be a civil dispute between Mr M and C.

Mr M disagreed and remained of the opinion that he was the victim of a scam as C never intended to purchase the vehicle and couldn't provide him with a refund. Mr M considered under the CRM Code he should be reimbursed in full.

As the matter wasn't resolved, it's been passed to me to decide.

Having reviewed what happened, I was persuaded Mr M was the victim of an APP scam. I considered the payment he made can be considered under the provisions of the CRM Code and the exclusion relating to private civil disputes had not been fairly applied by Lloyds and Mr M's claim should not be excluded on that basis. I was also of the opinion that under the CRM Code there were no other exceptions to reimbursement that could be applied. So I thought Mr M should be reimbursed the remaining amount he lost in full.

I contacted both parties, informally, to let them know of my initial thoughts and that Mr M should be reimbursed the outstanding loss. Mr M agreed. And Lloyds asked for final decision setting out and formalising my findings.

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.

I'm very aware that I've summarised this complaint and the responses briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here – which is to determine whether Mr M was the victim of an APP scam or whether Lloyds acted fairly in considering the matter to be a civil dispute meaning Mr M's payment wasn't covered by the CRM Code. 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 an alternative to the courts.

Having carefully considered Mr M's complaint, I am satisfied that under the terms of the CRM Code, Lloyds should reimburse the money Mr M lost in full. I'll explain why.

Why I consider Mr and Mrs M should be reimbursed under the CRM Code

The CRM Code states:

“DS2(2) This code does not apply to:

*(b) private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier;” **

*Subsections (a) and (c) have been omitted as they are not relevant to this complaint.

Lloyds argue this it is a civil matter between Mr M and C, not an APP scam.

Having carefully considered this aspect and information around (which includes third party information from the receiving bank and the car auction company), I'm persuaded Mr M was the victim of an APP scam. I consider the payment he made can be considered under the provisions of the CRM Code and the exclusion relating to private civil disputes has not been fairly applied by Lloyds and Mr M's claim should not be excluded on that basis. I'll explain why.

In this case, I have also been provided with evidence about C around the time Mr M made payment to it. However, I can't disclose the in-depth details, due to data protection laws. But I have taken it into consideration in determining this case.

So, here, I have to take all the above into consideration and determine whether I think C obtained funds from Mr M without having the intent to use those funds in the way they were intended, causing Mr M a financial loss through deceit.

Based on the circumstances of this case and the information I have seen and been provided with, I'm persuaded on balance that Mr M was deceived into making a payment in which there was seemingly no intent from C to use the funds Mr M paid it, to buy the car – through the 'buy it now' invoice it had sent Mr M.

Mr M made the payment under the 'buy it now' option and the car auction has confirmed to Mr M that the car was not purchased under the 'buy it now' option. It was in fact sold through a 'live auction' two days later. So, in this case, C had obtained funds from Mr M – under the agreement that it would purchase the car from the car auction through 'buy it now' – but it didn't. Importantly it then wasn't able to refund Mr M either.

So it seems to me C obtained monies from Mr M and had no intent to use them in the way agreed and then didn't have the ability to refund Mr M. To my mind, it can fairly and reasonably be said Mr M can be classed as the victim of deceit by C in which he lost money and he can therefore be classed as being a victim of an APP scam and one that is within the remit of the CRM Code.

Lloyds, in its submissions on this case, has commented that it wouldn't have known C was no longer operating in good faith and explained that once it became aware it has considered complaints about payments made to C.

However, I am mindful that the CRM Code was designed / implemented to reimburse customers that have fallen victim to a scam.

So the test I have to apply is not what Lloyds knew at the time and what it could have possibly done to prevent it – but whether a consumer (in this case Mr M) who lost money through deceit can be classed as a victim of a scam – and therefore have their claim considered under the CRM Code.

In the circumstances of this case, and as explained above, I'm satisfied Mr M can be deemed as being a victim of a scam meaning Mr M's claim can be considered under the CRM Code.

I don't think it is fair or reasonable for Lloyds to only consider complaints or claims made by those consumers who made payments once it was aware of the issue surrounding C. I consider this is too narrow a view to take and is unfair on Mr M who paid money to C as a result of intentional deception by C. And I'm mindful that those instances of the C not acting in good faith ultimately led to Lloyds becoming aware of the issue.

I appreciate Lloyds wouldn't have known about C until the issue became more widespread. But as explained, that isn't the point nor the test here. The test I have to apply is whether Mr M who lost money through deception can be classed as being a victim of a fraud / scam and therefore have his complaint looked at under the voluntary CRM Code, of which Lloyds is a signatory.

Taking all the above into account, and in the circumstances of this case, I am satisfied the payment Mr M made *can* be considered under the provisions of the CRM Code for the reasons already explained and it isn't a civil dispute.

Are there any other exceptions to reimbursement under the CRM Code?

When considering the CRM Code, I don't think there are any exceptions to reimbursement that apply. In short, Mr M had a reasonable basis of belief for believing the person or business with whom he transacted with was legitimate. Mr M simply wasn't to know at the time of making the payment that C would obtain funds from him with no intent to purchase the vehicle it said it would.

And because of this, I'm also mindful that in this instance no warning would have had a material effect on preventing the scam. So I don't think Lloyds can choose to decline reimbursement on the basis that Mr M ignored an effective warning.

Lloyds initially reimbursed Mr M in full for the first payment and then 50% of the second payment and it isn't seeking to recover that. So it follows that I consider that Mr M should now be reimbursed the remaining loss.

The level of service Mr M received

I understand that Mr M was unhappy with the service he received from Lloyds. Lloyds recognised this and offered £100 which wasn't accepted by Mr M at the time. Having reviewed this aspect, I do think Lloyds could have been clearer in its actions when Mr M reported the matter. It logged the matter as a scam, and reimbursed Mr M the first payment and 50% of the second payment (£7,075). Mr M wasn't informed what the £7,075 was for and was also given conflicting information about what was to happen. There was also a delay in matters and then Lloyds ultimately informed Mr M that it considered it had paid him in error and the matter was a civil dispute. I think Lloyds could have gathered enough information from the outset and made its determination. I don't think £100 is sufficient compensation for the distress and inconvenience caused and it should increase this to £250.

Putting things right

Lloyds Bank PLC should:

- Refund Mr and Mrs M the remaining money lost to the scam (that being £7,075.00).
- Pay interest on that amount at 8% simple per year from the date their claim was declined under the CRM Code until the date of settlement. †
- Pay Mr and Mrs M £250 (in total) for the distress and inconvenience caused.

† HM Revenue & Customs requires Lloyds Bank PLC to take off tax from this interest.

Lloyds Bank PLC must give Mr and Mrs M a certificate showing how much tax it's taken off if they ask for one.

My final decision

For the reasons explained, I've decided it is fair and reasonable to uphold Mr and Mrs M's complaint about Lloyds Bank PLC.

I direct Lloyds Bank PLC to pay compensation, as set out above, within 28 days of receiving notification of Mr and Mrs M's acceptance of my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 11 January 2023.

Matthew Horner
Ombudsman