

## **Complaint**

Mr N is unhappy that Lloyds Bank PLC didn't refund him when he told it he'd fallen victim to a scam.

## **Background**

In late 2020, Mr N was offered an investment opportunity by an individual I'll refer to as Mr V. Mr V claimed to be a talented forex trader, with plans to establish a hedge fund in an offshore jurisdiction. Another individual, Mr K, appeared to work with Mr V to find new investors. Mr N was introduced to Mr K through his daughter and her partner, both of whom had invested with Mr V and had received significant returns.

Encouraged by the returns his daughter and her partner had received, Mr N decided to invest £10,000. He used his Lloyds account to transfer the funds to an account in the name of Mr V. He was told to expect a return of £1,000 per month, and for the first four months, he did so. However, the payments then stopped abruptly. Mr V initially said that his account had been frozen and lawyers were involved. He reassured Mr N that he would soon be able to resolve the issue and pay him the money owed. Despite these assurances, Mr N was unable to recover his funds. Eventually, Mr V became uncontactable.

Mr N notified Lloyds and told it that he'd fallen victim to a scam. It declined to reimburse him, stating that Mr N should have conducted more thorough checks before investing. They argued that the returns he expected were too good to be true and should have prompted him to investigate the legitimacy of the investment further. Mr N wasn't happy with that response and so he referred his complaint to this service.

It was looked at by an Investigator. She initially upheld it in part and recommend Lloyds pay Mr N 50% of the money he lost. Lloyds agreed to do so. However, after considering new evidence submitted by Mr N, the Investigator decided that Lloyds should refund him in full. Lloyds disagreed with the Investigator's second view. It said that it now wasn't persuaded that Mr N was the victim of a scam at all. It thought there was a chance he'd just made an investment that had failed. Despite that, it still agreed to pay the 50% the Investigator had recommended initially.

Mr N wasn't willing to accept the offer from Lloyds and so the case has been passed to me to consider and come to a final decision.

## **Findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In broad terms, the starting position at law is that a firm is expected to process payments authorised by its customer under the Payment Services Regulations (in this case, the 2017 regulations). However, Lloyds is also a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code), which requires firms to reimburse

customers who have fallen victim to authorised push payment (APP) scams, except in a limited set of circumstances.

The CRM Code doesn't apply to all payments. Mr N's payment is only covered if it meets the relevant parts of the definition of an APP scam under the CRM Code. For it to do so, Mr N must have *"transferred funds to another person for what [he] believed were legitimate purposes but which were in fact fraudulent."*

Lloyds argues that it remains an unanswered question whether Mr N was a victim of fraud. It pointed out that there is an active police investigation into the matter and that it was premature to conclude definitively that Mr N had been scammed. Lloyds argued that, if Mr V's investment was legitimate but had simply failed, then this would not be grounds for reimbursement under the CRM Code, which wasn't intended to protect customers from risky investment decisions.

I have considered whether this scenario constitutes an APP scam under the CRM Code. Based on the available evidence, I am satisfied that it does. Mr N is not the only consumer to have raised concerns about Mr V. In several other cases that have been brought to this service, I have seen evidence showing that Mr V was not using client funds as intended. Instead, it appears he may have been using funds from new investors to pay returns to earlier investors or misappropriating the money for his personal use.

For those reasons, I'm satisfied that this case can be considered under the CRM Code. The starting position under the Code is that Mr N should be reimbursed unless Lloyds can demonstrate that an exception applies. Lloyds has pointed to a specific exception it thinks is applicable here. It has argued that Mr N made this payment without a reasonable basis for believing that the investment opportunity was legitimate. It has referred to the high returns he was promised. It believes this should have prompted him to carry out further checks before proceeding.

It's significant that the way the test is set out in the CRM Code isn't entirely objective and it allows me to take into account the characteristics of the customer. Mr N wasn't someone with any experience or knowledge of non-mainstream investment options. The returns promised by Mr V were significantly higher than those typically be available to a retail investor at the time. However, two key factors distinguish Mr N's case. First, Mr N's daughter and her partner had both invested with Mr V. They had each received real returns over several months. These returns were not simply balances displayed on a trading platform – they were genuine payments made into their bank accounts. Given this, I do not think it was unreasonable for Mr N to believe the investment was a legitimate one. Second, there are scenarios where certain individuals or strategies significantly outperform the market. While the returns Mr V promised were extremely high, the success of his daughter and her partner gave Mr N reason to believe the investment was genuine.

Overall, I'm persuaded that Mr N made this payment with a reasonable basis for believing that the investment was legitimate. Lloyds should, therefore, reimburse him under the terms of the CRM Code.

### **Final decision**

For the reasons I've explained above, I uphold this complaint.

If Mr N accepts my final decision, Lloyds Bank PLC needs to refund the payment he made in connection with the scam. It should also add 8% simple interest per annum calculated to run from the date it declined his claim under the CRM Code until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 19 November 2024.

James Kimmitt  
**Ombudsman**