

The complaint

Ms J complains that Lloyds Bank PLC (Lloyds) won't refund the money she lost as a result of a scam.

What happened

Ms J was looking to invest in an ISA offering better rates of return than she was currently getting with her other bank. She says she clicked on the first result on a well-known online search engine and registered her contact details with an investment broker (that I'll call W).

She received a call back from one of W's brokers (that I'll call C) who told Ms J about an investment opportunity with a private equity firm (that I'll call L). Ms J understood the investment to be an ISA managed by a firm (that I'll call N). She expected quarterly returns of £600, paid by another firm (that I'll call R).

Ms J was persuaded by the documentation W and L sent her that it was a legitimate investment. So, she made two payments of £10,000 to the details provided by L; one on 5 March 2020 and one of 6 March 2020. Her statements show the following credits which are believed to be returns from her investment:

- £187.10 on 1 April 2020
- £600 on 8 July 2020
- £577.57 on 8 July 2020
- £600 on 14 October 2020
- £577.57 on 14 October 2020
- £600 on 20 January 2021
- £577.57 on 10 February 2021

When she stopped receiving returns and had to chase W, she grew concerned she might have been scammed. Ms J says she was not aware of anything seriously wrong until the redemption date (September 2021) had passed. She says by this time, N had gone into liquidation and the parties involved were not answering her emails.

Ms J raised a complaint with Lloyds on 7 April 2022, during the investigation of which she requested a scam claim be raised. This was raised on 26 April 2022. Lloyds says Ms J had not raised a claim previously.

Lloyds declined to refund Ms J under the Contingent Reimbursement Model (CRM) Code, of which it's a signatory. The CRM Code sets out that Lloyds should refund victims of authorised push payment (APP) scams (like Ms J), in all but a limited number of circumstances. Lloyds said Ms J didn't have a reasonable basis for believing it was a genuine investment. It noted she did no independent checks on the firm, and had she done so she would have found a clear warning on the Financial Conduct Authority (FCA) website for L, in place since 3 March 2020. It said L confirmed on its website it was offering a high risk product which is not covered by the Financial Services Compensation Scheme (FSCS). And it said the proposed returns were too good to be true. Lloyds said it warned Ms J that it

couldn't confirm the payee's name matched the account she was paying. And it had no reason to intervene on the payments as they were in line with Ms J's usual account activity.

Ms J referred her complaint to our service and our Investigator upheld it. They said that she was eligible for a full refund under the CRM Code as Lloyds hadn't established a relevant exception to reimbursement could fairly be applied. They said Ms J didn't ignore an Effective Warning, and she had a reasonable basis for believing she was making a legitimate investment. So they recommended Ms J receive a full refund of her outstanding loss, together with 8% simple interest per year, from the date Lloyds declined Ms J's claim until the date of reimbursement.

Lloyds didn't accept the recommendation of our Investigator. It said:

- Ms J didn't have a reasonable basis for believing the investment was genuine.
 - o She didn't validate the person she was speaking to, or company she was dealing with.
 - o She assumed the companies were FCA regulated based on their documentation. She made no attempts to check.
 - o Ms J believed she was investing in an ISA but received documentation in relation to loan notes, which Ms J reasonably ought to have questioned. She should have undertaken some research into this type of investment.
 - o There was an FCA warning about the investment company prior to Ms J making payments.
- Lloyds doesn't think it was required to provide an Effective Warning to Ms J.
 - o Lloyds' primary role is to facilitate payments authorised by its customers.
 - o There was nothing revealed during the call it had with Ms J to reasonably have caused Lloyds to identify the payment had a higher risk of being associated with a scam.
 - o In the phone call it had with Ms J, she said she was investing in an ISA and the company she was dealing with was registered on the FCA website so there would have been no valid reason to question the payment further.
 - o The payment was not out of character for Ms J's account usage.
- The email Ms J received from the FCA strongly indicated she made a genuine investment rather than having fallen victim to a scam.
 - o Ms J made payments to N which was a genuine company which entered into liquidation after she'd sent the money.
 - o The evidence indicated she made a high-risk unregulated investment which unfortunately failed.
 - o Ms J received returns which would not align with a scam investment.
 - o The FCA warning since issued about L is not in itself evidence of a scam. Given the prevalence of investment scams, it's not unusual for genuine failed investments to be claimed as scams. L has since entered into compulsory liquidation.

Despite Lloyds' objections, it put forward an offer to resolve Ms J's complaint. It offered to refund 50% of the payments Ms J made less the returns she received. And pay 8% simple interest per year from the date the payments were made until the refund.

Whilst it maintained there is insufficient evidence Ms J fell victim to a scam, it considered the case again under the CRM Code. Lloyds said Ms J didn't have a reasonable basis for belief, but it agreed that when it spoke to Ms J at the time of her making the first payment, it missed an opportunity to ask further questions about the investment or provide her with relevant scam education.

Ms J did not accept Lloyds' offer. She said:

- The offer indicated Lloyds took responsibility. She thinks Lloyds needs a more robust way of ensuring money they send is safely sent.
- She says she saw on the website that L were 'approved by the FCA' and questioned whether Lloyds were suggesting she ought to have checked this the day she sent the money, as well as when deciding to enter into the investment.
- She checked out the broker and spoke to him every week until he disappeared. They were the top result on a well-known online search engine when she searched 'better ISA returns' which means they were well promoted/liked/approved of.
- She refuted the rate of return being too good to be true and commented on Lloyds recently increasing their savings account rates.

In response, Lloyds said there is no evidence to support that L was regulated by the FCA prior to the FCA warning being issued on 3 March 2020. And whilst the bank has a duty to take steps to protect customers from financial harm, customers should also take reasonable steps to protect themselves. Ms J didn't take reasonable steps to validate the companies she dealt with. Had she done so, she'd be aware they weren't regulated by the FCA. It said that the bank must make a refund decision under the CRM Code based on whether the bank and customer met their duty under the Code. And it firmly believes Ms J didn't meet the consumer standards under the CRM Code and therefore the liability should be shared.

As no agreement could be reached, this case was passed to me for a decision.

I requested further information from Lloyds to help me decide this complaint. In response, Lloyds put forward an argument that the CRM Code does not apply. It says this because Ms J sent the funds to N (a legitimate firm) who facilitated the movement of funds to L, and who were not themselves operating a scam. It referred to DS2(1) of the CRM Code which says:

This Code applies to Customers undertaking Payment Journey's as defined in DS1(2)(k):

(b) to the point of first reception of funds in an account held by a receiving Firm, (the first generation account). Firms whose accounts are utilised in the onwards transmission of APP scams are out of scope.

In response, Ms J argued it's a scam on the basis they took all her money and disappeared, the entity no longer exists, and she'd had recent contact from the Police which confirmed an eight-year banning order had been secured preventing the director of L from being a company director. She said she didn't get back quarterly dividends, nor did she get back her capital.

I also asked Ms J for further information. She maintained she genuinely believed she was buying an ISA. And the broker never made her aware her money was at risk. She didn't understand the difference between loan notes and ISAs because the broker referred to them both as ISAs.

When asked if she checked the FCA website or not, Ms J explained she received a brochure on 19 February 2020 which includes the FCA registration number. She opened her account on 28 February 2020 and the FCA warning was not issued until 3 March 2020. She questioned why she would have looked at the FCA website when she had the registration number and went through a broker. Ms J also confirmed she had limited investment experience, and limited understanding of the FCA.

Ms J confirmed she looked at the brochure from L, but she realised now she didn't understand it. But because of the way the broker referred to the investment as an ISA, and N acted as an ISA manager, and a letter from R confirmed she had transferred an ISA, she believed she was investing in a safe, government backed and tax-free ISA.

Ms J says she feels strongly that Lloyds ought to have warned her that L was not authorised by the FCA and had it done so, she would not have sent the money.

In its final comments to me before issuing this decision, Lloyds argued that the CRM Code doesn't apply because the definition of an APP scam under DS1(2)(a) was not met. This is because Ms J transferred her funds to N (a legitimate firm) as she intended to, and N's involvement was purely legitimate. It noted that N was genuinely buying an investment product of behalf of Ms J, and that whilst the investment later turned out to be fraudulent, this was a step down from the chain of Lloyds' first generation involvement. As N was not party to the end scam, the payment made from Ms J to N is not within the scope of the CRM Code.

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 reaching my decision, 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.

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.

It's not in dispute that Ms J made the payment to the fraudster herself. So, in accordance with the Payment Services Regulations 2017 (PSR 2017) she is presumed liable for the loss in the first instance.

However, as I've already set out, Lloyds is a signatory of the CRM Code which provides victims of scams with greater protection against the impact of authorised push payment (APP) scams, but only in certain circumstances. And Lloyds has raised numerous objections that the CRM Code applies to the payments Ms J made.

Does the CRM Code apply?

For the CRM Code to be relevant, Ms J would need to have been the victim of an APP scam, which is defined under DS1(2)(a) of the CRM Code as:

...a transfer of funds executed across Faster Payments...where:

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent*

Lloyds has made two arguments as to why this definition is not met; that Ms J has not been scammed, but rather her claim is the subject of a civil dispute; and that the involvement of N (a legitimate firm) means the definition is not met. I've addressed both of these arguments below.

Scam or Civil Dispute

Lloyds has firstly argued Ms J was not scammed but rather lost money to a failed investment and therefore her claim would be the result of a civil dispute. It remains unclear whether it still believes it to be a civil dispute or a scam, because it did make an offer to refund some of Ms J's loss. However, I'm satisfied Ms J did fall victim to a scam and the investment she was making wasn't legitimate. Therefore the definition of an APP scam under DS1(2)(a)(ii) is met.

In reaching this conclusion, I've firstly considered the purpose of the payments and whether Ms J thought this purpose was legitimate. I've then considered the purpose of the payments the recipient (L) had in mind at the time of the payment, and whether this broadly aligned with what Ms J understood to have been the purpose of the payments. Lastly, I've considered whether there was a significant difference in these purposes, and if so, whether the purposes were so substantially different that it could be said this was as a result of dishonest deception.

What was the purpose of the payment and did Ms J think this was legitimate?

Ms J made the payments because she thought was investing in an ISA with L, and I can't see anything which should suggest Ms J didn't think this was a legitimate purpose.

What was the purpose the recipient (L) had in mind and did this broadly align with what Ms J thought?

Firstly, Lloyds has considered N's *purpose* when deciding whether DS1(2)(a)(ii) applies. But I don't believe their interpretation of the test to be correct. It's L's actions and intended purpose for the payments which is relevant here – not N's, as N was merely acting on behalf of L who ultimately was the recipient of the funds. So I've considered whether L's purpose aligned with what Ms J understood the purpose of the payments to be.

When looking at the purpose question here, I've taken account of the wider circumstances surrounding the business and its director links and other businesses. And after reviewing all the available evidence on cases linked to L, here are the key findings:

- The director of L (who I'll call M) has been disqualified as a director on Companies House for eight years by the secretary of state. M was also the director of another firm (that I'll call S).
- M has failed to provide liquidators with accounting records for L and has said he will not be providing these.
- The FCA issued a warning about L in March 2020 saying it was providing financial services without authorisation.
- Despite saying S had assets of £34m, it never filed any accounts and wasn't independently audited at any point. Another company (that I'll call H) took over S. This company also never filed any accounts and M was the director. This company contacted investors to say their money would be safe despite N going into liquidation and then cut contact with all investors.
- Police Scotland are now investigating M, S and other linked companies.

- In some instances, S' brochures claimed to have agreements in place with Edinburgh City Council to lease local authority properties – ECC have now confirmed to our service that it had no record of any such contract or agreement with S or M.
- There is no evidence to suggest S or L were operating as legitimate companies. There is no evidence of any investments made. Some consumers received small monthly returns while others received no returns at all.

Ultimately there's no evidence which demonstrates that victim's funds were used in the manner agreed or prescribed by the businesses. Therefore, I consider this to be a significant difference in what Ms J understood the purpose of the payments to be, and the purpose L had in mind for the payments.

Was this as a result of dishonest deception?

The lack of co-operation by the directors of both companies with the liquidators and the disqualification of M persuade me that the inducement of payment by the victims was as a result of M and his businesses' dishonest deception. And with regard to L, I also consider it highly unlikely that a business operating legitimately would operate without required authorisation from the FCA.

In the absence of any convincing evidence that L was carrying out investments for the victims, I believe that the payments meet the definition of an APP scam, as per the CRM Code.

Does the additional step of Ms J paying N before the money was passed to L, mean that the payments are excluded from the CRM Code?

The involvement of a genuine intermediary does not exclude the possibility of the CRM code applying. The CRM code doesn't require the initial recipient of a payment to be an account owned by and for the benefit of the fraudster. Nor does it require that account to be controlled by a party which is complicit in the fraud. In fact, if this were to be the case, it would consequently mean that a large number of victims would not benefit from the protection of the CRM Code, as situations where the funds have gone to a mule (complicit or innocent) are common in APP scams. So, the CRM Code doesn't require the sending firm to make an assessment on whether the recipient account holder was complicit in the fraud or not.

Lloyds referred to DS1(2)(k) of the CRM Code, but the Lending Standards Board's consultation makes clear that the CRM Code can be applied to certain multi-stage fraud scenarios. Of particular importance, is the point at which Ms J lost control of her funds. I need to consider whether the funds were effectively under the control of the fraudster when they arrived at N.

Here I'm persuaded the funds were under the control of the fraudster at the point they arrived at the intermediary (N). Ms J does not appear to have a customer relationship with the intermediary – she was instructed to pay N by L. And I'm satisfied that the intermediary (N) was acting on behalf of L and not Ms J, given what we know about how this scam was operating. I'm also not persuaded Ms J had any reasonable way of preventing the onward transmission of her funds from N to L as it seems funds only passed through N as an intermediary before being sent on to other businesses, such as L. The money was therefore out of Ms J's control and so the payments made here are capable of being covered by the provisions of the CRM Code.

Has Lloyds fairly established an exception to reimbursement applies under the CRM Code?

The starting position under the CRM Code is that Lloyds ought to refund Ms J, unless it can establish an exception to reimbursement applies. Such exceptions to reimbursement include (as far as is relevant to this complaint) that Ms J;

- Ignored an Effective Warning by failing to take appropriate actions in response to such an Effective Warning and/or
- 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 the person or business with whom they transacted was legitimate.

Lloyds initially relied on both exceptions to reimbursement. However, it has since admitted it missed an opportunity to provide Ms J with relevant scam education during the first call it had with her. So, I've taken this as acceptance that Ms J did not ignore an Effective Warning, as Lloyds did not provide one during this call. I've therefore not gone into further detail about the effectiveness of the warning given by Lloyds.

Reasonable basis for belief

Turning to Ms J's reasonable basis for believing she was making a legitimate investment; I'm not persuaded that Lloyds has fairly established this exception to reimbursement applies. I'll go on to explain why I've reached this decision.

Ms J was actively looking for investments at the time and she reached out to W who appeared to be an investment broker and subsequently introduced her to L. She was also compelled by the prominence of W in the search results of a well-known online search engine, and this persuaded Ms J that W was approved of. Ms J noted that internet marketing and search engine optimisation is extremely hard and it's competitive to get a top slot in the results, so this made her believe W was legitimate.

I've understood from Ms J that C was a persuasive salesman and maintained regular contact with her, in which he was friendly and didn't apply pressure. Furthermore, having reviewed the correspondence from C, I consider it to be professional and free of cause for concern. Similarly, the documentation she received from L does look professional and is similar to the type of documentation you might expect to see from a legitimate investment company. Such documentation does contain reference to the FCA and Ms J thinks she also saw this confirmed on L's website. Ms J also had access to an online dashboard with L, and she was sent media articles to support the fraudster's story about why L was raising funds. Overall it seems the fraudster went to a great deal of effort to mimic what you might expect to see of a legitimate investment company, and I can see why this was particularly compelling to Ms J.

Ms J also noted that N's involvement (a legitimate FCA regulated firm) further assured her that her funds were safe, and I can understand why this did reassure her. Whilst there is a dispute about whether Ms J checked N was FCA regulated before the payment, it's clear from the phone call she had with Lloyds at the time the payments were made, that she knew N was FCA registered, and I think this would've added to her belief that the investment was legitimate.

I appreciate Lloyds has referred to the FCA warning that was published about L in March 2020. However, I'm not persuaded Ms J had an awareness of the significance of FCA regulation, or the FCA register and how to use it. She doesn't claim to be a sophisticated investor, and she went through what she thought was a broker and trusted their recommendation. She also noted that she's never taken steps to check Lloyds is in fact registered by the FCA nor has this ever been an expectation of her. Overall I can understand why Ms J didn't check the FCA register. But even if she had conducted further research and

found this FCA warning about L, it would have only confirmed that L was not authorised by the FCA – it didn't explicitly say that they were operating a scam. The same can be said of the warning Lloyds say was on L's website at the time. This is a warning about the risk involved in the investment – not that L was a scam.

Lloyds has argued that Ms J ought to have looked into the investment further, given the documentation from L referenced loan notes. I'm mindful Ms J was not a sophisticated investor and relied on the information she was given by whom she believed to be a legitimate investment broker. She says she didn't know the difference between an ISA and a loan note, and as the broker referred to it as an ISA she thought that's what she was investing in. In the correspondence from W, the investment is referred to as an ISA. N was introduced as the ISA manager, and she was transferring her ISA from another bank to the investment with L also. Ms J has referenced a letter from R which in her eyes, clearly showed she had transferred an ISA. Overall I can understand why she didn't look further into loan notes. But even if she had taken the steps Lloyds is suggesting, I've considered the proposal L made to Ms J, and it does align with what you might expect to see of a genuine loan note investment considering the rate of return, and description of the investment in the brochure. So had she taken the steps Lloyds is suggesting she ought to have done, I struggle to see how she might have uncovered the scam.

I've thought about whether the interest rate ought to have caused Ms J concern, given she thought she was investing in an ISA and not a Loan Note investment. I've no doubt the interest rate is one of the factors which drew Ms J to the investment with L. She has said she was specifically looking for a more competitive rate than what she was getting on her existing ISA with banks she had accounts with. And I do acknowledge that this rate far exceeded the typical ISA interest rate being offered at the time. However, taking into account all of the features of the scam, the professional literature and correspondence, the persuasiveness of the broker – W, the involvement of an FCA regulated firm – N, paired with Ms J's lack of investment experience; I can see why Ms J has taken the investment proposal at face value and reasonably believed that she was making a legitimate investment.

Overall, for the reasons I've set out, I'm not persuaded Lloyds has fairly established a valid exception to reimbursement applies. Therefore it should refund Ms J's outstanding loss in full, in accordance with the CRM Code which it has signed up to.

My final decision

For the reasons I've explained, I uphold this complaint about Lloyds Bank PLC and instruct it to:

- Refund Ms J's full outstanding loss which I calculate to be £16,280.19 (£20,000 sent, less the total returns of £3,719.81)
- Pay 8% simple interest on the refunded amount, from the date Ms J's claim was declined until the date the settlement is paid, less any tax lawfully deductible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 25 April 2024.

Meghan Gilligan
Ombudsman