

## **The complaint**

Mr and Mrs G complain that Lloyds Bank PLC ("Lloyds") has not refunded payments they made which they now feel is a scam.

Mr and Mrs G have also complained about the receiving bank. That matter is being considered as part of a separate complaint, so in this decision I am only looking at the actions of Lloyds.

## **What happened**

The detailed background to this complaint is well known to both parties so I won't repeat it here. But briefly between November 2020 and November 2021, Mr and Mrs G made six payments totalling £74,000 to two accounts held with another bank.

Mr and Mrs G knew the beneficiary of the funds personally – a family relative/their nephew (I will refer to as R). Mr and Mrs G have explained they sent money to R's business (S) on the understanding that they would be paid back.

Lloyds felt the matter was a civil dispute and declined to refund the payments. Our investigator did not uphold the complaint. She felt there was insufficient evidence to suggest this was a scam and as such the payments weren't covered under the Contingent Reimbursement Model (CRM) Code.

Mr and Mrs G didn't agree. They have provided multiple comments and documents to support their claim that they've been the victim of a scam.

As the case could not be resolved informally, it has been passed to me for a 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.

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

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 there is a dispute about what happened or would have happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

I have carefully noted the representations made by all the parties, but I won't be addressing every single point that's been raised. It doesn't follow that the points haven't been

considered, simply that I don't need to detail 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.

I'm sorry to hear about the situation Mr and Mrs G have been left in. They have paid out a considerable sum of money, yet it seems there is no prospect of R returning their money. It's clear that Mr and Mrs G feel strongly that R has tricked them. From their perspective, they were lending R money for his business or investing in his business seemingly with a view to receiving a return. But I don't have the power to decide any dispute between Mr and Mrs G and R. My role is limited to looking at whether Lloyds has treated Mr and Mrs G fairly. At the time Mr and Mrs G made the payments the Lending Standards Board's voluntary Contingent Reimbursement Model (the CRM Code) was in force. Lloyds has signed up to the CRM Code. But I don't think Lloyds is responsible for reimbursing Mr and Mrs G because of any obligation 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'.

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.*

But the CRM Code is quite explicit that it doesn't apply to all push payments. It says:

*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"*

In this case, the relevant question to determining whether the payments Mr and Mrs G made are covered by the CRM Code is whether R set out to obtain money by deceiving them about the very purpose for which their payments were obtained.

In order to meet the test for '*fraudulent purposes*' (as opposed to legitimate purposes), any fraud would need to be in specially in relation to the *purposes* for which the payments were obtained. And that must have been at the time the payment transactions occurred or earlier. It does not follow that fraud at a later date will meet the CRM Code's definition of an APP scam.

Neither would fraud which doesn't specifically relate to the *purpose* of the payment. That is to say, 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. Whilst some of the points Mr and Mrs G have raised about R in relation to other matters may show that he's of poor character; they do not show that in relation to the transactions carried out by R in this particular case that there was a fraudulent intent.

Mr and Mrs G feel strongly that their own experience and dealings with R indicates the nature of their relationship was a scam. They have provided some of the messages they had with R and details about the nature of the business he set up. And it seems he had set up similar separate entities on Companies House.

The initial payment was sent direct to R's personal account but following this, the payments were sent to a business account in the name S (the business R had set up). S was also registered on Companies' House and was (according to Companies House) trading at the time of the payments.

Mr and Mrs G have provided some documentation, but I haven't seen any definitive evidence (such as a contract) about what was agreed between the parties with regards to the purpose of the payments. When asked by Lloyds during a telephone conversation about the purpose of the payment on 28 April 2021, Mr G explain it was 'a sort of investment' and when questioned about the payment on 10 September 2021 he explained he was 'giving a loan'. And some of the payment references were also given as 'loan'.

Overall, I've not seen any documentation or conversation which supports what was agreed between Mr and Mrs G and R. And therefore, it's not clear what the agreed purpose for the funds was. The parties are in dispute about this.

I have noted that 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. Many pieces of the literature that Mr and Mrs G have 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 Mr and Mrs 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 their funds were not used as intended or that they were used fraudulently.

During one call with Lloyds Mr G explained his daughter was a shareholder and director of R's business. As I understand it Mr and Mrs G's daughter 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.

I do understand the concerns Mr and Mrs G have raised about R. And whilst I have considered all the points Mr and Mrs G have raised, they do not fundamentally address the purpose for which their funds were obtained. 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 Mr and Mrs G invested this doesn't lead me to conclude that they have 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 Mr and Mrs G's funds were used in a way that meets the definition of an APP scam – that their funds were used for fraudulent purposes.

On balance, I am unable to safely say this situation meets the definition of an APP scam. It is very difficult for me to establish that R was willingly and intentionally acting fraudulently by deliberately setting out to scam Mr and Mrs G at the time he asked them for money. I don't have the power to compel R to provide me with evidence, or to cross-examine him or to have him cross-examined in order to try and establish what his true intentions were.

As such, I don't think it is unfair to conclude the payments made fall outside of the scope of the CRM Code.

I am sorry to have to deliver this news to Mr and Mrs G. I know this wasn't the answer they were hoping for. It is clear that this situation and its aftermath has been and continues to be very difficult for them. But my role is limited to determining whether Lloyds bears any responsibility for their financial loss. 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 their losses.

For the reasons I have explained, I consider that the payments Mr and Mrs G made fall outside of the scope of the CRM Code. I've not seen any evidence to show that Lloyds has acted incorrectly or that it ought to have done more than it did to assist Mr and Mrs G when it learnt of the situation that they were in. Nor can I see there are other grounds on which I could say that Lloyds should, fairly and reasonably, bear the responsibility for their loss.

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

### **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 Mr and Mrs G to accept or reject my decision before 15 November 2024.

Kathryn Milne  
**Ombudsman**