

The complaint

Mr L complains that Lloyds Bank PLC won't refund him the money he lost, after he fell victim to an Authorised Push Payment ("APP") scam.

Mr L is represented by a third party in bringing his complaint. For ease of reading, I will only refer to Mr L in my decision.

What happened

I issued my provisional decision on this complaint on 18 December 2023. The background and circumstances of the case and the reasons why I was minded to not uphold it were set out in that decision. I have reproduced the provisional decision in italics below:

In or around June 2021, Mr L was introduced to an investment opportunity via a friend, who had also invested. Mr L engaged in communication with people who he believed were a business development manager and a trader, who were in the process of setting up an offshore hedge fund. Mr L received correspondence regarding the investment and a contract, which indicated that he was guaranteed returns of 10% a month and that if this amount wasn't achieved, the trader would personally add 10% to Mr L's balance on the last day of each month.

Mr L has said he had friends who were already investing with the trader and receiving returns. Alongside this Mr L has said he was cautious and he waited to receive confirmation that the hedge fund had been set up, before deciding to invest. On receipt of this confirmation and believing everything to be genuine, Mr L went ahead and made the following payments from his Lloyds account;

25 August 2021	£25,000
10 August 2021	£10,000

The payments were made to the trader's personal account, who'd told Mr L that deposits were temporarily being collected into his personal account, while a business account was being set up. Mr L was also told to say the payments were for 'friends and family', as the people he was dealing with said they'd had a few people have trouble with their banks, when saying payments were for investments.

Mr L has said a couple of weeks after making the payments he heard rumblings of people being unhappy and so tried to withdraw his money, but was unable to. It was at this point he realised he'd fallen victim to a scam.

Mr L raised the matter with Lloyds. Lloyds is a signatory of the Lending Standards Board Contingent Reimbursement Model (CRM Code) which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. Lloyds issued its final response in January 2023, not upholding Mr L's complaint. In summary, it thought the guaranteed returns Mr L was being offered were unlikely, it didn't think he had a reasonable basis to believe the investment was genuine and thought that he could have done more to protect himself. Alongside this, it didn't think the

payments were unusual considering the way Mr L usually used his account. It added that it had reached out to the beneficiary bank (the bank to which the payments were made) to try and recover the money Mr L had sent, but was unsuccessful.

Unhappy with Lloyds' response Mr L brought his complaint to this service. One of our Investigator's looked into things and concluded that Lloyds could fairly rely on one of the exceptions to reimbursement under the code. In summary, he thought there was enough going on for Mr L to have had concerns about the transactions he was making. Our Investigator considered whether Lloyds had met the standards set by the CRM code for scam prevention – and he thought it had. He said that it had given a scam warning based on what Mr L had said the payments were for. He added that, considering what it knew about the payments he was making, he didn't think it would've been apparent that he was falling victim to a different type of scam. It was also our Investigator's view that Lloyds had done what it could to try and recover the money Mr L had sent.

Mr L didn't agree with our Investigator's view. In summary, he didn't consider the effective warnings provisions of the code had been considered and he thought he had a reasonable basis for belief. He thought this because he knew of other people who had invested and received returns and there was a formalised contract, which gave the impression of a successful investment. He added that close friends had made money from this investment and had already received income.

As agreement couldn't be reached the complaint has been passed over 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.

In their submissions Mr L's representatives have referred to findings this service has made on other complaints. But I would point out that, while on the surface complaints may seem quite similar, each complaint is determined by its own individual circumstances. Here, as I'm required to do, I've looked at the individual circumstances of Mr L's 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. Having done so I'm minded to reach a different outcome to that of our Investigator. I'll explain why.

To begin with, Lloyds has a primary obligation to carry out the payment instructions its customers give it. As a starting point, a customer will therefore be assumed to be liable for a payment they have instructed to be made. There is no dispute that Mr L authorised these payment, albeit having been deceived into believing he was sending them for the purpose of a genuine investment opportunity. On the face of it, he is therefore liable for the resultant losses. However, as I've mentioned above, the CRM Code can provide additional protection for the victims of APP scams such as this was. Lloyds has accepted that the payments Mr L made falls within the scope of the CRM Code.

Having considered everything, I'm minded to say that I'm satisfied that:

- Under the terms of the CRM Code, Lloyds should have refunded Mr L the full amount he lost. And I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case.*

- *In the circumstances Lloyds should fairly and reasonably refund Mr L the money he lost, as well as interest on this amount.*

I have carefully considered Lloyd's representations about whether Mr L had a reasonable basis for believing the transaction to be genuine. But they do not persuade me to reach the conclusion that Mr L has made these payments without having a reasonable belief that he was making a legitimate investment, to the extent that Lloyds can choose not to reimburse him under the terms of the CRM Code.

I've taken into account what Mr L explains about the way the scam happened. It unfolded over a period of time and that the scammers were able to build trust with him. I understand Mr L was quite a latecomer to the scheme. He's explained he initially made contact with the fraudsters through friends, who he knew had already invested by the time he became involved and had realised returns on their investments.

I'm persuaded this is supported by evidence I've seen, which indicates the fraudsters were making some payments to their victims, akin to a Ponzi scheme. So, I've no reason to doubt what Mr L has said about this. I can see why this would initially have instilled confidence in Mr L that those he was dealing with were trustworthy, that the subsequent contact he had with them was genuine and that this was a genuine investment opportunity.

Mr L has explained that, prior to investing, he had communicated with the perpetrators, including video calls and he'd also sought confirmation of their identity, by asking for copies of their identification, which he received. As well as this, he's said he awaited confirmation of the investment being in place before making any payments. I think receiving this documentation would have further reassured Mr L of the legitimacy of the people he was dealing with. And I think this suggests that Mr L wasn't generally acting carelessly ahead of making the payments he did.

I'm mindful that there were elements of this fraud that ought to have caused Mr L to question its legitimacy. Notably the rate of guaranteed returns he was being promised seemed so good, to the point of being implausible, when compared to what you could expect to receive from a legitimate investment. But the test in the CRM Code is not entirely objective, it allows me to take into account (among other things) Mr L's characteristics. I question whether Mr L had a full understanding of just how difficult it is to reliably generate profits from this type of trading. Nor of how quickly, if this was a genuine investment, through the compounding of interest, it would have grown so aggressively, given the returns that were promised.

In the circumstances of this case, Mr L was also provided with a contract. I think this would reasonably have given Mr L further assurances that he was dealing with a legitimate investment. While we now know, with the benefit of hindsight, that this contract wasn't legitimate, at the time Mr L didn't realise he was being scammed and in appearance the contract seemed quite professional. The contract also gave the impression that the trader was willing to bind themselves to the commitments, in terms of return, they were making which I think would have further reassured Mr L.

Alongside the contract, Mr L was provided with other documentation and evidence from the fraudsters including statements, confirmation of trades and a certificate of incorporation, that I think would have just added to Mr L's belief of the validity of the investment.

I accept this is a finely balanced point and, when looking at things with the benefit of hindsight, there are things that Mr L may have done differently. But Mr L didn't know he was falling victim to a scam and on balance, for the reasons mentioned above, I think he did hold a reasonable basis for believing the investment scheme to be legitimate.

I'm mindful Mr L, following instructions from the fraudster, didn't select the true purpose for the payments he was making, rather he selected 'family and friends'. But having seen the messages between Mr L and the fraudsters, I don't think it's probable that Mr L understood that the likely intent behind this instruction from the fraudsters was to circumvent the banks fraud detection systems, rather it appears to me he thought this was purely to expediate the payment process.

Overall I am satisfied that under the CRM Code, Lloyds hasn't established any of the permitted exceptions to reimbursement apply.

My provisional decision

For the reasons given above, I intend to uphold Mr L's complaint against Lloyds Bank PLC and direct it to;

- *Refund Mr L the money he lost, being £35,000.*
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- *Pay 8% simple interest on this amount, from the date Lloyds first declined Mr L's claim until the date of settlement.*

In my provisional decision I asked both parties to send me any further evidence or arguments that they wanted me to consider by 8 January 2024.

Mr L responded and accepted my provisional decision and had nothing further to add. Lloyds confirmed it had received my provisional decision, but didn't agree with it. In summary, it responded to say that it was premature to conclude that the matter was covered under the CRM code, due to there being an ongoing investigation by a statutory body. It added that although it initially reviewed the case under the CRM code, it cannot be certain this is covered under the code.

Lloyds added that it believed it premature and inappropriate on current available information to conclude that these investment payments satisfied the criteria of a scam for either civil or criminal purposes.

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.

Lloyds has said the outcome of this case should be paused under R3(1)(c) of the code, which says;

R3(1)(c) if a case is subject to an investigation by a statutory body and the outcome might reasonably inform the Firm's decision, the firm may wait for the outcome of the investigation before making a decision

Lloyds has already considered and reached an outcome under the CRM code by saying it held Mr L liable. This was because it did not feel he had a reasonable basis for belief and it concluded the payments made were in line with the usual spending on Mr L's account. Considering that Lloyds, as detailed above, has already reached an outcome under the CRM code then the provision Lloyds has referred to is not applicable in this instance. Lloyds can't seek to delay a decision it's already made. The provision only applies before the business has made its decision under the code.

With this in mind, I see no reason to depart from the findings within my provisional decision. Within which, I have considered whether the CRM code has been correctly applied in reaching my decision around reimbursement.

Overall, for the reasons set out here and in my provisional decision, I remain of the view that this complaint should be upheld.

Putting things right

To put matters right Lloyds Bank PLC should now;

- Refund Mr L the money he lost, being £35,000.
- Pay 8% simple interest on this amount, from the date Lloyds Bank PLC first declined Mr L's claim until the date of settlement.

My final decision

My final decision is that I uphold this complaint and require Lloyds Bank PLC to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 9 February 2024.

Stephen Wise
Ombudsman