

The complaint

Mr M complains that Lloyds Bank PLC hasn't refunded him after he reported falling victim to a scam.

What happened

Mr M was introduced to a form of investment with a company I'll refer to as B. He was referred to them by a broker that had presented opportunities to him in the past. Those had been successful and so he trusted their judgement.

Mr M was talked through what the investment involved. B claimed to have designed and built an algorithm to place bets on sports events. The algorithm was said to be self-learning and would develop and refine over time. Mr M was impressed with what he saw and understood he'd be investing in a mini bond, with returns to be paid monthly.

He decided to invest £10,000 in March 2018 and received his monthly returns through to early 2020. At that point they stopped because sports fixtures around the globe halted with the pandemic. The director later explained, as fixtures started up again, that results were too erratic and unpredictable for it to make sense to continue betting, at least until a degree of normalcy returned. And so payments to customers like Mr M remained suspended.

B was still seeking more investment and assured existing customers that activity and returns would begin again as soon as possible. The director of B was in regular contact with clients. Mr M decided to invest a further £5,000 in June 2020. But he didn't receive any returns on that payment. And, as time went by, suspicions started to grow as to whether B was a legitimate enterprise.

B later entered administration, with an administrator being appointed in May 2022. He produced a report in December 2022. Amongst other things, it said:

'while it was initially assumed that (the algorithm B claimed to have developed) was a piece of software, we have since received confirmation that it is actually a very short set of written trading rules.'

"we have seen no evidence that (the algorithm B claimed to have developed) performs as described in the Information Memorandum."

Mr M reported that he'd been the victim of a scam to Lloyds. It considered his claim but said it couldn't help. It believed Mr M had been dealing with a legitimate firm that had failed, and so his was a civil dispute; not a case of him having been scammed.

Mr M didn't agree with Lloyds' response and so brought his complaint to our service. One of our investigators considered the complaint and recommended it be upheld in part, with the second payment made by Mr M to be refunded.

Whilst Mr M accepted, Lloyds did not. It maintained that Mr M had a civil dispute with B, and disagreed he'd been the victim of a scam.

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'm upholding it in part. I'll explain why.

Broadly speaking, the starting point at law is that Lloyds is expected to process payment instructions it receives which are properly authorised by Mr M. Mr M is then generally expected to be responsible for such payments. This is set out in the Payment Service Regulations (2017) and echoed in the account terms and conditions.

But that isn't the end of the relevant considerations in a complaint like this. There are times where businesses, taking into account relevant rules, codes and best practice standards, shouldn't have taken their customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.

Where the consumer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the consumer even though they authorised the payment.

Of particular relevance to the question of what is fair and reasonable in this case is the Lending Standards Board's Contingent Reimbursement Model ('the CRM Code'), which Lloyds has signed up to.

The CRM Code provides additional protection from APP scams, but only in certain circumstances. For example, the CRM Code only applies where the victim's payment meets the CRM Code's definition of an APP scam. Further to this, the CRM Code came into effect on 28 May 2019 and isn't retrospective. As that's the case, only the payment made by Mr M in June 2020 is covered by the CRM Code. The payment made in March 2018 is outside of the CRM Code.

Is it fair and reasonable for the outcome of Mr M's complaint to be determined now?

I ultimately have to decide whether it is fair and reasonable for Lloyds not to have upheld Mr M's claim for reimbursement of his losses. I am aware there is an ongoing investigation into B, and there may be circumstances and cases where it is appropriate to wait for the outcome of external investigations. But that isn't necessarily so in every case, as it will often be possible to reach conclusions on the main issues on the basis of evidence already available. And I am conscious that any criminal proceedings that may ultimately take place have a higher standard of proof (beyond reasonable doubt) than I am required to apply (which is the balance of probabilities).

The Lending Standards Board has said that the CRM Code does not require proof beyond reasonable doubt that a scam has taken place before a reimbursement decision can be reached. Nor does it require a firm to prove the intent of the third party before a decision can be reached. So in order to determine Mr M's complaint I have to ask myself whether I can be satisfied, on the balance of probabilities, that the available evidence indicates that it is more likely than not that Mr M was the victim of a scam rather than a failed investment.

I've reminded myself that Parliament has given ombudsmen the job of determining complaints quickly and with minimum formality. In view of this, I think that it would not be appropriate to wait to decide Mr M's complaint unless there is a reasonable basis to suggest that the outcome of any external investigation may have a material impact on my decision over and above the evidence that is already available.

Lloyds gave its answer to Mr M's complaint when it issued its final response. It declined his claim under the Code, stating its belief that the matter was a civil dispute. It didn't seek to delay giving an answer, as it could have chosen to do, under section R3(1)(c) of the Code, on the basis there was an ongoing statutory body investigation.

As it gave an answer and didn't rely on R3(1)(c) at the time it can't rely on it now to delay a claim outcome. It's then fair and reasonable for me to determine the outcome of Mr M's claim.

I will discuss some of Lloyds's concerns later in this decision, as part of my findings as to whether Mr M has fallen victim to a scam. There is some overlap in that regard. But I don't find it's necessary to wait for the conclusion of a statutory body investigation, or any potential related court case, for me to reach a fair and reasonable decision.

The payment not covered by the CRM Code

Although the payment made by Mr M doesn't benefit from the protections of the CRM Code, I still need to consider whether it would be fair and reasonable for Lloyds to reimburse the loss.

Even before the implementation of the Code, Lloyds ought fairly and reasonably to have had systems in place to monitor accounts and transactions for signs that a customer might be at risk of financial harm from fraud. Where there are such signs present, it may be become appropriate for a warning against proceeding with a payment to be issued before it is completed. Or it might be appropriate for a properly authorised payment instruction to be suspended and questioned.

To make a finding that Mr M's first payment ought to be refunded by Lloyds, I'd have to be satisfied that it made an error in allowing the payment through without warning or intervention *and* that such an error led to Mr M's loss. In the circumstances of this complaint, I'm not persuaded that is the case.

I'm going to focus on the second part of that test, as it's most relevant here. I'm not persuaded that Lloyds would've identified that Mr M was at risk or that a scam was taking place.

Had Lloyds asked him about the payment he was making, Mr M could have explained – among other things – he was investing with B, a company that had been established on Companies House since 2015. He would also have explained that he'd been introduced to B by a third-party who were also registered on Companies House, and whom he'd had previous successful dealings. He would have been able to provide evidence of the literature he'd been shown, and to explain that there were several high-profile sports personalities involved with running of B.

In reality, it's only after several years of operation and the eventual collapse of B that any scam concerns have been revealed. That's not information Lloyds would have been able to obtain, or that Mr M would have been able to share, at the time the payment was being made. And it's telling that, even now, Lloyds (and other firms this service is aware of) maintain B was a legitimate business.

As I'm not persuaded the scam could have been uncovered at the time, I can't say Lloyds ought to be responsible for refunding this part of Mr M's loss.

The payment covered by the CRM Code

The Code only applies to payments made in circumstances that can be defined as an APP scam. Lloyds' position has been that the payments Mr M made don't meet that definition because it believes B was a genuine business. Whilst that would be a reason for the payment to not be covered by the Code, I don't agree with Lloyds' position here; I'm satisfied that Mr M has fallen victim to a scam.

The Code states it covers payments where a customer sends money to, "*another person for what they believed were legitimate purposes but which were in fact fraudulent.*" And so, for the Code to apply, there must be a misalignment of intended purpose between the customer and the payee. And that misalignment must be a result of dishonest deception on the part of the payee.

Mr M believed he was investing in a mini bond with B and that his funds would be used to gamble on sports fixtures in order to generate returns. That gambling activity was to be powered by an algorithm created and maintained by B. There's no dispute as to what B was

promising it would do or how. But there's little evidence to suggest it was ever able to deliver what it said it would or that it was operating as it said it would.

The fundamental principle of B's offering was gambling through the use of the algorithm, described as *'being based on artificial intelligence which constantly refines and innovates the underlying assumptions and strategies'*. But the administrators (and other parties that might be connected to investigating B's activities) have found no evidence (that this service has been made aware of) that such an algorithm ever existed, instead finding only a basic set of written rules.

The administrator was also able to reveal as much as 41% of payments (nearly £3.5 million out of nearly £8.6 million invested, as per 31 August 2019) in from investors had been paid out to introducers to the scheme. That is an incredibly large proportion of funds that were meant to be used to generate returns. Such a high percentage is a common indicator of a Ponzi scheme being in operation. Investors were seemingly completely unaware that such rewards were being paid out – there's no mention of it in any of B's literature this service has seen – further suggesting B was not using client funds for the expected purposes.

The account of B – which this service has had sight of – show there were *some* payments to gambling companies. But not anything like the proportion that might have been expected of B's supposed business model. And the liquidator's report further confirms, *'there were considerable losses of bond holder capital whilst B was purportedly placing bets using (the algorithm).'*' Given B's promises to investors, this further supports that it was not using funds for the purposes intended by the payees.

I have seen little to no evidence that B was operating in the way that it promised to, or that its intended purpose for payments received aligned with that of investors. It is true that Mr M, amongst others, received returns from B for some time. However, this is a common feature of a Ponzi scheme, with small payments made to 'investors' for as long as possible to maintain the deception.

With all the above in mind I'm satisfied the second payment made by Mr M is covered by the CRM Code.

The Code does allow for Lloyds to potentially rely on an exception to reimbursement, if it can evidence it applies. The two most relevant exceptions that *might* apply can be summarised as:

- Mr M ignored an effective warning given by Lloyds at the time he made his payment;
- Mr M didn't have a reasonable basis for believing he was making a legitimate payment for legitimate purposes.

I've not seen any evidence of warnings given by Lloyds and so it can't rely on the exception. In any case, it would seem more likely than not that any finding would be that Mr M fairly and reasonably moved past any warning that *might* have been provided, given my previous findings about the likelihood of Lloyds being able to detect and prevent the scam.

It's also not suggested Mr M lacked a reasonable basis for belief. And I've seen nothing within the evidence I've seen to suggest that he did. He was introduced by a trusted third-party and, as commented on earlier, the scheme appears to have been sophisticated (as reflected by Lloyds (and other firms) insistence that B was a genuine company).

I've seen no persuasive evidence and argument to say any exception to reimbursement can be fairly applied. I'm then satisfied that Lloyds ought to have reimbursed Mr M the £5,000 lost when he raised his scam claim. It's then fair and reasonable that it compensates him to that effect now.

Putting things right

On Mr M's acceptance, Lloyds must:

- Reimburse the second payment made toward the scam (£5,000); *and*
- Pay interest on that sum at 8% simple per year, calculated from the date it declined his claim to the date of reimbursement.

My final decision

I uphold this complaint against Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 November 2024.

Ben Murray
Ombudsman