

The complaint

Mr and Mrs C complain about Lloyds Bank PLC.

They say that Lloyds should refund them after they fell victim to an authorised push payment (APP) scam.

What happened

In 2018, Mr and Mrs C were looking to make an investment and came across a business I will refer to as 'B'.

B offered bonds to investors, with the funds being used to place bets on sporting events in the UK. B claimed to have developed an AI algorithm which could accurately predict the outcome of such events.

Between June and August 2019, Mr and Mrs C invested a total of £50,000 in B, receiving returns of £4,939.01 between July 2019 and February 2020.

In November 2022, Mr and Mrs C made a complaint to Lloyds about the investment and asked it to refund their loss – but Lloyds declined to do so. Lloyds said that B was a legitimate company, and Mr and Mrs C's loss had been caused by B becoming insolvent, not because B was operating as a scam.

Mr and Mrs C then brought their complaint to this Service. Our investigator looked into things and concluded that B was not a legitimate business. They explained that the evidence showed that Mr and Mrs C's funds weren't used for their intended purpose and were obtained by dishonest deception, so their claim was covered by the Contingent Reimbursement Model Code ('CRM Code'). And, under the CRM Code, Mr and Mrs C were entitled a full refund as they had a reasonable basis for believing the investment was legitimate when they made the payments.

Lloyds didn't agree – it maintained that the loss was caused by the insolvency of B, rather than B running a scam.

As no informal resolution could be reached, the complaint has been passed to me to make a final 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

The starting point for my considerations is that, under the Payment Services Regulations 2017 and the terms of their account, Mr and Mrs C are liable for transactions they have carried out.

But Lloyds is a signatory to the Lending Standards Board Contingent Reimbursement Model CRM Code (CRM Code), which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

The CRM Code defines what is considered an APP scam as, "where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent".

In order to decide whether the circumstances under which Mr and Mrs C made their payments, meets the definition of an APP scam, I need to consider:

- The purpose of the payments and whether Mr and Mrs C thought this purpose was legitimate.
- The purpose the recipient (B) had in mind at the time of the payments and whether this was broadly in line with what Mr and Mrs C understood the purpose to be.
- And, if I decide there was a significant difference in these purposes, whether I'm satisfied that was as a result of dishonest deception.

Mr and Mrs C were making the payments to B as part of an investment. Based on the evidence that Mr and Mrs C had available at the time, there isn't anything to suggest they didn't think this was a legitimate purpose.

However, having looked at the evidence provided to me, I am satisfied that B was not a legitimate business – and I am satisfied that Mr and Mrs C were the victims of a scam, and did not lose their money in a high-risk investment or bad bargain. I'll explain why.

In its promotional literature, B sets out the details of its 'trading algorithm', which used artificial intelligence (AI) – 'which constantly refines and innovates the underlying assumptions and strategy'.

But the administrators have not been able to identify or locate such an operating system, and instead confirmed in its report dated 16 December 2022 that rather than a piece of software capable of what B had promised its investors, was actually a very short written set of trading rules. It also stated that it had seen no evidence that the algorithm performed as described to the investors.

Further to this, the administrators report in relation to B's use of funds showed some concerning information. In this report, they found that 'the total amount paid to introducers by August 2019 was £3,540,991, which would equate to 41% of that invested by bond holders at that date'. Payments of this volume to introducers are more typical of a Ponzi scheme than a genuine investment – and it doesn't appear clear from the literature presented to investors that this would have been the case.

I accept that B made some payments to gambling companies – but I don't think that this is enough to show that B was operating as a legitimate business. And an addition, the

liquidators report says that 'there were considerable losses of bond holder capital whilst B was purportedly placing bets using [its algorithm]. Again, this shows that B was not acting inline with what had been set out to its investors.

To date, nothing that has been received by this Service, or reviewed by me has shown that B was operating as it had suggested to and agreed with its investors prior to them making their investments.

I understand that Lloyds does not agree that Mr and Mrs C fell victim to a scam – in summary to our Investigators view it made the following points;

- B traded successfully for a period of time as shown by its records on Companies House
- As B was not regulated, it believes that Mr and Mrs C paid into a high-risk investment, and that this is why they lost their money
- While the payments made to introducers may be high, in unregulated investment sectors this may be more common
- Mr and Mrs C received payments from the investment, and so B was acting within its terms and conditions, and isn't typical of a scam
- Until the COVID-19 pandemic sent B into financial difficulty, it appeared to be running as a legitimate business
- It hasn't seen anything to suggest that B set out to defraud investors from the outset
- B's own banks (the receiving banks) say that they are treating the matter as a civil dispute
- One of B's banks, S says that there were payments being made to a software company
- There is an ongoing police investigation into B, the outcome of which is yet to be determined.

While I understand the points that Lloyds has raised, I do not think that anything it has raised alters my decision on this case.

Firstly, being registered on Companies House does not necessarily mean that a business is legitimate on its own – and while B may have been seen to be 'successfully' trading, as I have explained above, the funds investors have paid to B do not appear to have been used inline with what the investors were told. And while I understand that Mr and Mrs C initially received returns on their investment, this can be a common tactic to keep people investing, or an indication of a Ponzi scheme.

I know that the COVID-19 pandemic effectively shut down B, as it couldn't continue due to the lack of sporting events taking place, but as I have explained, it doesn't appear that the funds B was given were being used in the way that was described to its investors.

I also don't think that the amount of money being paid to introducers suggests that this was an unregulated investment gone wrong, given what is also known about the way B was operating. And I have explained, it doesn't appear that the funds given to B were used to place bets as suggested in the literature provided to investors, which I think shows that from the outset, investors were deceived. And while one of the receiving banks has said that payments were made to a software company, no evidence of the supposed algorithm has been found.

And finally, I am aware there is an ongoing investigation, 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 and Mrs C'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 and Mrs C were the victims 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 and Mrs C'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 – and given what I have explained above, I am not persuaded that it would.

Putting things right

Lloyds Bank PLC should refund Mr and Mrs C £50,000 (minus the returns they received). On top of this, Lloyds Bank PLC should pay Mr and Mrs C 8% simple interest from the date it declined Mr and Mrs C's claim to the date of settlement (less any lawfully deductible tax).

My final decision

I uphold this complaint. Lloyds Bank PLC should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 21 February 2025.

Claire Pugh
Ombudsman