

The complaint

Ms L complains that Lloyds Bank PLC won't refund the money she lost, after she fell victim to an investment scam.

What happened

Ms L had been looking for somewhere to place her money where it would earn greater interest than if it was with her bank. She told us she'd spoken with the bank about other accounts or investments but said it didn't come up with anything. Because of this, she looked for investment opportunities herself.

Ms L looked online and says she came across an advertisement to invest in precious metals. While she can't recollect the website she saw the advert on at the time, she recalls leaving her contact details when filling out a form so that she could be contacted with more information.

Following this, Ms L received a call. Unbeknown to her at the time she was speaking with a fraudster. The fraudster told Ms L about investments available with his company, which I'll refer to as B. She was sent a booklet and looked B up on Companies House. Ms L says she saw B existed and that the literature she received was in her opinion professional.

After further contact, Ms L decided to proceed with a £10,000 investment in a one-year bond, which B told her would attract an interest rate of 9.31%. On 3 November 2020, Ms L attended a Lloyds' branch to make the payment of £10,000 to the account details B had given to her. After making the payment, B sent Ms L confirmation that the funds had been received, along with a bond certificate for her investment.

Ms L has explained she contacted B not long after making the payment to say she'd changed her mind and wished to withdraw her money. Ms L explained to our Investigator that she got afraid which is what prompted her to want to withdraw her funds. She added that the process began to feel stressful – she'd parted with money when it had been safe up until that point. Ms L told us that her doubts about the £10,000 payment came as she'd started to have doubts about the security of it. Ms L recalls B told her that it would cost her a lot of money to change her mind - something about three figures. Ms L explained that her fear was about losing more money when she'd already paid £10,000. As Ms L didn't wish to pay out more money, she thought she'd leave her money and look at it again in a years' time - given she was under the impression she'd invested her funds for a year and then would look at it again. Ms L clarified that she didn't feel threatened and, that when B told her about the three figures she'd need to pay if she changed her mind, she thought B was telling her a fact.

B contacted Ms L again a few weeks later and after this contact Ms L visited a branch as she wished to make a payment of £100,000 for a further investment. A note from Lloyds indicates it spoke with her about the payment on 12 November 2020 and after discussing what the investment was offering there were concerns and, it thought the bond which she was told would attract an interest of 13.5% was too good to be true. It also says there were

further concerns regarding possible Ponzi schemes. Whilst Ms L says the bank didn't mention a scam to her, she decided not to proceed with the payment at that time.

Ms L was approached again by B in March 2021. Ms L has told us she was abroad at the time due to her holiday being extended as a result of the pandemic. She says B was in contact with her fairly regularly – more than once a week. Ms L has told us that it was like a friend reconnecting with her and seeing if she'd done anything about her investment.

To help with the background of what happened, Ms L has explained other circumstances that took place as a result of being abroad for an extended period. On 17 March 2021 Ms L attended court, along with two others in relation to a visa and being in the country over 90 days as a result of the pandemic.

During their contact, B told Ms L about an opportunity that was available - a bond that would attract interest of 11.1%. Ms L decided to go ahead. Between 26 March 2021 and 31 March 2021, she proceeded to make four separate payments of £24,950 (totalling £99,800) to the account details provided by B.

Ms L says after making the payments she heard nothing more from B and she became concerned she'd been the victim of a scam.

In April 2021, she contacted Lloyds to report the scam. Having looked into the matter, Lloyds said it would refund 50% of the third, fourth and fifth payments Ms L made. It didn't think it was liable for the remaining money Ms L had lost. Lloyds didn't consider it was liable to refund 50% of payments one and two on the basis that it felt an effective warning was given in branch for the first payment and that it couldn't have done anything more to protect her when the second payment was made. Lloyds did pay Ms L £100 compensation in recognition of the delay in responding to her complaint. The scam was reported in April 2021, but a final response letter wasn't issued until November 2021.

Ms L remained unhappy and so she brought her complaint to our service. One of our Investigators looked into things and she upheld the complaint in part. In summary, she didn't think Lloyds had met its standards by providing an effective warning (in branch for payment one or online for payment two) as required under the Contingent Reimbursement Model (the CRM Code), which it is a signatory of. She added that she was also satisfied the payments were out of character for her account and, therefore, warranted staff intervention. Had the bank intervened and asked questions she was satisfied it would've made a difference – given that its intervention in November 2020 (when Ms L wished to make a payment of £100,000) prevented her from proceeding with the payment at that time.

However, she didn't think Lloyds was liable to refund Ms L in full. She thought there was enough going on that Ms L ought to have had concerns about the transactions she was making. On this basis, our Investigator recommended Lloyds refund 50% of Ms L's overall losses. As it had already reimbursed 50% of payment three, four and five, she directed Lloyds to refund 50% of payments one and two, along with interest calculated at the monthly average rate for a one-year fixed rate bond as published by the Bank of England. In addition to the £100 compensation Lloyds had already paid, she thought an additional £150 (£250 compensation in total) should be paid to reflect the distress and inconvenience caused to Ms L. She thought had the bank contacted her about the payments, the spell would've been broken, and the impact of this scam would've been significantly reduced. This recommendation also reflected the delays caused by the bank in issuing a response to her complaint.

When reaching her view, our Investigator considered what Ms L had said about being vulnerable at the time of the later payments (March 2021) whilst abroad. Whilst she

acknowledged Ms L was vulnerable when delayed abroad, she didn't think these vulnerabilities meant Ms L was unable to protect herself from the scam she fell victim to – which was an investment scam. Therefore, she didn't conclude Ms L was more susceptible to the specific type of scam she felt victim to under the CRM Code.

Both Ms L and Lloyds accepted our Investigator's view. However, Ms L came back to our Investigator and asked that the case be re-opened, and the case considered by an ombudsman. This was because she considers she was vulnerable at the time of the scam and when making the payments. Therefore, under the CRM Code Ms L believes she should be reimbursed all the money she's lost.

In the further contact with our Investigator, Ms L said she feels she was unable to protect herself from the scam when making the later payments in March 2021, because of her vulnerable situation being delayed abroad. She's explained she was lonely and isolated, and she thought B had her back financially.

Having considered Ms L's response, our Investigator reiterated she felt Ms L was in a vulnerable position at the time (due to the background circumstances), but that she didn't think these vulnerabilities made Ms L vulnerable and more susceptible to the scam she fell victim to and so her recommendations remained unchanged.

As an agreement couldn't be reached, the complaint has been passed to me to reach a final decision.

For completeness, after Ms L's initial acceptance of the Investigator's view Lloyds proceeded to refund 50% of payment one and two as per the recommendations (£17,475). As the case has been re-opened and passed for a decision it has not yet paid the additional compensation of £150 or the interest.

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.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the consumer made the payments as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the transactions.

These were 'authorised payments' even though Ms L was the victim of a scam. Ms L made the payments herself. So, although Ms L did not intend the money to go to a fraudster, under the Payment Services Regulations 2017, and the terms and conditions of her account, Ms L is presumed liable for the loss in the first instance.

Of particular relevance to the question of what is fair and reasonable in this case is the Lending Standards Board's voluntary Contingent Reimbursement Model (the CRM Code), to which Lloyds is a signatory.

The CRM Code requires firms to assess whether a customer was vulnerable to the APP scam they fell victim to at the time it occurred. The relevant sections state:

"A Customer is vulnerable to APP scams if it would not be reasonable to expect that Customer to have protected themselves, at the time of becoming victim of an APP scam, against that particular APP scam, to the extent of the impact they suffered.

This should be assessed on a case-by-case basis.

In these circumstances, the Customer should be reimbursed notwithstanding the provisions in R2(1), and whether or not the Firm had previously identified the Customer as vulnerable. [...]

Factors to consider include:

(a) All Customers can be vulnerable to APP scams and vulnerability is dynamic. The reasons for dynamics of vulnerability may include: the personal circumstances of the Customer; the timing and nature of the APP scam itself; the capacity the Customer had to protect themselves; and the impact of the APP scam on that Customer

(b) A Customer's personal circumstances which lead to vulnerability are varied, may be temporary or permanent, and may vary in severity over time

(c) APP scams may include long-running APP scams or in the moment APP scams."

With the above in mind, I've thought very carefully about Ms L's situation and background circumstances. Within her submissions Ms L has explained why she feels she was vulnerable at the time she made the payments in March 2021 (as set out above under what happened). I know this will come as a disappointment to Ms L, but having carefully thought about everything she has told us I'm not persuaded, on balance, that the individual factors she's described made her more vulnerable and susceptible to this type of scam.

I'd like to assure Ms L that I do appreciate she was in a vulnerable situation by being abroad longer than she intended to be due to the pandemic and that she was unable to return home – which will have been upsetting and stressful for her. But Ms L has told our Investigator that she didn't feel her finances were at risk – that she felt her money was safe in the account it was currently held in with the bank but that equally at the time she felt her money wasn't at risk when she made the payments to B as she trusted him.

Whilst I also accept Ms L says when B got back in touch it was like an old friend coming back into her life, I am also mindful that Ms L was staying abroad in accommodation with a friend that she knew would be abroad at the same time – someone she knew from the UK. Someone I understand Ms L mentioned the investment to. All in all, I'm not persuaded Ms L's perception of the possible risks was significantly and adversely affected by the circumstances at the time.

Lloyds agreed to the recommendations of our Investigator's view, so I'm satisfied the bank accepts that it didn't provide an effective warning for all of the payments Ms L made. As set out above, Lloyds has now refunded half of Ms L's total losses as a result of the scam.

However, in declining to reimburse Ms L in full, it is for Lloyds to establish that one, or more, of the listed exceptions set out in the CRM Code itself. Those exceptions are:

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

There are further exceptions within the CRM, but none of these are applicable here.

Lloyds considers Ms L should be liable for the remainder of her loss on the basis that she made the payments without a reasonable basis for believing that the investment was genuine.

After carefully considering all of Lloyds' submissions, I'm satisfied it has shown one of the listed exceptions applies here. I'm not persuaded Ms L had a reasonable basis for believing that the payments she was making was for genuine investments from the outset. I know this will come as a disappointment to Ms L so I will now explain why:

- Ms L was contacted by B after leaving her details following the advert, she'd seen about investing in precious metals. Ms L told us she checked Companies House and received a booklet from B. Ms L told us the booklet she received from B - about the company and what it was offering looked professional and she had no reason to doubt what it was saying. Ms L no longer has the booklet and so it's not been possible to see the booklet. This said, I've seen no reason to doubt Ms L's personal views about the booklet she received. However, Ms L has confirmed she carried out no other checks into B or the investment she was being offered. I've not seen anything that indicates Ms L was aware of B prior to leaving her details after seeing the advert online. From what I've seen and been told, it appears that Ms L took what B had told her largely at face value. Given that she was looking to invest £10,000, I think Ms L ought fairly and reasonably to have carried out more research to satisfy herself about B and the investment she was looking to make.
- The initial one-year bond Ms L was investing in was offering interest at 9.31%. I think this was too good to be true. I recognise Ms L says she thought this was possible as it was for precious metals and not a standard bond with a bank. But she didn't take steps to verify what was being offered to satisfy herself about what she was being offered. Given the interest rate offered, I'm persuaded Ms L ought to have proceeded more cautiously before making the payment.
- I'm further mindful that following the initial payment of £10,000, Ms L says she changed her mind and spoke to B as she wished to withdraw her money as she had some concerns over the security of her funds. She was told she'd incur a large charge if she did so and as a result, she decided to leave her money in the investment as she didn't want to pay out more money. I think Ms L ought to have had concerns about what B had told her in regard to the large charge in the event she wished to withdraw her money.
- I'm further mindful that in November 2020, after making the initial payment, Ms L wished to invest a further £100,000. She visited a branch to make this payment but after speaking with the bank she decided not to proceed after concerns were raised about the interest rate being too good to be true and concerns that it might possibly

be a Ponzi scheme. Three months later Ms L proceeded to make four payments of £24,950 after B got in contact with her about another investment opportunity. I recognise Ms L has said that due to the distance in time between the earlier £10,000 payment and when she decided not to go ahead with the £100,000 investment, these weren't in her mind at the time of making the payments in March 2021. Whilst I recognise Ms L says the earlier payments weren't in her mind and that B reconnecting was like an old friend coming back into her life, I've not seen anything that shows Ms L carried out any checks into the new investment that was offered. This new investment bond was offered with an interest rate of 11.1% which was higher than the initial bond she'd invested in. I think the rate offer was too good to be true. This combined with the other factors, such as her contact with the bank in November 2020, albeit she didn't recall this at the time, I think ought to have caused her some concern about what B was offering her in March 2021 and ought to have prompted her to proceed more cautiously.

I'm mindful that, taking any of the individual factors above in isolation, they may not have been enough to have prevented Ms L from proceeding to make the payments. But when taken collectively and considering the specific circumstances of this case and the factors in the round, on balance, I think that there was enough going on and sufficient red flags that Ms L ought reasonably to have taken further steps to protect herself from the risks.

With all things considered, for the reasons explained above, I can't fairly say that Ms L had a reasonable basis for believing that she was making payments towards legitimate investments.

I am sorry to have to deliver this news to Ms L. I know this wasn't the answer she was hoping for. But, for the reasons I have explained, I cannot fairly say that Lloyds should fairly and reasonably be held fully responsible for the loss Ms L has sadly suffered.

Finally, I've considered our Investigator's recommendation that Lloyds should pay a further £150 compensation in recognition of the distress and inconvenience Ms L experienced as a result of the bank's actions, such as, the delay in providing its final response. Lloyds agreed to pay a further £150 and so it has accepted there are things it could've done better. Overall, I'm satisfied a further £150 compensation in addition to the £100 already paid (£250 in total) is fair and reasonable in the circumstances of this case.

Putting things right

Ms L has confirmed she's received the 50% refund for payments one and two from Lloyds, which she initially accepted following our Investigator's view. The bank informed our service after being notified that our service was re-opening the complaint for an ombudsman's decision that it would hold off making the payments in respect of the interest recommendation and the £150 compensation payment.

In light of my findings above, Lloyds Bank PLC, should now:

- Pay interest on 50% of payment one, calculated using the monthly average rate for a one-year fixed bond as published by the Bank of England for the month of November 2020 and, the one-year fixed bond interest rate on the 50% refund for payment two for the month of March 2021.
- Pay a further £150 compensation (£250 in total).

My final decision

My final decision is that I uphold this complaint in part against Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 16 February 2023.

Staci Rowland
Ombudsman