

## **The complaint**

Miss D is unhappy that Lloyds Bank PLC ("Lloyds") won't refund her after she fell victim to an investment scam.

## **What happened**

In August 2020, Miss D was looking for potential investment opportunities. She filled out some forms online and was subsequently contacted the following day from an organisation - I will refer to K in this decision. K proposed various options to her. Miss D says she looked into the company and following further communications, she decided to invest in a three-year bond with a return of 10%. On 26 August 2020 Miss D transferred £5,000 to K via a third party (I will refer to as N). N was a legitimate regulated entity at the time.

In October 2022, Miss D was contacted by K to say she needed to pay £1,000 as they had to close her account early due to fault with the scheme. K told her she would then receive the money in her account. Miss D didn't make the payment and all communication stopped. The website was removed and its phone number uncontactable.

Lloyds declined the claim, they felt Miss D invested with a legitimate company and this is a civil dispute.

Our investigator upheld the complaint. She found this was a scam and Miss D had a reasonable basis for believing this was a legitimate investment opportunity. The investigator therefore recommended that Lloyds refund Miss D in full.

Lloyds did not agree. It says:

- K was a genuine business, evidence by its entry on Companies House.
- K is in liquidation and there are ongoing insolvency investigations.
- Although Action Fraud referred the matter to the Police, there is no criminal investigation into the actions of K or its directors.
- There is no evidence to suggest K misled investors about the high-risk nature of the investment.

Lloyds also says:

- Based on the information from other investigations/statutory bodies, it can't agree there is sufficient evidence to conclude K intended to defraud Miss D.
- Investigations into K are ongoing, and the Official Receiver has not confirmed that K did not use investor funds broadly in line with what Miss D understood to be the purpose of the payment.

- The current information does not meet the burden of proof of fraud, and it considers any decision should be deferred until the Official Receiver had completed its investigations and confirmation as to whether K was acting fraudulently and, if it was, whether this was the case from the outset.
- There is a website with reviews from customers stating they have taken out bridging finance through K.

Whilst it acknowledges the failure of the Directors to co-operate with the liquidation process is of some concern, it cannot agree that their failure to co-operate can be considered as evidence of an intention to defraud investors.

As the case could not be resolved informally, it's been passed to me for a 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.

When considering what is 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 relevant time.

It's important to highlight that with cases like this I can't know for certain what has happened. So, I need to weigh up the evidence available and make my decision on the balance of probabilities – in other words what I think is more likely than not to have happened in the circumstances.

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.

Of particular relevance to the question of what is fair and reasonable in this case is the Lending Standards Board's (LSB) Contingent Reimbursement Model (CRM Code) for authorised push payment scams. The CRM Code was a voluntary code for reimbursement of authorised push payment scams which required firms to reimburse customers who have been the victims of APP scams - in all but a limited number of circumstances. Lloyds was a signatory to the CRM Code at the time the payments in question in this case were made. Where a firm is a voluntary signatory of the LSB's CRM Code, I need to see whether it is a relevant consideration for my decision. And, where it is a relevant consideration, I must carefully consider the provisions of the LSB's code itself that the firm has agreed to and any guidance the LSB has provided on its application.

In order for me to conclude whether the CRM Code applies in this case, I must first consider whether the payment in question, on the balance of probabilities, meet the CRM Code's definition of a scam.

An “APP scam” is defined in the Definitions and Scope section of the CRM Code:

*“Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.”*

If I, fairly and reasonably, make a balance of probabilities conclusion that it does, then the provisions of the CRM Code apply. In that event, unless Lloyds is able to show that the consumer is not entitled to reimbursement due to any the CRM’s Code exceptions at R2(1) and the vulnerability considerations are not relevant, then the consumer is likely to be entitled to reimbursement.

*Can Lloyds delay making a decision under the CRM Code?*

In its recent submissions, Lloyds says there is an ongoing investigation, and suggests we should wait the outcome of that before reaching a final decision.

The CRM Code says firms should make a decision as to whether or not to reimburse a customer without undue delay. There are however some circumstances where I need to consider whether a reimbursement decision under the provisions of the CRM Code can be stayed. If the case is subject to investigation by a statutory body and the outcome might reasonably inform the firm’s decision, the CRM Code allows a firm, at R3(1)(c), to wait for the outcome of that investigation before making a reimbursement decision. By asking to wait for the outcome of the current investigation, I take that Lloyds considers that R3(1)(c) applies in this case.

In deciding whether R3(1)(c) is applicable in this case, there are a number of key factors I need to carefully consider:

- Where a firm already issued a reimbursement decision - for example by telling the consumer they will not be reimbursed because they are not the victim of an APP scam – then R3(1)(c) has no further application. The LSB confirmed in its DCO letter 71 to firms dated 6 November 2024 that *“a firm should not seek to apply this provision where it believes that the case is a civil dispute and therefore outside of the scope of the CRM Code”*.
- The Financial Ombudsman Service does not have the power to restart R3(1)(c) – so where a firm has made a reimbursement decision a consumer is entitled, under the DISP Rule, for our service to decide the merits of the complaint about the payment(s) they made fairly and reasonably on the balance of probabilities.

So, this provision only applies *before* the firm has made its decision under the CRM Code. So, Lloyds can’t seek to delay a decision it’s already made. And Lloyds only raised this point (or asked for a decision to be delayed) after the case was referred to our service. It had already reached a decision on Miss D’s claim in its final response letter to her, when it said the complaint appeared to be the subject of a civil dispute between Miss D and K.

So, I don’t think Lloyds can now rely on this provision.

*Is it appropriate to determine Miss D's complaint now?*

I ultimately have to decide whether it is fair and reasonable for Lloyds not to have upheld Miss D's claim for reimbursement of her losses.

There may be circumstances and cases where it is appropriate to wait for the outcome of external investigations and/or related court cases. 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.

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 Miss 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 Miss D was 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 Miss D's complaint unless there is a reasonable basis to suggest that the outcome of the insolvency investigation may have a material impact on my decision over and above the evidence that is already available.

It's not clear if Lloyds is concerned that administration outcome regarding K's actions may lead to Miss D being compensated twice for the same loss, i.e. by Lloyds and by the liquidators. But I don't know how likely it is that any funds will be recovered as part of those proceedings.

But I agree that, if Lloyds has already paid a refund, it would not be fair or reasonable for those recovered funds to be returned to Miss D as well. And I would also expect Miss D to divulge to Lloyds anything she received in connection with K at any point now or in the future. In order to avoid the risk of double recovery Lloyds is entitled to take, if it wishes, an assignment of the rights to all future distributions under the administrative process before paying the award. So I'm not persuaded that this is a reasonable barrier to it reimbursing her in line with the CRM Code's provisions.

So, I don't think it's fair or necessary to wait for the administration process to complete. All in all, I don't think it's fair for Lloyds to delay making a decision on whether to reimburse Miss D any further.

For the reasons I discuss further below, I don't think it's necessary to wait until the outcome of the investigation for me to reach a fair and reasonable decision. There doesn't need to be 'conclusive' evidence – as I said at the start I reach my decision on the balance of probabilities. And with that in mind, I don't think it would be fair to wait for that investigation to complete before making a decision on whether to reimburse Miss D.

*Are the payments covered under the provisions of the CRM Code?*

Although Lloyds has not mentioned this in its more recent submissions for completeness, I have covered off an earlier point it raised about the fact that Miss D made the payment to N, rather than directly to K.

The CRM Code does not require the initial recipient of a payment to be an account owned by and for the benefit of the fraudster. Neither does it require that account to be controlled by a party which is complicit in the fraud. Instead, the relevant test is whether an APP scam has taken place. In this case, (for reasons I will come on to) I think the payment meets the definition of an APP scam under DS1(2)(a)(ii) in that Miss D transferred her funds to another person (N) for what she believed was a legitimate purpose but was in fact fraudulent. Specifically, Miss C believed that she was making a payment as part of a legitimate scheme but, in fact, she was being defrauded.

If the CRM Code required that the first recipient of funds also be the party that benefits from the fraud, a great many claims would be excluded. I say this because many first-generation accounts are not controlled by the fraudster themselves. The use of money mules (complicit or innocent) is well-known and the CRM Code does not require the sending firm to make an assessment of whether the recipient account holder was complicit in the fraud or not. Instead, I need to consider whether the funds were effectively under the control of the fraudster at the point they arrived at N.

Given what is known of the relationship between N and K it's very likely the funds that credited N's account were passed to K within a few days (likely minus a small fee retained by N) and was carried out under a pre-existing agreement. More importantly, Miss D does not seem to have a customer relationship with N, the funds do not appear to credit an account in her name and she had no significant interactions with it. I'm satisfied N was acting on behalf of K and not Miss D and she had no reasonable way of preventing the onward transfer of funds to K.

It follows then that the money was both out of Miss D's control at the point it arrived at N and effectively under the control of K. Consequently, the circumstances in this case are not significantly different from a typical scam scenario - where funds are transferred into an account, which is unlikely to be owned by the fraudster, but the recipient has agreed to pass funds on to an ultimate beneficiary.

That means that the payment Miss D made is capable of being covered by the provisions of the CRM Code. The Lending Standards Boards' consultation makes clear that certain multi-stage frauds are within the scope of the Code.

But, for the reasons I've already outlined, in this case there's no need to consider the payment from N to K (the onward transmission of funds) as the funds were effectively under the control of K once they reached N.

Finally, I've thought about whether it's fair for the CRM Code to apply in such circumstances. It's not clear if Lloyds thinks that Miss D should complain directly to N and the fact it was FCA authorised (it entered liquidation in August 2021) is in itself enough to disapply the CRM Code. But, for the reasons I've already set out, the involvement of a genuine (or unwitting) intermediary does not exclude the possibility of the CRM Code applying. Neither do I think it is unfair for the Code to apply.

I appreciate Lloyds doesn't accept; it is liable (at least to consider the complaint under the Code) had the payment been made directly to K. But I think it's fair to say, I think, that the involvement of N was essentially incidental. So, while I'm somewhat sympathetic to Lloyds that it, rather than another financial business, will be solely responsible for Miss D's loss, given that Lloyds is a signatory to the CRM Code, I don't find that Lloyds being responsible creates an unfair outcome. Neither can I direct Miss D to pursue the matter solely with N which is, in any case, now in liquidation.

*Has Miss D been the victim of a scam, as defined in the CRM code?*

Lloyds has signed up to the voluntary CRM Code, which provides additional protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances).

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 wouldn't apply to a genuine investment that subsequently failed.

And the CRM Code only applies if the definition of an APP scam, as set out in it (and as I have set above), is met.

I've considered the first part of the definition, and having done so I'm satisfied that Miss D paid the account she was intending to send the funds to. And I do not think there was any deception involved when it comes to who she thought she was paying. So, I do not think the first part of the definition set out above affects Miss D's transaction.

I've gone on to consider if Miss D's intended purpose for the payment was legitimate, whether the intended purposes she and the company (K) she paid were broadly aligned and, if not, whether this was the result of dishonest deception on the part of K.

From what I've seen and what Miss D has told us, I'm satisfied Miss D made the payment with the intention of 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. Miss D understood she would receive regular returns and profit by the end of the investment term. And I haven't seen anything to suggest that Miss D didn't think this was legitimate.

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. It 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.

I've considered the reviews on the third-party website which show feedback purportedly left by K's borrowers. But I'm not persuaded 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 a single loan has been found. Its investigation includes the period in which Miss D's bond was still active. So it seems unlikely that those reviews were left by genuine borrowers.

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 have also failed to attend court for a private examination. 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.

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.

Other concerns are that Miss D says the website closed and K then became uncontactable - which is unusual with a genuine organisation.

Lloyds says there is no active police investigation. Whilst K may not have been subject to a criminal investigation, I am conscious that any criminal proceedings would require a higher standard of proof (beyond reasonable doubt) than I am required to apply (which - as explained above - is the balance of probabilities).

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.

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.

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.

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

And so, I think the circumstances here meet the definition of a scam as set out under the CRM Code.

*Is Miss D entitled to a refund under the CRM code?*

Under the CRM Code the starting principle is that a firm should reimburse a customer who is the victim of an APP scam, like Miss D. The circumstances where a firm may choose not to reimburse are limited and it is for the firm to establish those exceptions apply. R2(1) of the Code outlines those exceptions.

One such circumstance might be when a customer has ignored an effective warning.

A second circumstance in which a bank might decline a refund is, if it can be demonstrated that the customer made the 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

There are further exceptions within the CRM Code, but they do not apply in this case.

The CRM Code also outlines the standards a firm is expected to meet. And it says that when assessing whether the firm has met those standards, consideration must be given to whether compliance with those standards would have had a material effect on preventing the APP scam that took place.

I am also mindful that when Miss D made these payments, Lloyds should fairly and reasonably also have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before it processed a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

Although Lloyds has not established that any of those exceptions apply, for completeness I find that none apply in this case. I have explained why below:

*Did Miss D have a reasonable basis for belief?*

The investigator outlined the reasons why she felt Miss D had a reasonable basis for belief and I agree - broadly for the same reasons.

I have considered not just whether Miss D believed she was sending money for an investment, but whether it was reasonable for her to do so.

Miss D told us she had been contacted by K. This was after she'd left her details on a website when she was actively looking to invest her money. I don't think the indicative rates of return suggested that the investment was too good to be true. Miss D says K had a professional looking website and she received a bond certificate for her investment. And registered on Companies House, it appears the company had been operating for several years. It is only now with a significant amount of investigation that the events surrounding K have come to light. There was nothing in the public domain at the time about K that Miss D could've reasonably inferred from that a scam was taking place.

This means Lloyds can't rely on this exemption to reimbursement and should fully reimburse Miss D.

Lloyds hasn't submitted it provided a warning at the time Miss D made the transaction – so I can't fairly say Miss D ignored an effective warning.

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

### **Putting things right**

Miss D says she didn't receive any monthly interest payments back from K and Lloyds hasn't provided all Miss D's bank statements. But if it transpires that she did, I think it would be fair for any returns to be deducted from the amount Lloyds has to refund her.

I also don't think any action I would've expected Lloyds to take would have prevented Miss D making these payments, as I don't think any of the information, I would've reasonably expected it to have uncovered at the time of the payments would've uncovered the scam or caused it significant concern.



In order to put things right for Miss D, Lloyds Bank PLC must:

- Refund Miss D the payments she made as a result of this scam (£5,000), less the any payment she received (if applicable)
- Pay Miss D 8% interest on that refund, from the date it declined her claim until the date of settlement

As K is now under the control of administrators, it's possible Miss D may recover some further funds in the future. In order to avoid the risk of double recovery Lloyds Bank PLC is entitled to take, if it wishes, an assignment of the rights to all future distributions under the administrative process before paying the award.

If Lloyds UK Plc considers that it's required by HM Revenue & Customs to deduct income tax from the interest award, it should tell Miss D how much it's taken off. It should also provide a tax deduction certificate if Miss D asks for one, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

### **My final decision**

My final decision is that I uphold this complaint and I require Lloyds Bank PLC to put things right for Miss D as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 14 March 2025.

Kathryn Milne  
**Ombudsman**