

The complaint

Mr G is unhappy that Lloyds Bank PLC hasn't refunded him after he reported falling victim to a scam.

What happened

Mr G heard a radio advert for an opportunity to invest in a company (I'll refer to it as B) which leased cars. The premise was that his investment would be used to purchase a car that would then be leased out, with him set to receive a portion of the monthly lease cost and a final, larger payment at the end of the agreement.

Mr G checked Companies House and could see that B had been established for years. He's explained how he was already aware of B to an extent, as he'd had business dealings with it, and so was confident it was a legitimate business and a going concern. He also checked for B on Trustpilot and found positive reviews.

He decided to invest, confident the investment opportunity was a good one, and sent £28,000 to the account details he was given by B.

B started to pay Mr G the promised monthly returns each month until February 2021. He received a total of £3,208.32 and then nothing more. At that time Mr G found out the Financial Conduct Authority (FCA) had placed restrictions on B and later learned it had gone into administration.

Mr G contacted Lloyds in June 2023 to report that he'd been the victim of a scam.

Lloyds investigated and provided Mr G with a final response on 1 August 2023. Lloyds' position was that Mr G hadn't fallen victim to a scam and had instead made payments to a legitimate business that had fallen on hard times. It acknowledged that the Serious Fraud Office (SFO) had started an investigation into B (and other businesses connected to it). And it said, "If new evidence is found and charges are brought against them, we will certainly look at this again for you".

Mr G wasn't satisfied with Lloyds' response and so brought his complaint to our service. One of our investigators considered the complaint and recommended it be upheld. He said the evidence showed there was a clear discrepancy in alignment between the payment purposes Mr G and B had in mind, so this met the definition of a scam.

He also said he was satisfied Mr G had no reason to suspect the investment wasn't legitimate. So he recommended Lloyds refund his losses in full. Lloyds disagreed with our investigator, so the complaint has been passed to me.

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 broad terms, the starting position at 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 Boards Contingent Reimbursement Model (the CRM code). This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the Code where they have been the victim of a scam – as defined in the code.

Can Lloyds delay making a decision under the CRM code?

Lloyds has argued that the payments Mr G made are the subject of an ongoing complex investigation and it would be fair to wait for the outcome of this investigation before making a decision on whether to reimburse him. But I disagree.

The CRM Code says 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.

But this provision only applies before the firm has made its decision under the Code – it can't seek to delay a decision it's already made. And Lloyds only raised this after the case was referred to our service and had already reached a decision on Mr G's claim in its final response letter to him, when it said he made a legitimate payment and this didn't appear to be a true scam. So Lloyds can now rely on this provision here.

And, in any event, the SFO had been carrying out an investigation into B and several connected companies. But that investigation concluded on 19 January 2024 when the SFO published the outcome of the investigation, which included the charging of former company directors with fraud, on its website.

The Lending Standards Board has also said that the Code does not require a criminal test to have been met 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.

As the SFO has reached an outcome on its investigation, and I don't find it's fair or necessary to wait until the outcome of the related court case – which isn't scheduled for more than two years – I don't believe it's fair for Lloyds to delay making a decision on whether to reimburse Mr G any further.

Has Mr G been the victim of a scam, as defined in the CRM code?

The relevant definition of a scam from the CRM Code is that the customer transferred funds to another person for what they believed were legitimate purposes but which 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.

In order to determine whether Mr G has been the victim of a scam as defined in the CRM Code I need to consider whether the purpose he intended for the payments was legitimate,

whether the purposes he and the company he paid intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of the company.

From what I've seen and what he's told us, I'm satisfied Mr G made the payments here with the intention of investing with the car leasing company. He thought his funds would be used to purchase one or more cars, which would then be leased out, and that he would receive returns on his investment. And I haven't seen anything to suggest that Mr G didn't think this was legitimate.

But I'm persuaded the evidence I've seen suggests B didn't intend to act in line with the purpose for the payments it had agreed with Mr G.

We are aware that B made claims that investor funds would be allocated to specific cars, and that the cars would be secured in their favour by way of a fixed charge registered with Companies House. But the Financial Conduct Authority (FCA)'s supervisory notice to one of the connected companies said that, while the companies had around 1,200 customers and had entered around 1,200 leases, they had only registered 69 vehicles at Companies House – which suggests the vast majority of the vehicles funded weren't secured in the way described.

The FCA also checked a sample of the vehicles the companies held against the DVLA database, and found a significantly larger proportion of these were second-hand than the companies' stated business model suggests or would support – as it relied on securing significant discounts on new vehicles, which wouldn't be available on second-hand vehicles.

It also found a number of leases started significantly before the vehicles were put on the road, and some vehicles not found on the database at all. And the FCA said it considered the companies' valuation of the vehicles it held was unrealistic, and that the group's liabilities significantly exceeded its assets.

A report by the administrators of one of the connected companies also said that the total number of loan agreements was 3,609, relating to 834 investors, but that the number of vehicles held by the group at the appointment of the administrators was 596 – or less than one car for every six loan agreements.

There's no record at Companies House of any charge in Mr G's favour over any vehicle with the company following his investment. And as I'm satisfied the evidence shows the company was largely not carrying out this key aspect of the investments, it's safe to conclude that this wasn't done in Mr G's case either.

I'm satisfied the evidence shows the car leasing company wasn't acting in line with the business model and features of the investment it had led Mr G to believe he was making. And so the purpose the company intended for the payments Mr G made wasn't aligned with the purpose Mr G intended for the payments.

The SFO has also said that the former company directors are accused of providing those who invested with false information and encouraging people to pay in whilst knowing that investments were not in reality backed up by the cars they had been promised. So I'm persuaded the discrepancy in the alignment of the payment purposes between Mr G and B was the result of dishonest deception on the part of the company.

I'm satisfied the circumstances here meet the definition of a scam from the CRM code.

Is Mr G entitled to a refund under the CRM code?

Lloyds is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This Code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one I've explained I'm satisfied Mr G fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made
- The customer made the payment without a reasonable basis for believing that:
 - o the payee was the person the customer was expecting to pay;
 - o the payment was for genuine goods or services; and/or
 - o the person or business with whom they transacted was legitimate

There are further exceptions within the CRM Code, but these don't apply here.

From what I've seen, the communication Mr G had with the car leasing company and the documents he received about the investment all appear to have been relatively professional and looked legitimate. That is reflected in the same received by other victims of this scam.

The way Mr G was told the investment would work doesn't appear to be suspicious and the returns he was told he would receive don't appear to be too good to be true. And it appears the company had been operating for several years, one of the connected companies was authorised and regulated by the FCA, and a number of previous investors had received the returns they were told they would. I'm not then persuaded there was anything about the investment that should have caused Mr G significant concern or that Lloyds has established that he made the payments without a reasonable basis for belief that the investment was legitimate.

That Mr G had previous dealings with B further establish his reasonable basis for belief.

Lloyds has also sent us a copy of the warning it says Mr G was shown before making the payments, which said:

"Could this be a scam?"

If you're paying an invoice and the account details have changed, or the invoice is for a service you haven't ordered or received, it could be a scam.

We recommend always checking the payment details by phone or in person before making the transfer.

If someone is pressuring you, please stop now."

This warning wasn't relevant to Mr G's circumstances or the type of scam he was falling victim to. So I don't find it was specific enough to be effective in his circumstances. It can't then be said Lloyds has established that Mr G ignored an effective warning in relation to the payments.

I don't believe Lloyds has established that any of the exceptions to reimbursement under the CRM Code apply here, and so it should refund the money Mr G lost in full.

Redress

As Mr G received a number of monthly interest payments from B, it would be fair for these to be deducted from the amount Lloyds has to refund him.

It seems unlikely any action I might've expected Lloyds to take – in terms of detection, intervention, and warnings – would have prevented Mr G making these payments, as I don't believe any of the information it would've reasonably expected it to have uncovered at the time of the payments would've revealed the scam or caused it significant concern. And I don't consider it was unreasonable for Lloyds to initially decline Mr G's claim under the CRM Code, as it wasn't clear from the evidence available at the time that this was a scam.

But the CRM code allows firms 15 days to make a decision after the outcome of an investigation is known. So Lloyds should have responded to Mr G's claim and refunded his losses under the CRM Code within 15 days of the SFO publishing the outcome of its investigation. I'm satisfied it's then fair and reasonable for Lloyds to pay 8% interest on the refund, from 15 days after the SFO published its outcome on 19 January 2024, until the date of settlement.

As B is now under the control of administrators, it's possible Mr G may recover some further funds in the future. So, if it wishes, it would be unreasonable for Lloyds to request Mr G complete an indemnity confirming he'll return any funds recovered in future to Lloyds. But this will be for Lloyds to arrange separately from the settlement of this complaint.

Putting things right

On Mr G's acceptance Lloyds should:

- Refund the payment of £28,000 made by Mr G, minus the £3,208.32 he received back from B; *and*
- Pay interest on that sum at 8% simple per year, calculated from 3 February 2024 until the date of settlement.

My final decision

Your text here

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 20 August 2024.

Ben Murray
Ombudsman