

The complaint

Mr and Mrs L complain that Lloyds Bank PLC won't refund all the money they lost when they were the victims of what they feel was a scam.

What happened

In August 2021, a friend of Mrs L's recommended an investment company to her that they had been using and had earned them good profits. Mrs L then looked into the investment company, met other people who had invested and spoke with a broker from the company. And as Mr and Mrs L thought it looked legitimate and were interested in earning some extra income, they made a number of payments from two joint accounts they held with Lloyds to invest with the company.

I've set out the payments Mr and Mrs L made from their joint Lloyds accounts below:

Date	Details	Amount
27 August 2021	From 1 st joint account	£25,000
27 August 2021	From 2 nd joint account	£25,000
10 January 2022	From 1 st joint account	£5,000
27 January 2022	From 2 nd joint account	£24,850

Unfortunately, Mr and Mrs L didn't receive all the returns they were expecting or their initial capital back from these investments. And the broker they had been speaking to then stopped responding to them. So Mr and Mrs L reported the payments they had made to Lloyds as a scam and asked it to refund the money they had lost.

Lloyds investigated and initially said it felt both it and Mr and Mrs L could have done more to prevent the money being lost, so agreed to refund 50% of their loss. It then looked at the case again and said it felt this was a civil dispute between Mr and Mrs L and the investment company, rather than a scam. It said it wouldn't take back the refund it had already provided, but didn't agree to refund anything further. Mr and Mrs L weren't satisfied with Lloyds' response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think there was enough evidence to show that the investment company was a scam. So they didn't think Lloyds should have to refund anything further. Mr and Mrs L 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.

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 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 in order to determine whether Mr and Mrs L 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 the investment company 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 they've told us, I'm satisfied Mr and Mrs L made the payments here with the intention of investing with the investment company. They thought their funds would be invested by the company, and that they would receive returns on those investments. And I haven't seen anything to suggest that Mr and Mrs L didn't think this was legitimate.

But I'm not satisfied the evidence I've seen shows that the investment company intended a different purpose for the payments, or that Mr and Mrs L's and the investment company's purposes for the payments weren't broadly aligned.

I've thought very carefully about this and I think it's a finely balanced matter in this case. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is likely to have happened, based on the evidence I do have.

Mrs L first found out about the investment company from a friend of hers who said they had successfully invested with it. Mrs L has said she also attended a party with a number of other people who had invested with the company. And that she met the broker in-person on at least one occasion. But this isn't how I would expect a scammer to find potential victims, and I wouldn't expect a scammer to be able to arrange these kinds of personal recommendations.

From what I've seen of their communication with the broker, Mr and Mrs L appear to have exchanged a significant number of text messages and phone calls with them. And this communication continued for more than a year after the final payment Mr and Mrs L made to the investment company. But I wouldn't expect a scammer who always intended to steal someone's money to continue communicating with them in this way for so long after receiving their money.

Mr and Mrs L also received a written contract from the company relating to their investments, which I wouldn't necessarily expect from a scammer.

And the investment company was registered and had filed annual accounts with the relevant regulatory authority in the country Mr and Mrs L were told it was based in, and had done so

for a number of years before Mrs L was told about it or Mr and Mrs L made their payments towards it.

Mr and Mrs L have sent us a recording of a phone call they says is with the liquidator of the investment company and shows that the broker didn't carry out any trades. But, having listened to the recording they sent, it's not clear who the person they are speaking to is and, even if it was the liquidator of the investment company, I don't think they say with any certainty that the broker didn't carry out any trades. I also don't think anything else said in the recording shows conclusively that the investment company was operating a scam.

Mr and Mrs L have also made a number of arguments about guarantees the broker made about the investment, the way they were asked to send money to the investment company and the way the investment company was wound up. But while these things might suggest the investment company wasn't acting as I would expect a professional business to, acting unprofessionally does not mean the company intended to operate a scam. And I don't think any of the issues Mr and Mrs L have raised mean the company didn't intend to carry out the investments as it agreed with them.

I sympathise with the position Mr and Mrs L have found themselves in and I appreciate that they have lost a significant amount of money. But losing money does not necessarily mean there has been a scam, as legitimate investments will sometimes fail and can do so for a variety of reasons.

Based on the evidence I've seen, I think it's more likely the investment company here intended to carry out the investments as agreed with Mr and Mrs L, but that other factors ultimately meant this didn't happen. I don't think I can safely say the circumstances here meet the high legal threshold and burden of proof for fraud or the specific definition of a scam I must apply here. I don't think the evidence I've seen suggests the investment company deceived Mr and Mrs L about the purposes of the payments. I think both Mr and Mrs L and the investment company's intentions for the payments were the same – to carry out the agreed investments. So I don't think the circumstances here meet the definition of a scam from the CRM code.

I therefore don't think the payments Mr and Mrs L made to the investment company are covered under the CRM code, or that Lloyds should be required to refund the money they lost.

As I mentioned above, Lloyds has already refunded Mr and Mrs L 50% of the money they lost, and has said it won't take back this refund. So I don't think it should be required to do anything further.

It's possible that material new evidence may become available at a future date, which suggests that the investment company did take the payments using dishonest deception. If that happens, Mr and Mrs L can ask Lloyds to reconsider their claim for these payments and, if not satisfied with its response, bring a new complaint to our service.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs L to accept or reject my decision before 27 March 2025.

Alan Millward

Ombudsman