

## **Complaint**

Mr A is unhappy that Lloyds Bank PLC didn't reimburse him after he told it he'd fallen victim to a scam.

## **Background**

In November 2021, Mr A agreed to invest a significant sum of money in gold. A family member had recommended a business that could help him with such an investment. Mr A says that he believed he would transfer funds and this company would invest it in gold on his behalf. At any point, he could realise his investment by selling the gold. He made two payments of £22,830 in total.

Later, Mr A attempted to contact that company but wasn't able to do so. He has since learned that the company has been liquidated. Understandably, he wants to know what has happened to the investment he held through this company and thinks he must have fallen victim to a scam. He says that there has been a police investigation and individuals connected to that business have been arrested.

He complained to Lloyds. It considered his complaint under the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. Having done so, it agreed to refund 50% of the second payment Mr A made in connection with the scam. However, it has since decided to treat this incident as a private civil dispute. The CRM Code only offers protection where a customer as fallen victim to a scam. That means Lloyds isn't expected to refund him under the Code.

Mr A was unhappy with that and thinks he should be refunded in full. He referred his complaint to this service and it was looked at by an Investigator. The Investigator said that there wasn't strong enough evidence to say that he'd fallen victim to a scam. Mr A disagreed with the Investigator's view and so the complaint has been passed to me to consider.

## **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 and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

However, that isn't the end of the story. Lloyds is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code ("the CRM code"). This code requires firms to reimburse customers who have been the victim of authorised push payment ("APP") scams, like the one Mr A fell victim to, in all but a limited number of circumstances.

However, the Code doesn't apply to all payments. It only covers payments made in connection with its own definition of an APP scam:

*“a transfer of funds executed across Faster Payments [...] authorised by a Customer in accordance with regulation 67 of the PSRs, where [...] The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.”*

It also specifically excludes from its ambit what it refers to as *“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...”*

To reach a finding that Mr A was the victim of a scam, I'd need to be persuaded that the company he invested his money with set out with the intention of scamming him. I obviously can't *know* their intentions at the relevant time. I therefore have to draw inferences from what the other available evidence tells me and decide whether it shows that, on the balance of probabilities, Mr A was the victim of a scam rather than some other kind of dispute.

Unfortunately, the available evidence here is limited. Mr A has shown me a form that has been completed by hand with *'500 grams of gold invested'*. It's not clear from this document what this means – it could, for example, mean that the payee would acquire and be custodian of 500 grams of gold bullion and only sell it with Mr A's agreement or it could mean that the money would be used to invest in some instrument that was connected to the market price of gold.

It's impossible for me to know for sure that the payee didn't actually use Mr A's funds to buy gold that was earmarked for him specifically. As part of the investigation, the bank that operated the company's account shared information with us that does appear to have shown that the company was using customer money to purchase gold bullion from a well-known supplier.

Mr A has sent us links to two articles on local newspaper websites about individuals being arrested in connection with an investment scam. But these articles are very light on detail and neither provides enough context for me to safely say that they relate to the company Mr A had dealings with

Overall, while I can't rule out the possibility that Mr A is a victim of fraud here, the available evidence isn't strong enough to say that it's more likely than not that he was. As things stand, I'm satisfied that Lloyds hasn't done anything wrong in treating this as a private civil dispute. Having said that, Mr A has told us that there's an ongoing police investigation and there's a possibility that might result in a prosecution or conviction.

There's no guarantee that would lead to a clear and unambiguous finding that Mr A was the victim of an APP scam. Nonetheless, it is possible that, when the police investigation has concluded, new material evidence may come to light about the company's intentions, which might make a difference. But I must decide the case on the facts and information before me. And currently I'm not able to conclude there is sufficiently persuasive evidence that Mr A has been the victim of an APP scam.

If new material information does come to light, at a later date, then Mr A can bring a new complaint to Lloyds. But I'm satisfied, based on the available evidence that I have seen, that this is a civil dispute and so I don't think Lloyds did anything wrong in treating it as one under the terms of the CRM Code.

**Final decision**

For the reasons I've explained above, I don't uphold this complaint.

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

James Kimmitt  
**Ombudsman**