

The complaint

Mr D complains that Lloyds Bank PLC (Lloyds') won't reimburse the money he lost when he fell victim to a scam.

What happened

Mr D says that he wanted to invest the proceeds of the sale of his home and pension funds and came across a company I'll refer to as K in my decision. K offered bonds to investors which offered fixed rates of return. The funds invested would be used to provide short-term bridging loans to retail customers.

Mr D chose to invest £100,000 in one of K's bonds, expecting the investment to last for three years. To do so, in September 2020, he made four separate payments from his Halifax account to an FCA regulated account (a company I'll call N in this decision). On 5 October 2020 Mr D received his first monthly dividend as expected and was persuaded to invest more.

In the table below I have set out the payments Mr D made and the returns he received (the returns are shown in italics).

Transaction	Date	Amount
1	02/09/20	£20,000
2	04/09/20	£25,000
3	05/09/20	£25,000
4	07/09/20	£25,000
5	09/09/20	£5,000
6	01/10/20	£25,000
	<i>05/10/20</i>	<i>£591.03</i>
7	06/10/20	£75,000
8	15/10/20	£20,000
9	16/10/20	£10,000
	<i>03/11/20</i>	<i>£388</i>
	<i>01/12/20</i>	<i>£388</i>
	<i>04/01/21</i>	<i>£2,577.80</i>
	<i>01/02/21</i>	<i>£388</i>
	<i>01/03/21</i>	<i>£388</i>
	<i>01/04/21</i>	<i>£2,992</i>
10	25/05/21	£10,000

Total		£240,000 less credits of £7,712.83
--------------	--	---

Mr D thought he must have fallen victim to a scam when he wasn't able to contact anyone at K. Insolvency proceedings involving K began in 2023 and, in July 2023, its creditors successfully applied to liquidate the company.

Lloyds didn't agree to reimburse Mr D. It said he had a civil dispute with K, and it was reasonable for it to view the payments as being in line with normal account activity.

Mr D 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. He concluded this was a scam rather than a failed investment and recommended that Mr D be reimbursed in full (less the returns he has received) and interest.

Lloyds didn't agree with the investigator's findings, so Mr D's complaint was passed to me to decide. Lloyds made the following points:

- It still considers K was a legitimate business and Mr D has a civil dispute. The FCA has not issued any warnings in respect of K and there is no 'conclusive' evidence of a scam.
- K is in liquidation and investigations by an insolvency practitioner and the Official Receiver are still in progress and there's no evidence that funds weren't used for the intended purpose. The Insolvency Service said in May 2023 that it hadn't found evidence of bridging loans being provided by K. But it also said that investigations were ongoing. An updated liquidator's report in August 2024 showed that funds have been secured.
- The Official Receiver provided Lloyds with links to reviews written by directors who say they took out bridging finance through K. The reviews are verified and don't appear to be fake.
- Although Action Fraud referred the matter there is no criminal investigation into K or its directors. The police told Lloyds this in May 2024 and on 2 December 2024 confirmed there is no active police investigation, civil or criminal, into K or its directors.
- There is no evidence to suggest K misled investors about the high-risk nature of the investments being offered.
- The fact directors haven't cooperated with the Insolvency Service's investigation is concerning but isn't evidence of an intention to defraud investors.
- Mr D received his first return on 5 October 2020, so Lloyds doesn't agree the common scammer tactic of paying returns to entice a victim to pay more was employed here.

I intended to reach the same outcome as the investigator but wished to provide additional reasoning, so I issued a provisional decision on 11 February 2025. In the 'What I have 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.

Having done so, I agree with the investigator broadly for the same reasons.

In deciding what's fair and reasonable, I'm 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 time.

Where the evidence is incomplete or missing, I am required to make my findings based on a balance of probabilities – in other words what I consider is more likely given the information available to me. Lloyds has referred to there being no 'conclusive' evidence of a scam but, as I have just said, I need to make my decision on the balance of probabilities.

I am extremely sorry to hear about the situation Mr D is now in and the impact it has had on him. He has sustained a significant financial loss. But, I do not have the power to consider the actions of K. The complaint I am limited to deciding is the one Mr D brings against Lloyds.

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.

Can Lloyds delay its decision under the CRM Code?

Lloyds has said that it is engaging with other firms and considering its position in relation to K. It has also said there is currently no conclusive evidence that K operated a scam. I'm uncertain if Lloyds wishes to rely on R(3)(1)(c) so will cover it briefly.

R(3)(1)(c) and (d) of the CRM Code says:

(c) If a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm's decision, the Firm may wait for the outcome of the investigation before making a decision.

(d) If the Firm relies on (c), it should make a decision no later than 15 business days after the outcome of an investigation is known. After invoking (c), the Firm should not further invoke (a).

The above provisions only apply when a firm hasn't made a decision about whether to reimburse a customer. In this case, Lloyds issued a final response letter to Mr D in April 2023 in which it said he wasn't the victim of a scam. In the circumstances, I'm satisfied Lloyds can't rely on the above provisions.

I ultimately have to decide whether it is fair and reasonable for Lloyds not to have upheld Mr D's claim for reimbursement of his losses. I am aware there may be circumstances and cases where it is appropriate to wait for 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. I understand that there is no ongoing police investigation. But criminal proceedings 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 D'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 D was the victim of a scam rather than a failed investment.

I'm mindful 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 D'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.

Did K operate a scam?

Lloyds is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code). Under this code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam, except in limited circumstances. But the CRM Code only applies if the definition of an authorised push payment (APP) scam, as set out in it, is met.

I have considered whether Mr D's claim falls within the scope of the CRM Code, which defines an APP scam as:

...a transfer of funds executed across Faster Payments...where:

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

To decide whether Mr D is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payment and whether Mr D thought this purpose was legitimate.*
- The purpose the recipient (K) had in mind at the time of the payment, and whether this broadly aligned with what Mr D understood to have been the purpose of the payment.*
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.*

Mr D believed the purpose of his payments was providing an investment to K that would be passed on to other small to medium sized businesses in the UK property finance industry. This was by way of short-term bridging loans to companies involved in property development. Mr D understood he would receive regular returns and profit by the end of the investment term. I haven't seen anything to suggest that he didn't consider this to be a legitimate purpose.

I've considered whether there is convincing evidence to demonstrate that the true purpose of the investment scheme was significantly different to this, and so whether this was a scam or genuine investment.

The Insolvency Service has said it hasn't found any evidence of bridging loans being provided by K - which was exactly what K told investors it would be doing. This statement was made in May 2023, when The Insolvency Service said that its investigation was ongoing. Even after extensive investigations the position hasn't changed. The Insolvency Service also had concerns over the trading of K and said it was acting as a Ponzi scheme. It hasn't found any evidence that K conducted any investments.

The Insolvency Service and the insolvency practitioner involved in the liquidation process, have both confirmed the directors of K continue to fail to co-operate with the Insolvency Service's investigation into the company. The directors failed to attend court for a private examination and have continued to fail to provide information. They have said this is frustrating the liquidation process. I accept that on its own this isn't evidence of an intention to defraud, but I've considered it alongside the other available evidence.

Other concerns are that K became uncontactable - which is unusual with a genuine organisation. According to Companies House, K's principal activities are listed as 'buying and selling of own real estate and other-letting and operating of own or leased real estate', which is different to how it purported to be using investors' money.

Overall, there is a lack of any evidence that K was operating as a genuine and legitimate company. Most consumers invested a large amount of money and received very small

monthly returns for a short period before this stopped – typical of how a Ponzi scheme operates. Mr D received a return that persuaded him to invest more and then received returns for a short period.

Lloyds has provided this service with reviews on a third-party website which they say are from borrowers who have taken out bridging loans and have been verified by the site. I am not convinced that the evidence shows that the verification process for that site was robust enough to prevent manipulation by a company like K, which may have sought to use it to build false credibility. It's also significant that, despite extensive investigation by the Insolvency Service, no evidence of any loans has been found. It seems improbable that those reviews were left by genuine borrowers.

Finally, I considered Lloyds' argument that no warning about K has been posted on the FCA warnings list. But that doesn't, in my view, outweigh all the other evidence supporting the claim that this was a scam.

Ultimately, I've not been provided with any evidence to show that the business was operating in line with the way it agreed with its investors prior to their investment. So based on the evidence I have, I am satisfied this was a scam.

I've also thought about the fact Mr D's payments went to N. The involvement of a genuine intermediary does not exclude the possibility of the CRM Code applying. The CRM Code doesn't require the initial recipient of a payment to be an account owned by and for the benefit of a fraudster. Here, I'm persuaded the funds were under the control of the fraudster at the point they arrived at N. Mr D does not appear to have had a customer relationship with N, and I'm satisfied N was acting on behalf of K and not Mr D. The money was out of Mr D's control and so the payment here is capable of being considered under the provisions of the CRM Code.

Reimbursement under the CRM Code

As I have said above, the starting principle under the CRM Code is that a firm should reimburse a customer who is the victim of an APP scam except in limited circumstances. Lloyds hasn't provided any evidence or arguments in respect of whether an exception to reimbursement applies, but for completeness I have considered this point.

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 service; and/or the person or business with whom they transacted was legitimate.
- The customer ignored effective warnings, by failing to take appropriate action in response to such an effective warning.

* There are further exceptions outlined in the CRM Code, but they don't apply to this case.

It is for Lloyds to establish that an exception to reimbursement applies. Here, Lloyds hasn't considered Mr D's complaint under the code and didn't respond to any points made by the investigator in respect of its application. So, it hasn't demonstrated that any of the listed exceptions can fairly be applied.

For the sake of completeness, I'll briefly cover why I'm not persuaded any of the listed exceptions can be fairly applied.

I'm satisfied that Mr D had a reasonable basis for believing the investment was legitimate. I say this because:

- K provided brochures and documentation which appeared to be legitimate, and Mr D received regular communications from his account manager. Mr D no longer has

access to documents or emails but has been able to provide bond certificates.

- *Mr D says that he took advice from two independent financial advisors who looked at K and the products it provided and concluded K offered a sound investment.*
- *K's account manager assured Mr D that his payments were going to N, which was an authorised company. The account manager also set up a call between Mr D and a representative of N to verify N was acting on behalf of K.*
- *Mr D agreed to a further bond after he received a return which reassured him the opportunity was legitimate.*

Overall, I think this was a sophisticated scam and the steps Mr D took to verify the investment were reasonable.

The CRM Code says that where firms identify authorised push payment (APP) scam risks in a payment journey, they should provide effective warnings to their customers. This should include appropriate actions for the consumer to take to protect themselves from scams like the one Mr D has fallen victim to. I haven't been provided with any evidence to show that Mr D was provided with an effective warning so can't say Mr D ignored one.

As, I'm not satisfied that Lloyds can rely on an exception to reimbursement, Mr D is entitled to a full refund. Lloyds can deduct from that refund the returns that Mr D received (which total £7,712.83), meaning the net refund should be £232,287.17.

It's possible that funds could be recovered at a later date through the administrators. Lloyds is entitled to ask Mr D to sign an indemnity to cover this eventuality.

Responses to my provisional decision

Mr D accepted my provisional decision. Lloyds didn't agree and asked me to consider the following points:

- It acknowledges that bringing criminal charges against an individual or company requires the police to reach a higher standard of proof but states that there is no criminal investigation in this case.
- K is the subject of an investigation by the Insolvency Service and Official Receiver. If they find evidence of an intention to defraud, they have a duty to refer this to the police, but this hasn't happened. Given that the police confirmed in December 2024 there has been no contact from the Insolvency Service since the case was transferred, it can reasonably be assumed that the Insolvency Service, even after a lengthy investigation, hasn't found evidence of an intent to defraud. Lloyds asked this service why such a referral hasn't taken place.
- Until the Insolvency Service completes its investigation there is insufficient evidence to show K wasn't operating legitimately.
- In May 2023, when the Insolvency Service said it hadn't found any evidence of bridging loans, it also said it was still investigating.
- This service has referred to the Insolvency Service saying it believes K was operating a Ponzi scheme but has not provided evidence.
- It's clear from documentation provided by K to investors that it didn't mislead investors about the high-risk nature of the investments it offered.

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.

After carefully considering the additional points raised by Lloyds my decision is the same as

my provisional decision (which I have reproduced above), and for the same reasons.

Lloyds cannot rely on R(3)(1)(c) of the CRM Code as it has already made a decision not to reimburse Mr D.

I set out in my provisional decision my reasons for deciding Mr D is the victim of an APP scam, but, in brief, the Insolvency Service has confirmed that after reviewing K's accounts, there is little evidence of any bridging loans being provided with the investments. It has also stated that K appears to be operating a Ponzi scheme. I don't consider the Insolvency Service reached these conclusions lightly and think the evidence is persuasive. Other factors, like the actions of the directors during investigations, also indicate that K operated a scam.

I acknowledge that K does not appear to be the subject of a police investigation. The police have limited resources and must take into account a range of factors when deciding whether to pursue a criminal investigation. So, I do not consider this factor to be determinative. And it's not for this service to explain the actions of the Insolvency Service in terms of referring the matter to the police as Lloyds has suggested.

Lloyds has referred to the fact this service hasn't shared some evidence from the Insolvency Service with it. Under the rules that govern how this service considers complaints we may accept information in confidence where we consider it appropriate.

Lloyds has also pointed out that K didn't attempt to mislead investors about the high-risk nature of the investment. As K was attempting to mimic a genuine investment company, I don't think this means the investment opportunity was genuine.

Lloyds has not suggested that if the CRM Code applies any of the exceptions to reimbursement set in it should apply. I'm satisfied that an exception can't be fairly applied. I haven't seen any evidence to show that any effective warnings were given, and I consider Mr D had a reasonable basis to believe the investment was legitimate at the time he made the payments. I set out in my provisional decision the reasons for this, and I think the fact there continues to be debate about the legitimacy of the investment all this time later strongly suggests Mr D had a reasonable basis for belief.

This means that Mr D should be reimbursed his full loss under the provisions of the CRM Code (less the returns he received – which are set out below).

I consider that interest should be payable from the date Lloyds declined Mr D's claim as the information I've largely relied on to uphold this complaint was available to Lloyds at that stage.

My final decision

I uphold this complaint and require Lloyds Bank PLC to:

- Refund Mr D £232,287.17 (his loss minus returns of £7,712.83); and
- Pay 8% simple interest per year on the refund, calculated from the date Lloyds made the decision not to reimburse Mr D under the CRM Code until 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 Mr D how much it's taken off. It should also give Mr D a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 10 April 2025.

Jay Hadfield

Ombudsman