

The complaint

Mrs W complains that Lloyds Bank PLC allowed a fraudster to open and operate an account with it, leading to a significant loss for Mrs W, and that it failed to act when told that the account had been used for fraud.

Mrs W is represented in this complaint by a claims management company, for simplicity I will refer to Mrs W throughout this decision, even when referencing what her representatives have said on her behalf.

What happened

Mrs W was looking to invest and was introduced to a company I'll call 'R'. R was looking for investors to fund 'loan notes' to back a proposed residential property development, it promised returns of 1% per month. Mrs W decided to invest £10,000 and transferred those funds to R's Lloyds account from her Lloyds account on 18 July 2022.

Mrs W initially received returns on her investment, but these stopped in January 2023. R went into liquidation in August 2023.

Mrs W felt she had been the victim of an investment scam and that R had set out to defraud her. She raised a scam claim with Lloyds, but it declined to refund her, it said this was a civil dispute between Mrs W and R. Lloyds did not specifically respond to Mrs W's concerns about how R's account was opened and operated. Mrs W was unhappy with Lloyds' response, so she referred her complaint to our service.

Our Investigator looked into the complaint and reviewed it under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. Having done so, they felt it was more likely a civil dispute between Mrs W and R. On balance, they did not think there was strong enough evidence to show that R had intentionally acted to defraud Mrs W, rather than this being a case of poor business practices or simply an investment that failed. They also were satisfied Lloyds had met its obligations regarding the opening and operation of R's account and that any failures in its response to Mrs W's complaint about R's account had not contributed to Mrs W's loss. So, they didn't think Lloyds needed to refund Mrs W.

Mrs W disagreed, so as an informal agreement could not be reached the complaint has been passed to me for a final 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.

It isn't in dispute that Mrs W authorised the payment in question. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that she is liable for the

transaction. But she says that he has been the victim of an authorised push payment (APP) scam.

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). But the CRM Code only applies if the definition of an APP scam, as set out in it, is met.

I have set out the definition of an APP scam as set out in the CRM Code below:

...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) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

I've therefore considered whether the payment Mrs W made to R falls under the scope of an APP scam as set out above. Having done so, I don't think that it does. I'll explain why in more detail.

In order to determine if Mrs W has been the victim of a scam, I have to consider if her intended purpose for the payment was legitimate, whether the intended purposes she and the company she paid were broadly aligned and, if not, whether this was the result of dishonest deception on the part of the company.

Based on the evidence available to me, it appears Mrs W was intending for her funds to be invested in loan notes. She then expected to receive returns on her investment of 1% per month. And she received professional and detailed paperwork about this investment, R was also on Companies House and had been incorporated since 2019. So, I see no reason why Mrs W would not have thought this was a legitimate investment.

I've gone on to consider whether R's intended purpose for the payment aligned with what Mrs W intended as set out above. I'm aware that R had previously been involved in a similar development project which was completed in 2019. So, it seems that R had operated as a legitimate developer previously. And the site earmarked for development that Mrs W invested in had previously had planning permission granted, I appreciate that this planning permission appears to have expired by the time Mrs W invested, but I don't think that means that R had no intention to develop the site. In addition, while I cannot share exactly what we have seen, we have seen statements for R's accounts, and those do not show any clear evidence that it was operating as a Ponzi scheme as Mrs W has suggested.

I am aware of the ongoing police investigation, and that R appears not to be co-operating with the liquidator's investigations. And I acknowledge that there is some information that suggests R may have been acting unprofessionally. So, it is certainly possible that R may have been acting fraudulently, but equally it may simply have been a failed investment. The evidence available is simply not strong enough for me to say that R set out to intentionally defraud Mrs W.

I am also satisfied that Lloyds carried out the appropriate checks, bearing in mind its internal compliance procedures, prior to opening R's account. And that there was nothing at that time that would have indicated to Lloyds that there may go on to be issues with R's account

relating to accusations of fraud. So, I don't think that Lloyds did anything wrong in allowing R to open and operate an account, or that there is anything that would have meant it should intervene in the payments into and out of R's account relating to Mrs W's investment.

And while I acknowledge that Lloyds did not specifically respond to Mrs W's concerns about R's account, I agree with our investigator that any direct response to those concerns would not have changed the outcome here, given that Mrs W had already raised a complaint with Lloyds about the payments out of her Lloyds account.

I know this will be disappointing for Mrs W, but with all of the above in mind I am satisfied that Lloyds has treated her fairly regarding this complaint.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 20 February 2025.

Sophie Mitchell
Ombudsman