

The complaint

Dr C complains that Lloyds Bank PLC ('Lloyds') won't refund the remaining funds she lost when she fell victim to a scam.

What happened

What Dr C says

Dr C says that after receiving an inheritance she left her contact details on the websites of some investment companies. In July 2022 Dr C received an email from someone from a company I'll refer to as R in this decision. The representative of R sent information to Dr C about the company and appeared to be professional and knowledgeable. After completing some research into R, Dr C decided to follow a recommendation to invest in a bond with a company I'll refer to as P. Dr C received a letter of introduction from R, a 'Trade Confirmation Form', terms and conditions and an investor information sheet. She was also required to provide know your customer (KYC) documents.

On 10 August 2022 Dr C made a payment of £5,005.95 to a 'segregated account' at a company that wasn't R or P. The payment was made up of her £5,000 investment plus a trading fee. Dr C says that in September 2022 she was encouraged to increase her investment through R, and she purchased more bonds. Payments went to a different company and amounted to £50,000.

Dr C says that she received regular phone calls to update her on the progress of her investments. In December 2022 Dr C decided to buy shares in P. Between 14 and 22 December 2022 Dr C sent a total of £42,515.95 to a third company, which also wasn't connected with R or P. She says that Lloyds intervened when she made one of the December payments.

I have set out in the table below the transactions Dr C made on the instructions of R's representative.

Transaction	Date	Amount	Payee	Reason
1	10/08/22	£5,005.95	1	Bond 1
2	26/09/22	£512.95	2	Bond 2
3	28/09/22	£9,925.85	2	Bond 2
4	29/09/22	£19,560	2	Bond 2
5	30/09/22	£20,001.20	2	Bond 2
6	14/12/22	£2,565.95	3	Shares
7	15/12/22	£9,795.95	3	Shares
8	20/12/22	£18,122.79	3	Shares
9	21/12/22	£12,081.86	3	Shares

In January 2023 Dr C says she was contacted by someone from R who told her that she would not be receiving profits as originally agreed and that R was no longer dealing with individual clients and were instead focusing on corporate clients. A representative of R explained that Dr C's investment would be passed to a new company – H. Dr C completed some research into H and thought it was a reputable investment company. H promised Dr C a return of £16,000 in January 2023 but she was given a series of excuses about why this couldn't happen. She then asked to sell her bonds and shares and for all her money to be returned. Initially Dr C was asked for more funds and then H stopped responding and Dr C found the number she had been given was no longer in use. Dr C realised she was the victim of a scam and contacted Lloyds to report what had happened.

What Lloyds says

Lloyds initially refunded 50% of all payments from and including payment seven in the table above as it flagged this payment for checks but didn't go far enough. After a review, Lloyds decided to refund 50% of payment four and all subsequent transactions so made an additional payment to Dr C. This was because it said Dr C's account activity became unusual at that point. Lloyds made a deduction from the award because it said Dr C didn't take sufficient steps to check that the investment opportunities she was offered were genuine. Finally, Lloyds said it had done what it could to recover Dr C's funds.

Dr C was unhappy with Lloyds' response and brought a complaint to this service.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld in part. He said that Lloyds should also refund 50% of payment three. The investigator felt a deduction was fair because he wasn't satisfied Dr C had a reasonable basis for believing she was making genuine investments. He gave a number of reasons for this, including the fact that R was based abroad but payments were made to UK accounts and payees one, two and three weren't linked to the investment in any way. And the scammers gave no information about the companies being invested in and offered unrealistic rates of return.

Dr C agreed with the investigator that Lloyds should be responsible from the third payment but challenged the 50% deduction. Through her representative, she responded to the investigator's main points as follows:

- The scammers were based abroad but Dr C paid three UK accounts unrelated to investing.

Dr C questioned this point and was told that it was the easiest and quickest way to pay. Many people use exchange services and wallets when making investments and even if Dr C had looked up the payees, she wouldn't have found any information to suggest they were involved in scams.

- High rate of return

Dr C was initially offered a 6% rate of return and there was no set return for future payments. I believe Dr C also said the 30% return she was told she had received seemed high, but she did some research and found a website that said it was reasonable. Dr C's representative provided a link to the website.

- Nature of investment

Dr C says she was assured that funds would be invested in recognised companies in Europe and America that provided high returns. She wasn't provided with the company names though.

- Lack of contractual documents

Whilst Dr C doesn't have contracts she was provided with convincing literature.

- Incorrect payment details

When choosing the payment reason of paying a bill Dr C wasn't trying to mislead Lloyds. She was sent an invoice to pay so felt this was an appropriate choice.

- FCA warning

The FCA warning in respect of H was posted on 24 August 2022, after Dr C had started to invest. It would be unreasonable to expect her to check this before making further payments.

Lloyds agreed with the investigator's findings and made an additional payment to Dr C in January 2024 to cover 50% of transaction three plus interest.

The complaint was passed to me to decide. I intended to reach a different outcome to the investigator, so I issued a provisional decision on 24 October 2024. In the "What I've provisionally decided – and why" section of my provisional decision I said:

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, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

When thinking about what is fair and reasonable in this case, I've considered whether Lloyds should have reimbursed Dr C under the provisions of the CRM Code and whether it ought to have done more to protect her from the possibility of financial harm from fraud.

There's no dispute here that Dr C was tricked into making the payments. But this isn't enough for her to receive a refund of the money under the CRM Code. Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that:

- 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.
- The customer ignored an 'effective warning' by failing to take appropriate steps in response to that warning.

There are further exceptions outlined in the CRM Code that do not apply to this case.

Dr C's representative has said she was vulnerable at the time of the scam because of her age. If Dr C was vulnerable as set out in the CRM Code, she would be entitled to full reimbursement without considering the exceptions I have listed above.

Dr C's representative hasn't explained how Dr C's age made her vulnerable or why it made her unable to protect herself from the scams she fell victim to, which is what is required for her to be reimbursed in full based on her vulnerability. So I am not persuaded Dr C was vulnerable under the CRM Code.

I've gone on to consider whether Lloyds could fairly rely on any of the exceptions to reimbursement.

Transaction one

Taking into account all of the circumstances of this case, including the characteristics of Dr C and the complexity of the scam, I'm satisfied Dr C had a reasonable basis for belief when she made payment one and will explain why.

I have been provided with a copy of an introductory email R sent to Dr C on 28 July 2022 which included information about R and links to further information about R and P. I have also seen a letter Dr C received from P on 29 July 2022 congratulating her on her decision to invest. The letter enclosed terms and conditions, which Dr C was required to sign and return,

a 'Trade Confirmation Form' and an 'Important Investor Information' document. In addition to this, Dr C was asked to provide Know Your Customer ('KYC') documents. The trade confirmation form showed a rate of return of 6% per year, which wasn't so high I'd expect Dr C to have concerns. The document also said that payments were to be made to an FCA regulated broker. Dr C received an invoice on headed paper and a 'Segregated Account Checker' form in respect of payee one (see below).

I recognise that Dr C chose the invoice or bill payment reason when there was a payment reason that better suited her circumstances (investment). She has explained why she chose this payment reason and said that she received an invoice from R which she was paying. Dr C also says she wasn't advised to lie to her bank. Overall, I'm not persuaded her payment reason negatively impacts her reasonable basis for belief.

I've gone on to consider whether Dr C ignored an effective warning provided by Lloyds. As I have said above, Dr C chose the paying bills payment reason rather than investing and was provided with a warning tailored to this payment purpose. Dr C has provided an explanation for this that does not seem unreasonable. I don't consider the warning provided, or the warning Lloyds would likely have given if investment was chosen was effective, so I don't think it would be fair to rely on this exclusion.

Overall, I'm provisionally minded to require Lloyds to refund payment one plus interest from the date it first made its decision not to reimburse.

Transactions two to five

Given the value of transaction two I wouldn't have expected Lloyds to have recognised an APP scam risk. This means that Lloyds wasn't required to provide Dr C with an effective warning, and whether Dr C should be reimbursed depends on whether Lloyds can fairly apply the reasonable basis for belief exception.

Dr C has provided an email she received from R dated 15 September 2022 which provided details of how another fund (with a company I'll call B) had performed from 2017 onwards. R said that the information showed Dr C's bond with a genuine provider had massively underperformed in comparison. R went on to provide details about B and said that although the fund was managed by B, R had exclusive access to it. There were no hidden fees and R would take a 5% commission.

Over a few days at the end of September 2022 Dr C paid £50,000 to what was described by R as a 'segregated account' at a different company to the one she initially paid. She was provided with a document headed 'Segregated Account Checker' in respect of payee two, which listed 'Bonds, Equities, Real Estate, Currency Deposits' under 'Approved Activities'. Dr C received a purchase confirmation which showed the number of units she had purchased. This is the only information I have in respect of payments two to five although I'm aware Dr C said she had multiple calls with a representative of R.

Whilst I recognise there was more Dr C could have done to check what she was being told I'm mindful of the fact Dr C wasn't an experienced investor. And although I decided her age didn't make her vulnerable, I consider it is relevant to my consideration of whether Lloyds can fairly apply the reasonable basis for belief exception to reimbursement under the CRM Code.

By the time Dr C made the September transactions R's representative had built trust. He also provided documentation which I think to the inexperienced investor would have been persuasive. The 'Segregated Account Checker' documents were fake, but I'm not persuaded Dr C should have recognised this.

I acknowledge that there was an FCA warning in respect of R that was first published on 24 August 2022 but don't think this alters anything. Dr C had already invested by this stage, and, in any event, Dr C knew that R wasn't a UK company.

I don't think Lloyds needed to provide an effective warning in respect of payment two, so Dr C can't have ignored it. No warnings were given in respect of transactions three, four and five. In these circumstances, Lloyds should also reimburse transactions two to five inclusive in full.

Transactions six to nine (inclusive)

Lloyds has already refunded 50% of these transactions. After carefully considering the evidence, I consider Lloyds acted reasonably in doing so.

I haven't been provided with any evidence about the December 2022 investment, although subsequent emails Dr C has provided lead me to believe they relate to the ongoing scam. This suggests to me that Dr C placed a lot of trust in a representative of R. By the time Dr C made them she also hadn't received any returns and was paying a third new segregated account, which seems odd. In October 2022 Dr C was told the total profit she had earned was £21,080. This profit related to £5,000 invested on 10 August 2022 and £50,000 at the end of September. On 6 December 2022 Dr C was advised of profits of over £43,000. Even to an inexperienced investor I consider profits on this scale ought reasonably to have caused concern.

I've also taken account of the fact Lloyds asked Dr C some questions when transaction six was made, including whether someone had contacted her with an offer to make money. Dr C said 'no'. Then when Lloyds spoke to Dr C on 15 December 2022, she didn't provide accurate answers to the questions posed and said she didn't expect Lloyds to be responsible for her decision making. Dr C told Lloyds the payment was for a private build and was reluctant to share details. I note that Dr C says this was because the Lloyds agent she spoke to was arrogant and patronising, but I don't agree this was the case. While the agent's questions didn't go far enough, it's clear Dr C was being asked questions to protect her from fraud, but Dr C didn't engage.

Overall, I think a 50% deduction in respect of transactions six to nine is fair.

Responses to my provisional decision

Both parties accepted my provisional 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.

As neither party has raised any additional points for me to consider my final decision is the same as my provisional decision (which I have reproduced above so will not repeat here).

My final decision

For the reasons stated I uphold this complaint and require Lloyds Bank PLC to:

- Reimburse all of transactions one and two; and
- Pay interest on the above amounts at the rate of 8% simple per year from the date Lloyds made its decision not to reimburse under the CRM Code to the date of settlement; and
- Reimburse the outstanding 50% of transactions three, four and five; and
- Pay interest on the above amounts at the rate of 8% simple per year from the date Lloyds made its decision not to reimburse under the CRM Code to the date of settlement.

If Lloyds Bank PLC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Dr C how much it has taken off. It should also give Dr C a

tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Dr C to accept or reject my decision before 10 December 2024.

Jay Hadfield
Ombudsman