

The complaint

Mr and Mrs C complain that Lloyds Bank PLC won't reimburse them after they lost money to an investment – that they now consider to have been a scam.

What happened

Mr and Mrs C have explained that they were introduced to an investment opportunity, provided by a firm that I'll refer to as S, by Mr C's brother. Mr C's brother had already invested with the firm, was making good profits and by the time Mr C invested himself, his brother had already withdrawn returns equalling his initial investment. Mr C has also explained that his brother had known the director of S personally for around three years. Mr C has explained that he waited for around eight months after his brother invested before deciding to become involved himself. During this time, his father had also invested and appeared to be doing well.

Mr and Mrs C therefore contacted S expressing their interest in investing and, upon receiving an investment contract, in December 2021, they made their first payment of £25,000 by faster payment to an account in S's name. The following week they made two further payments of £25,000 and £10,000. Around two months later, encouraged by how their investment was performing, Mr and Mrs C decided to invest further and sent £80,001 across five payments in the space of around two weeks. This time, they were asked to send these funds to an account in another name as S was having trouble with its current bank account. As their investments made so far appeared to be performing well, Mr and Mrs C have explained this didn't concern them, and they made the payments to the new account details as requested. Mr and Mrs C have explained that they were not given a specific rate of return to expect from their investment, but that the director of the firm had personally guaranteed initial investments.

Mr and Mrs C explained that they received weekly reports confirming how their investment was performing. As they had no concerns about the investment and it was performing well, they had never attempted to make withdrawals of their funds. However, Mr C's brother then contacted them advising there had been issues with the firm and other investors had been unable to make withdrawals. Mr and Mrs C tried at this time to make a withdrawal but never received any funds. Since this time, Mr and Mrs C have received contact from the Police, advising S is under investigation.

Mr and Mrs C complained to Lloyds, but Lloyds didn't consider it was liable to reimburse them. It said that S was a genuine firm, registered on Companies House and that while directors are under investigation, they haven't been charged. Lloyds therefore considered this to be a civil matter between Mr and Mrs C, and S.

Lloyds also said it contacted Mr C when he attempted to make the first payment to S, to ensure he wasn't at risk of financial harm from fraud. During this call, the advisor identified that S was a genuine firm, but also flagged that it wasn't authorised by the Financial Conduct Authority (FCA) and that it had received a fraudulent payment previously.

An investigator considered the complaint and upheld it. He said on balance this was a scam and covered by the Contingent Reimbursement Model (CRM) Code and that none of the exclusions Lloyds had relied on applied – so Lloyds should reimburse Mr and Mrs C in full.

In its response to our view, Lloyds maintained that this was a civil dispute, based largely on S being a registered company on Companies House and no charges having yet been made by the Police. Lloyds also questioned how our service can issue a view on a case when it is still being investigated by the Police and considered impacted cases should be ringfenced until investigations are completed.

As Lloyds didn't agree with the investigator's view, the complaint has been referred to me for 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.

It's important to highlight that with cases like this, in deciding whether there was in fact a scam, I need to weigh up the available evidence and make my decision about what I think is likely to have happened on the balance of probabilities – in other words what I think is more likely than not to have happened in the circumstances.

When considering what is fair and reasonable, I'm also 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 relevant time.

In broad terms, the starting position in 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, where the customer 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 customer even though they authorised the payment.

Lloyds is a signatory of the Lending Standards Board's Contingent Reimbursement Model (the CRM Code). This requires firms to reimburse customers who have been the victims of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the CRM Code where they have been the victim of an authorised push payment (APP) scam – as defined within the CRM Code. So if I am not persuaded that there was a scam then I will not have a basis to uphold the complaint.

Can Lloyds delay making a decision under the CRM Code?

Lloyds has questioned how our service can fairly view a complaint where there is an ongoing Police investigation and has suggested that cases against S should be temporarily ringfenced. There is an exception under the CRM Code (R3(1)(c)) that states that firms should make a decision as to whether or not to reimburse a customer without undue delay but that, if a case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, it may wait for the outcome of the investigation before making a decision.

While this exception provides a reason why firms *may* delay providing a claim outcome under the CRM Code, it doesn't impact that customer's right to refer the complaint to our service – and similarly it doesn't impact our service's ability to provide a complaint outcome when we consider we have sufficient evidence to do so. Additionally, this exception needs to be raised by the firm, prior to it having reached an outcome on the claim under the CRM Code, which Lloyds hasn't done in this case.

I've therefore gone on to consider below whether we do have enough evidence to proceed at this time on Mr and Mrs C's complaint.

Is it appropriate to determine Mr and Mrs C's complaint now?

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 – as explained above – 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 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 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.

Lloyds has stated that it needs to understand the charges that have been brought and what these relate to, in order to appreciate whether this was a scam. However, for the reasons I discuss further below, I don't think it's necessary to wait until the outcome of the police investigation or potential related court case for me to reach a fair and reasonable decision.

Have Mr and Mrs C been the victims of a scam, as defined in the CRM Code?

The relevant definition of a scam in accordance with the CRM Code is that the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

The CRM Code also says it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier.

So, it doesn't cover a genuine investment or a genuine business that subsequently failed.

So in order to determine whether Mr and Mrs C have been the victims of a scam as defined in the CRM Code I need to consider whether the purpose they intended for the payments was legitimate, whether the purposes they and S intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of S.

From what I've seen and what Mr and Mrs C have told us, I'm satisfied Mr and Mrs C made the payments with the intention of investing in forex trading. They thought their funds would be used by S to trade and that they would receive returns on their investment.

But I think the evidence I've seen suggests S didn't intend to act in line with the purpose for the payments it had agreed with Mr and Mrs C.

Mr and Mrs C made their payments to two accounts - one held in S's name and one held in another beneficiary's name. I've reviewed beneficiary statements for these accounts and while I can't share the details for data protection reasons, the statements do not suggest that legitimate investment activity was being carried out by S at the time Mr and Mrs C made the relevant transactions. Whilst there is evidence S initially did carry out trades, it doesn't necessarily follow that it was a legitimate enterprise. S and its linked companies were not authorised by the FCA to carry out trading, so its operations clearly lacked an important element of legitimacy; it was required to be authorised to do the activity it was carrying out and it wasn't.

Further concerns centre around the owner of S (who was bankrupt at the time). From the paperwork provided to consumers, he appears to have "personally guaranteed" the investments (despite forex being a high-risk investment and him never being in a financial position to do so). He also signed contracts on behalf of S despite not officially being listed as the director of the business. He appears to have acted as a 'shadow director', when he would've been disqualified as a director in his own right due to his bankruptcy. Furthermore, S was listed as an 'IT consultancy' business on Companies' House and not a financial services firm.

So based on the above, along with the weight of testimony we have seen from other consumers who invested in S, I am satisfied that it is more likely S was not acting legitimately, since its intentions did not align with Mr and Mrs C's intentions, and I am satisfied that S was dishonest in this regard. It follows that I'm satisfied Mr and Mrs C were the victims of a scam.

Are Mr and Mrs C entitled to a refund under the CRM code?

Lloyds is a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this, in all but a limited number of circumstances and it is for Lloyds to establish that a customer failed to meet one of the listed exceptions set out in the CRM Code.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that*:

- The customer ignored what the CRM Code refers to as an "Effective Warning" by failing to take appropriate action in response to such an effective warning
- The customer made payments without having a reasonable basis for believing that: the payee was the person the Customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate

**Further exceptions outlined in the CRM Code do not apply to this case.*

Did Lloyds meet its obligations under the CRM Code and did Mr and Mrs C ignore an effective warning?

As mentioned previously, when Mr and Mrs C made the first payment to S, it was stopped by Lloyds pending further questioning. During the call, a fraud advisor told Mr C that the reason the payment was stopped was that the account had previously received fraudulent funds. However, the advisor also told Mr C this 'could still be OK'. Mr C was asked if he'd set the investment up himself and whether anyone else had access to it. Mr C confirmed this wasn't the case and he had contacted the investment firm himself. The advisor explains they see cases where people are contacted offering a quick way to make money, an account is set up

but that funds then go to another company. The advisor confirmed it shouldn't be a problem if Mr C set the investment up himself and had done his homework.

The advisor then put Mr C on hold to complete further checks, after which he advised that S is on Companies House and the name matches that on the bank account. However, he also advised that S isn't on the FCA register. On this basis he said 'it comes down to you and the homework you've done on it...As long as you've done your homework, it's your money'.

I don't think this warning can be considered effective under the CRM Code. While the fraud advisor identified two key issues here (the receipt of fraudulent funds and lack of FCA authorisation) I don't think he did enough to highlight the risk of proceeding. In particular, the advisor did not explain what the FCA register was, what relevance it had here, or that it was a regulatory requirement to be authorised, and that this is a key scam hallmark where authorisation is lacking.

Therefore, I'm not satisfied that Lloyds can rely on this exception of the Code as a reason to not reimburse Mr and Mrs C.

Did Mr and Mrs C have a reasonable basis for belief?

I've considered whether Mr and Mrs C acted reasonably when making these payments, or whether the warning signs ought to have reasonably made them aware that this wasn't a genuine investment. Having considered everything carefully, I don't think Mr and Mrs C did act unreasonably in the circumstances of this complaint. I've taken into account that two members of Mr C's own family had already invested, and one had received their initial investment back already in returns and was still performing well, that his brother knew the director personally and that Mr C had waited for around eight months after his brother had initially invested to first see how it went.

When deciding to invest himself, I accept that Mr C had been told by Lloyds that S wasn't authorised. However, Mr C has explained that he wasn't aware that firms needed to be authorised by the FCA and, as explained, I don't think the warning provided by Lloyds, went far enough in explaining the implications of this.

I appreciate Mr and Mrs C didn't complete their own research into S prior to proceeding, and relied largely on their family's recommendations, but I don't think this was unreasonable in the particular circumstances of this case. I say this for the reasons already covered – Mr C's brother already having received significant returns and knowing the director personally. I can understand why it wouldn't have occurred to Mr C that this was a scam in these circumstances.

I've thought about the profits Mr and Mrs C had seen their family receive. I accept these were high – however I've also factored in that Mr and Mrs C weren't given a specific rate of return to expect, only that their initial investment was guaranteed. So while Mr C's brother had received high returns, Mr and Mrs C went into the investment knowing these rates weren't promised.

Lastly, Lloyds has itself suggested that Mr and Mrs C have been the victim of a failed investment, rather than a scam. While I disagree on this point, as already explained, I think this evidences that it was not entirely clear whether this was in fact a scam or not, even with the benefit of hindsight and so it doesn't appear reasonable to suggest that Mr and Mrs C should have identified this, prior to many of these warning flags coming to light.

Overall, for the reasons I've explained above, I think it is fair for our service to consider Mr and Mrs C's complaint based on the evidence currently available and having done so, I think it is fair and reasonable for Lloyds to fully reimburse them under the CRM Code.

My final decision

My final decision is that I uphold Mr and Mrs C's complaint against Lloyds Bank PLC and I direct it to:

- Refund Mr and Mrs C in full the payments they made towards the scam (£140,001)
- Apply 8% simple interest, from the time it declined Mr and Mrs C's claim under the CRM Code until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 12 December 2024.

Kirsty Upton
Ombudsman