

The complaint

Ms K is unhappy that Lloyds Bank PLC (“Lloyds”) haven’t refunded the money she lost to an investment she now believes was a scam. She also lost a further sum to a second organisation purporting to be able to recover her lost investment funds.

Ms K is represented by a third party.

What happened

The full details of this complaint are well known to both parties, so I won’t repeat them here. Instead, I’ll recap the key points, and focus on giving reasons for my decision:

In August 2017 Ms K received information or advice from a broker/IFA (I will refer to as C) to invest money into an investment - with an organisation I will refer to as W. Ms K made five payments (ranging between £7,000 and £25,000) between 4 August 2017 and 26 March 2018 totalling £74,000. The first payment went directly to W and the following four transfers went to C (then on to W from there). Ms K received credits back from W between 12 July 2018 and 19 July 2019 totalling £6,600.53. W went into administration in May 2020.

In November 2019 Ms K fell victim to a scam from an organisation who claimed to be able to recover her funds from W. She paid £1,580 as a ‘fee’.

Lloyds said it wouldn’t be appropriate for it to refund money for a failed investment. It didn’t uphold her complaint about the recovery scam as it felt she didn’t have a reasonable basis for belief under the Contingent Reimbursement Model (CRM) Code.

Our investigator did not uphold the complaint. He thought the payments were unusual based on the account activity but, he didn’t think intervention by the bank would have made a difference in this case as W looked to be a genuine company at the time.

Ms K did not accept the investigator’s conclusions, so the case has been passed to me for a decision.

I initially explored Ms K’s vulnerabilities in November 2023. Ms K’s representative had a number of opportunities to supply me with further information. In January 2024, I explained to Ms K’s representative why I was intending on reaching the same overall conclusion as the investigator. Further extensions to supply information were granted but I am now ready to issue my final 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.

In deciding what’s fair and reasonable, I’m 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 time.

Where the evidence is incomplete or missing, I am required to make my findings based on a balance of probabilities – in other words what I consider is more likely (than not) given the information available to me.

I am extremely sorry to hear about the situation Ms K is now in, not just following the failure of W, and the impact it has had on her. But also, her health condition which has clearly declined since the events in question. And she has sustained a significant financial loss, through no fault of her own. However, I do not have the power to consider the actions of W – or the company that gave her advice – C. The complaint I am limited to deciding is the one Ms K brings against her bank, Lloyds. That means I must focus on whether I consider Lloyds was at fault in any way - and if so, what difference I think that fault likely made.

I have carefully noted all the representations, but I won't be addressing every single point that's been raised. No disrespect is intended, and it doesn't follow that the points haven't been considered, simply that I don't need to particularise every point in reaching an outcome I consider to be fair and reasonable in all the circumstances. I've instead concentrated on the issues I think are central to the outcome of this complaint.

Transactions to W and C

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. So, under the Payment Services Regulations (PSRs) and the terms of her account, Ms K is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for a bank to take additional steps or make additional checks before processing a payment in order to help protect customers from the possibility of financial harm from fraud.

I note W has gone into liquidation and there is an ongoing police investigation into the matter. So the outcome on whether or not this is a fraud or scam is not currently known. But I don't need to make a finding on this to reach an overall outcome that I consider to be fair and reasonable in this particular case.

The investigator said the transactions were unusual based on the historic activity on Ms K's account and I don't think that was an unreasonable conclusion to reach. The first payment was for £7,000 and was significantly higher than historical activity in recent months – so I agree it did stand out. But even if Lloyds concluded the £7,000 transfer was unusual for the account and had intervened on the payment (or the payments that followed), I don't think it would have made a difference in this case broadly for the reasons the investigator previously outlined – which I have expanded on below.

In order for me to find in Ms K's favour in relation to the payments, I'd need to be in a position to say that Lloyds' actions, or inactions, led to the loss. In short, I'd need to be satisfied that Lloyds could have, or should have, identified that Ms K was falling victim to a scam and prevented the payments from being made. Based on what I've seen, I don't think they'd have been able to do so.

Based on the circumstances of the payments, I'm not persuaded that proportionate questioning by Lloyds would've likely identified any cause for concern about the payments Ms K was making. I say this as I don't think the information Ms K would've been able to provide would've led Lloyds to be concerned that Ms K was at the immediate risk of financial harm and was potentially falling victim to a scam.

If questions had been asked about the nature and purpose of the payment Ms K was proposing to make, I think it's more likely than not that Ms K would have explained she was investing in W - itself a UK registered company at the time and that this was based on the advice of C - another UK registered company and regulated with the Financial Conduct Authority at the time of the transfers.

Whilst I appreciate Ms K might have researched things more – I don't think the 'investment' would have been cause for concern at the point of transfer or the events that have now transpired with W were foreseeable. Ms K was transferring £7,000 for an investment with an organisation (W) which appeared – through its registration with Companies House - to be legitimate. Records held with Companies House indicate W was a genuine limited company that was incorporated in September 2015 and was actively trading (with no suggestion of liquidation) at the time Ms K sent her money to it. C was also a genuine limited company that was incorporated in June 1999 and regulated for investment advice at the time of the transfers. So, the payment didn't look like fraud or a scam and it would have needed a considerable amount of investigation to unearth the facts about W that have now come to light (and which even now seem inconclusive after a considerable amount of time). So, I don't think Lloyds ought reasonably to have cause for concern.

I'm sorry Ms K has lost a considerable amount of money and I can understand why she would like to be compensated for her losses. But I'm only considering whether the bank should be held responsible for what happened, and I don't think it did anything wrong in allowing the transactions to be processed.

Recovery fee scam

In November 2019 Ms K fell victim to a scam from an organisation who claimed to be able to recover her funds from W. She paid £1,580 as a 'fee' in advance. There are separate considerations for the money Ms K lost in November 2019 and Lloyds did consider this aspect under the Lending Standards Board's Contingent Reimbursement Model (CRM) Code which came into force in May 2019. Lloyds was also able to recover £278 of Ms K's funds at the time.

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. It also sets out the standards a business is expected to meet.

Lloyds seeks to rely on one of the exceptions to reimbursement:

- Ms K made the payments without a reasonable basis for believing that they were for genuine goods or services; and/or the organising claiming to recover her funds was legitimate.

There are further exceptions within the CRM code, but these don't apply here.

There is also a clause under the CRM Code which could lead to a full refund notwithstanding the above exception. This part of the Code says that 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.'

There is a clear vulnerability here which Lloyds is now aware of. Whilst Lloyds wasn't made aware of Ms K's dementia/memory loss until November 2020, the CRM Code is clear that

this clause would apply whether or not the business was aware of the vulnerability at the material time.

In July 2023, our investigator asked about the impact of Ms K's medical condition and requested Ms K's representative to provide 'any associated medical evidence to support this'. Ms K informed her representative that she suffered from memory loss at the time, but it was not as bad as it has been within the last 1-2 years. Ms K's representatives didn't supply the evidence at the time – but informed us that she can provide medical evidence of this if needed.

In November 2023, I further explored with both parties the possibility Ms K was vulnerable at the time of the recovery scam in November 2019.

Although Ms K's representatives previously said she could provide medical evidence if needed - subsequently it has been unable to provide this. Ms K's representative said:

- Ms K confirmed her diagnosis was recent, but she can't remember when the issue started.
- She is unsure about the dates as to when this started as an issue and cannot confirm if it did or didn't affect her decision making at the time.

Ms K's representatives have asked for a number of extensions since that date, and it has now had plenty of opportunity to acquire that information. It seems the evidence it is now trying to obtain was readily available in August 2023 when it was first requested by this service. But, in any event, the evidence of Ms K's own testimony suggests that her condition has only had an impact more recently – so on balance, I don't think it impacted her significantly at the time - in November 2019.

While I accept Ms K's health has deteriorated after the scam, I'm not persuaded there's sufficient evidence to suggest she was suffering with it to such an extent at the time of the scam that means it would not be reasonable to expect Ms K to have protected herself from falling victim to this scam. It seems she very quickly realised she'd fallen victim to a scam – later that day when she was told W had gone into liquidation.

So, I am not upholding Ms K's complaint under the vulnerability section of the CRM Code.

Did Ms K have a reasonable basis for belief?

I need to consider not just whether Ms K believed she was sending money to a genuine firm that could recover lost funds, but whether it was reasonable for her to do so. I've thought about the steps Ms K took to reassure herself about the legitimacy of the transaction and whether it was reasonable for her to proceed with the payment.

Lloyds says the decision to decline Ms K's claim was based on Ms K's lack of due diligence and that Ms K's representative did not cover any details on what the customer did in order to check the legitimacy of the organisation that claimed to be able to recover her lost funds.

Lloyds says Ms K paid people who said they could reclaim money lost to W. But this was before she got an email on what appears to have been the same day to say W had gone into liquidation.

I haven't seen any evidence of the communications (such as emails) Ms K had with the people who claimed to be able to recover her money or confirmation of why she thought this was a genuine situation. But it seems the email was out of the blue and at a time when W hadn't confirmed it had gone into liquidation. She was being asked to pay a fee upfront for

its services. So I think the contact and premise on which that contact was made ought to have caused concern. This in turn ought to have led to a greater degree of scrutiny by Ms K as to whether this was a genuine situation – which would likely have revealed this was a scam.

Did Lloyds meet its obligations under the CRM Code and should it have done anything further to prevent the payment?

The CRM Code says that, where firms identify scam risks, they should provide effective warnings to their customers. And where it doesn't meet its obligations under the CRM Code, it may be responsible for meeting the cost of reimbursing the consumer.

Banks can't reasonably be involved in every transaction. There is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. I don't think the transaction for £1,580 was unusual or suspicious and I don't think Lloyds ought to have identified a scam risk as a result. So I don't think Lloyds needed to provide an effective warning or ought reasonably to have taken any further action before processing the payment for £1,580.

Overall, having considered the matter carefully, I am sorry to hear about Ms K's circumstances and that she has lost so much money. But I don't find it is because of any failing on Lloyds' account.

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 Ms K to accept or reject my decision before 25 April 2024.

Kathryn Milne
Ombudsman