

## Complaint

Mr K is unhappy that Lloyds Bank PLC didn't reimburse him after he told it he'd fallen victim to a scam.

## Background

In 2020, Mr K learned about an investment opportunity with a company known as Buy2Let Cars. It was promoting a scheme under which investors provided the funds for the acquisition of new vehicles. Those vehicles would then be leased to members of the public. The proceeds would benefit the investor. The company told investors that they'd receive monthly payments for 36 months. In month 37, the leased car would be returned to Buy2Let Cars' partner firm, Raedex Consortium.

Mr K was told that he could expect to earn an 11% annual return on his investment. Amongst the various assurances he was given by the company, he was told the investment was "*asset backed*" – in other words, his funds were associated with and secured against a specific vehicle. That meant his investment was more secure.

Mr K was persuaded to go ahead with the investment. He used his Lloyds account to make the following payments:

6 July 2020	£25,000
6 July 2020	£25,000
7 July 2020	£25,000
8 July 2020	£25,000
9 July 2020	£25,000
10 July 2020	£15,000
26 October 2020	£7,000
29 December 2020	£7,000
23 February 2021	£7,000

He did receive returns from Buy2Let Cars and their total value was a little over £16,000. Unfortunately, things didn't go according to plan. In February 2021, the regulator, the Financial Conduct Authority (FCA), imposed significant restrictions on its partner business, Raedex Consortium. An investigation had found that the company's liabilities exceeded its assets – it was "*balance sheet insolvent*". As a consequence, the FCA considered that the firm risked not meeting one of the conditions for its authorisation. In mid-2023, the FCA restricted its permissions so it could no longer promote investments. Buy2Let Cars later went into administration. The administrators made a referral to the Serious Fraud Office (SFO) based on what it found during the process of administration. Buy2Let Cars' directors were then subject to an investigation by the SFO which has resulted in both being charged with fraud related offences.

Once Mr K decided that he'd fallen victim to a scam, he notified Lloyds. Lloyds didn't agree to refund him. It wasn't persuaded that what had happened to Mr K was covered by the Lending Standards Board's Contingent Reimbursement Model Code ("CRM Code"). It argued that his payments had been made to a legitimate company that paid him the returns

he expected until it fell into administration. In other words, this was an investment that had gone wrong, and Mr K wasn't entitled to be reimbursed for that.

Mr K wasn't happy with that and so he referred his complaint to this service. It was looked at by an Investigator who upheld it. The Investigator concluded that this likely was an authorised push payment (APP) scam and so it could be considered under the CRM Code. He was also not persuaded that there was any reason why Lloyds wouldn't be expected to pay a refund under the Code.

Lloyds disagreed with the Investigator's view and so the complaint has been passed to me.

## **Findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In deciding what's fair and reasonable, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account. However, that isn't the end of the story. Lloyds is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code ("CRM Code"). That Code requires signatories to pay refunds to victims of authorised push payment ("APP") scams in all but a limited set of circumstances.

The CRM Code doesn't cover all payments. For Mr K's payments to fall within its scope, they must meet the relevant parts of the CRM Code's definition of an APP scam. Lloyds has argued that Mr K hasn't shown that this was an APP scam, but instead says that Mr K has a private civil dispute with the company that offered him the investment. Mr K disagrees, and so that is the first question I need to consider.

It's important to note that there are a number of potential reasons (other than an APP scam) for a company to fail to meet its contractual obligations. That might happen, for example, where a business has a problem with cashflow. A business can fail or be mismanaged so that its promises can't be kept. That doesn't necessarily demonstrate an intention to commit fraud (which is what is needed to show that the CRM Code should apply). Instead, for a payment to be covered, it must meet the Code's definition of an APP Scam. In this context, that would require that the purpose for which the company procured the payments was different to what Mr K believed due to dishonest deception.

The key factor is what the intentions of the company were at the time of the payments. I obviously can't know what was in the mind of the individuals selling the investment to Mr K at the time. I have to infer what those intentions most likely were from what the other available evidence shows. I also need to be able to exclude, on the balance of probabilities, the alternative possibility that this is simply a matter of the company breaching its legitimate contract for a legitimate reason. Put another way, I need to decide whether the available evidence shows it is most likely that the company set out to defraud Mr K with criminal intent. That is a high bar to meet. Nonetheless, I'm satisfied that the evidence shows that this was a scam and I'll explain why.

I understand Buy2Let Cars claimed that investor funds would be allocated to specific cars. There would be a legal charge over the specific vehicle acquired. That doesn't appear to be what happened. The FCA's supervisory notice to one of the connected companies said that, while the companies had around 1,200 investors, they had charges secured against only 69 vehicles. In other words, the overwhelming majority of the cars acquired by Buy2Let Cars weren't secured in the way Mr K was told they would be.

The FCA also checked a sample of the vehicles the companies held against the DVLA database. It found that a large proportion of these vehicles were second hand. This was inconsistent with the way the company explained its operating model which relied on it securing significant discounts on new cars. It also found other inconsistencies. Some leases started before the first registration of their associated vehicles. For some, the associated vehicle doesn't appear to have existed on the DVLA database at all. The FCA also said the company valuation of their stock of vehicles wasn't at all realistic.

In addition to that, a report by the administrators of one of the connected companies found that it had entered into around 3,600 individual agreements with investors. Each agreement should've been associated with a specific vehicle. However, the company only had legal title to around 600 vehicles.

For these reasons, I'm satisfied the evidence shows that the company wasn't operating in the way it had told Mr K it would. The features of the investment he believed he was making were absent. The purpose for which the company procured the payments from him was, therefore, not aligned with the purpose Mr K had for those payments.

The SFO has also said that the former company directors are accused of providing investors with false information and encouraging people to invest despite knowing their investments weren't really backed up by individual cars. In the light of that, I'm persuaded that it's more likely than not that the discrepancy between the company's purpose in procuring the payment and Mr K's in making it was the result of dishonest deception on the part of the company. As a result, I'm satisfied the circumstances here meet the definition of an APP scam under the CRM code.

Lloyds has argued that, perhaps Mr K was one of the lucky minority whose funds were invested in the way he expected. But it's noteworthy that the 'vehicle funding form' he signed when making his two investments didn't include any information that could identify the individual vehicle and, as far as I can see, no relevant fixed charge was registered on the profile of B's partner company on Companies House. I'm therefore satisfied that it's unlikely this was the case.

#### *Should Mr K be reimbursed under the CRM Code?*

I've gone on to consider whether Lloyds was required to reimburse Mr K under the terms of 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 K fell victim to, in all but a limited number of circumstances. It is for the firm to establish that one of the 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; or
- The customer made the payment without 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.

Lloyds hasn't argued that Mr K ignored an effective warning when making any of these payments. I've also not seen any evidence that one was displayed at the time and so I'm satisfied that it can't rely on the first exception above. I've also considered whether Mr K made these payments with a reasonable basis for believing the investment was a legitimate one. From what I've seen, the communication he had with the company and the documents he received about the investment all appeared professional and legitimate. That is reflected in the same information received by other victims of this scam.

The way Mr K was told the investment would work isn't inherently problematic and he wasn't promised returns that were objectively too good to be true. In addition to that, the company had been operating for several years and its partner company was authorised by the FCA. Overall, I'm not persuaded there was anything about the investment that should have caused Mr K significant concern or that Lloyds has established that he made the payments without a reasonable basis for believing the investment to be legitimate. It follows that Lloyds should reimburse him under the CRM Code.

#### *Other issues*

The Financial Services Compensation Scheme (FSCS) is accepting customer claims submitted to it against Raedex Consortium Ltd. More information about FSCS's position on claims submitted to FSCS against Raedex can be found here:

<https://www.fscs.org.uk/making-a-claim/failed-firms/raedex/>

The FSCS is also aware that we have issued recent decisions upholding complaints against banks related to the Raedex investment scheme. Whether the FSCS pays any compensation to anyone who submits a claim to it is a matter for FSCS to determine, and under their rules. It might be that Raedex Consortium Ltd has conducted activities that have contributed to the same loss Mr K is now complaining to us about in connection with the activities of Lloyds.

As I have determined that this complaint should be upheld Mr K should know that as they will be recovering compensation from Lloyds, they cannot claim again for the same loss by making a claim at FSCS (however, if the overall loss is greater than the amount they recover from Lloyds they may be able to recover that further compensation by making a claim to FSCS, but that will be a matter for the FSCS to consider and under their rules.) Further, if Mr K has already made a claim at FSCS in connection with Raedex, and in the event the FSCS pays compensation, Mr K is required to repay any further compensation they receive from their complaint against Lloyds, up to the amount received in compensation from FSCS.

FOS and FSCS operate independently, however in these circumstances, it is important that FSCS and FOS are working together and sharing information to ensure that fair compensation is awarded. More information about how FOS shares information with other public bodies can be found in our privacy notice here: <https://www.financial-ombudsman.org.uk/privacy-policy/consumer-privacy-notice>

#### **Final decision**

For the reasons I've explained, I uphold this complaint. If Mr K accepts my final decision, Lloyds Bank PLC needs to:

- Refund the payments he made in connection with the scam, less the returns that he

received.

- Add 8% simple interest per annum calculated to run from 15 days after 19 January 2024 until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 6 March 2025.

James Kimmitt  
**Ombudsman**