

The complaint

Ms G is unhappy that Lloyds Bank PLC has decided not to refund her after she says she was the victim of a scam.

What happened

In summary, Ms G was contacted by a relative – R, to invest in a business I'll refer as S. R showed Ms G a website for S, and says he offered her a good rate of return on her investment.

Ms G made eight payments totalling £127,500 over an 18-month period between December 2020 and June 2022. Payments were made to S's company account and to R's personal account.

Ms G has said she believed her money was going into an investment for solar energy that was at an advanced stage of development and S had a contract with a well-known energy provider. The money would be used for manufacturing costs. Ms G says she now believes

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.

this is all a lie. R claimed to have secured millions of pounds of other investments which she says doesn't exist.

Lloyds looked into the claim and said it was a civil dispute and not covered by the Contingent Reimbursement Model (CRM) code. Unhappy with this outcome Ms G brought the complaint to our service.

One of our investigators looked into things. Although she initially thought the matter was covered by the CRM code, after carrying out further investigation, she decided the matter was a private civil dispute and Lloyds did not need to refund Ms G for her losses in this instance.

She reviewed correspondence between Ms G and R. These showed that Ms G was working for S. And rather than taking a salary she agreed to be compensated with equity in the company. And Ms G was also involved in recruiting investors for R's businesses. Ms G signed a promissory note that said her investment could become shares in the company. The investigator found that Ms G has shares in a linked company where R is the director.

She also commented on the way Ms G's funds were used in the recipient account, which supported this was a loan to S, and didn't support that a scam had occurred.

Ms G did not agree this was a civil dispute. She provided a large array of documents and communications between her, R, and several other individuals. She said many other victims claimed to have invested with R and were also scammed.

Ms G has provided multiple comments and documents (mostly partial documents and conversations) to support her claim that she's been the victim of a scam. In summary she's said the following:

- R had been made bankrupt several times and had a number of CCJs, showing his lies and fraudulent intentions.
- S had gone into compulsory liquidation and R continued to request investment after this.
- R is in the process of being struck off as a director.
- There's no evidence that the funds were used for business purposes and instead were used for R's personal gain or profit.

As the complaint couldn't be resolved it was passed to me.

My final decision

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

Having done so, I agree with the investigator, that Lloyds' finding, that this was a private civil dispute, was not unreasonable, in the circumstances.

I appreciate this will come as a disappointment to Ms G, as she feels strongly that she has been the victim of a scam and should be refunded as a result. That's not to take away that Ms G hasn't suffered a loss or, that some fraudulent behaviour was underlying R's actions. But not all instances of fraud will be enough to say that a bank is responsible for a consumer's losses. I need to see convincing evidence that Ms G has been the victim of an Authorised Push Payment (APP) scam and meets the requirements under the CRM code.

The Scope and Definitions section of the CRM Code details that the CRM Code can only apply to authorised payments meeting the code's definition of an 'APP Scam'. I've underlined the relevant section to this particular complaint.

DS1(2)(a) of the code defines an APP scam as:

APP scam

Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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.

The CRM code also specifically excludes private civil disputes with the following definition.

DS2(2) This Code does not apply to:

(b) private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier;

The relevant and applicable section of the code here, is that, in order for the consumer to have been the victim of an APP scam, the consumer must have been deceived about the very purpose for which their payment has been procured.

For there to be '*fraudulent purposes*' (as opposed to legitimate purposes) it would require the test for fraud to be met in relation to the *purposes* for which the payment was procured. That must have been at the time the payment transaction occurred or earlier. It does not follow that fraud at a later date can engage the CRM Code's definition of an APP scam.

Neither would fraud which doesn't speak to the *purpose* of the payment. I take it to follow that there may be situations where false representations were made which could amount to fraud under the Fraud Act, but which don't have the effect of the payment falling within the scope of the definition of an APP Scam set out under the CRM Code.

Importantly, I don't have the power to conduct a criminal investigation into R or S. Part of what is required here is to establish the intent and state of mind of R (accused of this fraud) about the purpose of Ms G's payments. I can only do this on the evidence available to me and to make a finding on the balance of probabilities on what I think is more likely than not to be the case.

I'll start by saying, that whilst Ms G has provided a number of documents these are mostly partial documents of court cases, letters between solicitors etc and I'm not persuaded I have all the correspondence and conversations that took place between Ms G and R. I think that's in part because of the complexity of the relationship between the two of them, with Ms G being an employee of R's at the point she was making the payments, as well being a relative of R, and her close relatives also deciding to invest in R's businesses. And, as I set out below, I'm persuaded this is a private civil dispute between Ms G and R and that's potentially why not all correspondence between them has been provided.

What was the purpose of the payments Ms G made?

Whilst Ms G has provided extensive documentation there appears to be very little evidence with regards to the context of the payments she made. Correspondence between Ms G and R suggests the agreement for the money was on a loan basis. I refer to the letters and emails between Ms G's solicitor and R in 2022. There's also the partial text message between them which also indicates the money was paid to R and his business on a loan basis.

But Ms G claims this was not the case, she says it was an investment, where funds were to be used for manufacturing costs. I've not seen any documentation or conversation which supports this was agreed. And therefore it's not clear what the agreed purpose for the funds was. The parties are in dispute about this and there's no clear evidence to support Ms G's statements about the payments being for an investment. Ms G signed a promissory note in December 2020 which also makes no mention of an investment (I'll refer to this document again, later in my decision). The most persuasive evidence I have, is the correspondence

between Ms G and R, that this was a loan. In addition to this, five of the eight payments on Ms G's statements give "loan" as the payment reference.

When considering the evidence produced in support of Ms G's claim of an APP scam, I'm required to reach my findings on a balance of probabilities rather than to the criminal standard. But I would need to see convincing evidence to find it more likely than, that not the underlying purpose of the payment transaction was for fraudulent purposes.

After carrying out further research, I can see another company (where R is one of multiple directors) is currently being wound up. Unsecured claims have been made and paid by the liquidators. I can see that this company held substantial sums of money across its accounts. It also had funds relating to a land purchase in Canada, to build a manufacturing plant for products relating to solar energy. This company has a similar name to S and is operating in the same field of expertise as S – solar energy. In relation to this, Ms G has provided a solicitor's letter which says her funds were, in part, remitted into the account of this company that is being wound up. Many pieces of the literature that Ms G has provided refer to R's multiple businesses, some of which are international, but all appear to be linked to R, and solar energy. With this in mind, it seems likely that Ms G's funds were intended to be used for R's businesses in general and his work in the wider solar energy industry. And so, I don't find the failing of S specifically is enough to say that her funds were not used as intended or that they were used fraudulently.

Ms G has made many allegations about R's conduct as an individual, as well as his actions as the director of S. Whilst I have considered all the points Ms G has raised, they do not fundamentally speak to the purpose for which her funds were procured. R did ultimately engage and conduct business in the solar power industry and held a number of businesses both in the UK and internationally. It's not clear how all these companies interlinked or how funds may have moved between them. And whilst I can't follow the exact trail for the money Ms G invested this doesn't lead me to conclude that she has been the victim of a scam. It's possible R used the funds for his businesses and these were absorbed as costs in running such a business and its multiple linked entities. I accept that it's possible that R misappropriated the funds and they were not used for the intended purpose. Or it's possible that many of R's businesses failed for reasons not relating to fraud. But with the information that's currently available to me I haven't seen any evidence that Ms G's funds were used in a way that meets the definition of an APP scam – that her funds were used for fraudulent purposes.

Although I don't doubt Ms G has been left in a difficult situation, overall, I haven't seen convincing evidence that this came about as the result of an APP scam. It follows I can't say the bank ought reasonably to be held liable for her losses.

Has Ms G suffered a loss?

I have seen one document which refers to a promissory note saying returns could be repaid as shares. Ms G says she did not agree to this, but she did sign the agreement. And I have seen that Ms G owns 2500 shares in another company that R is director of and which is still active on Companies House, it also appears to operate in the same industry that S did. So, it wouldn't be fair to say Ms G has been the victim of an APP scam in this instance. She believed she was investing in R's businesses and she is a shareholder of a company R is a director of. So it's reasonable to conclude that the purpose of the payment has been met. And whilst Ms G may not have received the returns she was promised by R, as a shareholder in one of R's businesses she may receive a percentage of its profits, and Ms G has given no other explanation to how or why she came to own these shares.

As Lloyds didn't need to consider this as an APP scam it didn't need to go on to contact the recipient account provider about recovering the funds. It didn't need to intervene with the payment either and, even if it had, I don't think it would have made a difference given that Ms G was dealing with a family member at the time; she would likely have proceeded with what she was doing despite potential interventions from Lloyds.

If new material evidence comes to light at a later date then Ms G can of course raise a new complaint with her bank at the time. But as it stands there is not convincing evidence that the issues Ms G has faced with S or R are the result of APP scam.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 15 November 2024.

Sophia Smith
Ombudsman