

The complaint

Mr P complains that Lloyds Bank PLC hasn't refunded him after he fell victim to a scam.

What happened

Mr P received a leaflet through his door from a business I'll refer to as T. The leaflet advertised T's services for investing in gold.

Mr P has said he looked into T online and found positive reviews and that it was registered on Companies House. He's also said he'd heard about T in his local community and so decided to make enquiries about what was on offer. He spoke to the director of T on the phone, who started to explain the investment opportunity. Mr P was encouraged to visit one of T's local branches and as it was nearby, he agreed.

Mr P went to the address he was given, which was a jewellery store (I'll refer to it as D). He was told more about the investment opportunity. The salesperson explained he'd be investing in jewellery which would then be stored securely on site. Mr P's investment would also be used to buy and sell more gold and jewellery to generate a profit. He was to receive a share of those profits, paid to him every six months.

Mr P decided to invest and sent three payments (£3,000, £240, and £1,465) between the start of January and end of February 2022. He realised something was wrong when he didn't receive the promised returns. He contacted the director of T to find out what was happening and was given excuses for the lack of payment. Mr P was eventually promised a refund, but it never materialised. And the director of T stopped communicating with Mr P. So he reported he'd been the victim of a scam to Lloyds.

Lloyds looked into what had happened and said it wouldn't refund Mr P. It considered his claim under the Lending Standards Board's Contingent Reimbursement Model (CRM) Code but said Mr P wasn't due a refund. Lloyds said that was because Mr P hadn't done enough to ensure the investment was legitimate, and so lacked a reasonable basis for believing it was. It also said that it had done what it could to warn of scams ahead of the payment being made, and so hadn't been at fault in following Mr P's instructions to make the payments.

Mr P disagreed with Lloyds' position and brought a complaint to our service. One of our investigators considered it and didn't recommend it be upheld. She said the CRM Code didn't apply in Mr P's case as she believed there was a buyer/seller disagreement – or a civil dispute – between Mr P and T. Whilst her reasons for not upholding the complaint differed to Lloyds', she found there was no remedial action to take, and Mr P wasn't due a refund.

The case has been passed to me to make a final decision as Mr P didn't agree with the investigator's findings.

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.

I'm sorry to disappoint Mr P further, but I'm not upholding his complaint, and for broadly the same reasons as our investigator. I'm persuaded Mr P has a dispute with T and so the CRM Code doesn't apply to the payments he made.

I don't doubt that Mr P has lost out here. And it seems quite likely he has been badly treated by T. I also know this affair has had a significant impact on Mr P, not only financially but physically and mentally too. I am sorry to hear that's the case, but I can't say it's Lloyds that ought to fairly and reasonably cover his losses.

The starting point at law is that a customer is responsible for any transactions made from their account which are properly authorised. This is confirmed by the Payment Service Regulations (2017). And there's no dispute that Mr P did authorise the payments.

The CRM Code is in place to see the victims of scams refunded in most cases, even though the payments will have been authorised. But it doesn't apply to all payments made from a customer's account. The Code sets out what payments are covered and, of particular relevance here, it states:

"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;

I must consider whether I believe T and D were more likely than not genuine businesses which haven't fulfilled their agreement with Mr P, or whether they set out with the intent to scam him. Based on all the evidence I've seen, I'm persuaded it is the former and that Mr P has a civil dispute with T and D. I'll summarise the key reasons below:

- Both T and D are registered with Companies House, albeit one is now dissolved and the other is in liquidation. But at the time they were both going concerns, and had been for a few years;
- Mr P found positive reviews for T at the time, suggesting it was genuinely trading and delivering what was promised;
- T was VAT registered and also had an Economic Operators Registration and Identification number (EORI number), required for importing and exporting goods through the UK. It appears likely it also had the proper HMRC permissions (for tax purposes) for trading in gold;
- D was a physical jewelry store which Mr P visited in person. There were items on display, some of which Mr P viewed;
- D is now in liquidation and has had official insolvency practitioners assigned, indicating a genuine business;
- Mr P met the director of T, and others involved with D and/or T during his course of his dealings with the two businesses;
- I've seen statements for the account Mr P sent his money to. The activity there appears to show funds being used as intended and expected.

I've taken all these points in mind and am persuaded that collectively they point to T and D being genuine businesses. I can't say what has gone wrong with them and why Mr P hasn't received either his returns or his original investment. But I'm satisfied it is because of a likely breach of contract on T's part, rather than this having been a scam from the outset.

I've also taken account of the fact that police are investigating D and T and the people connected to it. But there is very little information available about this investigation or its outcome. And so I can't say it's a persuasive factor at this stage. It could be that, should significant details emerge about any prosecution, Mr P *might* be able to bring a further complaint seeking a refund. But any such new evidence would have to be considered at the time it becomes available, with a finding to be made on whether the merits could be looked at again.

It's for these reasons I can't say Lloyds should fairly and reasonably reimburse or compensate Mr P for his losses.

I've thought about whether there's anything else Lloyds might have done to help Mr P. I'm satisfied there wasn't, including there being no prospect of recovering his funds from the recipient account. They'd already been removed by the time he reported what had happened to Lloyds.

My final decision

I don't uphold this complaint against Lloyds Bank PLC.

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

Ben Murray
Ombudsman