

The complaint

Mr J, as the director of J is bringing a complaint that Lloyds Bank PLC decided not to refund J after being the victim of a scam.

J is bringing its complaint using a claims management company which I'll refer to as K.

What happened

J invested in a company I'll refer to as A. A offered a rent-to-rent property investment. J's funds would be used to refurbish properties and A would find a tenant to rent the property at a higher price. A told consumers they would rent the properties out to council's or housing associations. A claimed to have agreements in place with a well-known charity (I'll refer to as H) and a housing association (I'll refer to as P).

This service is broadly aware of the scam that J fell victim to. It was far from the only investor to be drawn into the scam and, sadly, this service has seen numerous complaints from different victims. We know investors were promised monthly returns, based on the length of each contract. Funds would be used for the sourcing and refurbishment of properties. The scheme continued for some time, with some 'investors' actually receiving some money back, as might be expected of a Ponzi or pyramid scheme.

In or around May 2023, H issued a public statement on its website, saying that it had been made aware of several property investment schemes where H had been named as either the guarantor or would be placing tenants into the rented properties. It said H had no involvement with these schemes. Any claims that H was involved were bogus and fraudulent. It specifically mentioned A, where it claimed H as the "tenant" in its contracts, dating as far back as 2019. H reiterated it had not entered into any agreements or had any dealings with A.

K, representing J, as well as many other investors, has provided correspondence from the housing association - P. In these emails P said it had never worked with A.

J made three payments to A, totalling £57,250. J received one return of £3,875 in July 2023. J also received sourcing fees from a company (F) it was working with that sourced clients for A. J returned all but £1,500 of those fees to F when it discovered A was a scam.

In October 2023 consumers were contacted by the director of A, to say the company would be dissolved and no further payments made to customers.

K raised a scam claim with Lloyds on behalf of J. Lloyds said it believed the money had been sent to a genuine company and it deemed the matter a civil dispute or failed investment. It said A was a business for several years and contracts were exchanged between J and A. Regular returns were received until investors were told the investment had failed.

It didn't think J's claim was covered by the CRM code and it didn't offer to refund J.

In its business file Lloyds said when setting up the payment Mr J received a confirmation that the payee matched the account details entered. It added Lloyds did not intervene with the payments, even if it had it said its unlikely Mr J would have been deterred from going ahead as A was a genuine active company.

Unhappy with that outcome, K brought J's complaint to our service. One of our investigators looked into things. They were satisfied that J's claim was an Authorised Push Payment scam and therefore covered by the Contingent Reimbursement Model (CRM) code. In summary the key points they set out were:

- A, provided rental agreements with a well-known charity - H. That charity has since released a public statement on its website that it has never had any dealings with A.
- The housing association – P, that A also claimed to be working with, confirmed it also had never had dealings with A.
- Because of the two false representations above, which featured in most consumers contacts with A, they were satisfied that A dishonestly deceived consumers about the purpose of the payments they were making.
- J's contracts included the housing association – P - as the tenant, which was found to be untrue. They were persuaded that A could not fulfil the contract with J.

They went on to say that J should receive full reimbursement under the CRM code as Mr J had a reasonable basis of belief when making the payments. They said:

- A provided professional and convincing sales literature and had a professional website.
- The agent J spoke to was knowledgeable. J had been dealing with another agent of A's and saw other investors had been receiving their returns for many months, prior to deciding to invest with A.
- The company had been registered on Companies House since 2019.
- At the time A claimed to have agreements in place with H and P, which appeared genuine at the time J decided to initially invest.
- The rental contracts A provided appeared genuine and didn't look too good to be true.

The investigator recommended that Lloyds reimburse J in full and pay 8% simple interest from date the claim was declined to the date of settlement, minus any returns or fees received.

Lloyds did not agree with the investigations it agreed that A did not have the contracts it claimed to have with social housing agencies and charities. But it said A was being investigated by law enforcement agencies to determine if there was an intention to defraud.

It said it had ring-fenced these cases and felt our view was premature. It said as and when the police investigation concluded and charges brought it would revisit the claim as per R3(1)(c) of the CRM code.

It added that as there is on-going court action this is a reason our service might not consider a complaint.

I have since been in touch with Lloyds and explained my thoughts on A in general and the other complaints we've seen regarding this scam. I set out why I was satisfied why investors were scammed. Lloyds received the investigators view in November 2024, I corresponded with Lloyds in January 2025. But it hasn't reviewed its position on this particular complaint

since then, and so as this complaint hasn't been resolved, it has been passed to issue a formal 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.

Having done so, I've come to the same conclusions as the investigator. I'll set out my findings in full below.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards, codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Lloyds's request for the case to be placed on hold

In order for the consumer to have been the victim of an APP scam the consumer must have been deceived about the very purpose for which their payment has been procured. '*fraud*' in this instance would mean that there had been a dishonestly made false representation, with the intention of making a gain for A or to cause a loss to J.

And for there to be '*fraudulent purposes*' (as opposed to legitimate purposes) would require that test for fraud to be met in relation to the *purposes* for which the payment was procured. That must have been at the time the payment transaction occurred or earlier. It does not follow that fraud at a later date can engage the CRM Code's definition of an APP scam.

Neither would fraud which doesn't speak to the *purpose* of the payment. I take it to follow that there may be situations where false representations were made which could amount to fraud under the Fraud Act, but which don't have the effect of the payment falling within the scope of the definition of APP Scam set out under the CRM Code.

I don't have the power to conduct a criminal investigation into A. Part of what is required here is to establish the intent and state of mind of the person(s) accused of this fraud about the purpose of J's payment.

When considering the evidence produced in support of J's claim of an APP scam, I'm required to reach my findings on a balance of probabilities rather than to the criminal standard. But given the serious nature of the allegations involved I consider that this must involve convincing evidence to lead me to find it more likely than not the underlying purpose of the payment transaction was a fraudulent purpose.

Having reviewed all the information regarding A carefully, I'm of the opinion this is an APP scam and therefore caught by the CRM code. There is evidence of the A's false representations about the contracts it had with H and P that we now know to be untrue. And there is no evidence of any legitimate contracts provided to consumers. We've also seen the receiving account statements and there's no activity that would suggest the business was being run as described or the consumers funds were being utilised in anyway as agreed between A and the consumer. There are no rental incomes and payments to any companies, merchants etc. And at a certain point you can see funds are being used to repay other consumers who have invested and so it would appear to be a Ponzi scheme. Lloyds has said there is an on-going Police investigation and R3(1)(c) of the CRM code applies. R3(1)(c) says:

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.

Lloyds has already provided an outcome under the CRM code when it issued its final response saying it declined J's claim. So, it can't retrospectively apply this provision in this case.

But even if Lloyds doesn't consider that it gave an outcome under the CRM code, Lloyds hasn't provided an explanation as to why awaiting the outcome of the police or other statutory body investigation *might reasonably inform* an outcome under the CRM code. A Police investigation and decision to charge will be based on a criminal burden of proof. That may well take many months or years to decide or may not happen at all. In this case I'm deciding if Lloyds, under the voluntary CRM code, is liable to refund the consumer where it's more likely than not, that the consumer was the victim of an APP scam. I appreciate a Police investigation may reveal more detail but as I'm of the opinion that it is not in question that this was a scam, then that isn't necessary in this particular instance.

A criminal prosecution is not necessary to determine if something is an APP scam under the code. I'm satisfied on balance that this was more likely than not a scam. I've seen no evidence that A intended to use the consumers funds as they agreed between them. And Lloyds has not provided any evidence to contradict this either. As such I'm satisfied this meets the definition of an APP scam under the CRM code.

Furthermore, Lloyds has referred to about on-going court action as being a reason we might not consider a complaint, but that is not applicable here. Here the complaint with Lloyds is not being considered by any court. The underlying company is being investigated but that does not impact our decision to make a finding under the CRM code.

Application of the CRM code

Lloyds a signatory of the Lending Standard Board's Contingent Reimbursement Model Code (the LSB's CRM Code). The CRM Code requires firms to reimburse victims of APP Scams in all but a limited set of circumstances.

The investigator set out their explanation for making the finding this was an APP scam (and therefore a claim caught by the CRM code) but for clarity I'll repeat the salient points here.

- I've seen no evidence that A could have fulfilled the contracts it entered into with consumers. It did not have the agreements in place with the parties it claimed - either H or P. And in J's case, the contract included P as one of the parties.
- The contracts and agreements A provided to consumers were therefore fictitious as they contained the details of parties who had not contracted with them.
- I've also explained I have seen other supporting evidence that A was not operating in line with the purpose that was agreed with its customers.
- There's no evidence that J's funds were used for the intended purpose that both J and A had agreed they would be used for.

Lloyds hasn't provided any evidence that A was operating legitimately. As I've already set out, I'm satisfied this is an APP scam and caught by the CRM code, I've gone on to apply the provisions of the code below.

As I've mentioned, the CRM code which requires firms to reimburse consumers who have been the victims of APP scams, in all but a limited number of circumstances and it is for

Lloyds to establish that a customer failed to meet one of the listed exceptions set out in the CRM Code.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that*:

- The customer ignored what the CRM Code refers to as an “Effective Warning” by failing to take appropriate action in response to such an effective warning.
- The customer made payments without having a reasonable basis for believing that:
 - o the payee was the person the Customer was expecting to pay;
 - o the payment was for genuine goods or services;
 - o and/or the person or business with whom they transacted was legitimate

*Further exceptions outlined in the CRM Code do not apply to this case.

Did Lloyds meet the standards expected of a firm under the CRM Code?

The CRM code says that, where a firm identifies APP scam risks, it should provide “Effective Warnings” to their customers. It sets out that an Effective Warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. And it says that, as a minimum, an Effective Warning should be understandable, clear, impactful, timely and specific.

I’m satisfied given the value of the payments, despite this being a business account Lloyds still ought to have identified that J could be at risk of an APP scam and provided effective warnings in line with the Standards under the CRM code.

Lloyds hasn’t said that it provided any warnings at the time Mr J made the payments from J’s account.

Overall, I’m satisfied that Lloyds ought to have provided effective warnings which it hasn’t satisfied me that it did. And so Lloyds has failed to meet the firms’ standards under the CRM code.

Did Mr J have a reasonable basis of belief when making the payments?

I’ve also thought about the steps Mr J took to reassure himself about the legitimacy of the contact he’d received from A and whether it was reasonable for him to proceed with the payments from J’s account. And I’m persuaded he did. I’ll explain why.

- Mr J says he found A and completed the necessary due diligence and was already working with another company that Mr J was working with at the time. This other company had been earning a sourcing fee with A and could see many investors had received returns at the point J invested with A.
- A had a basic, but professional looking website, which I’ve had limited access to, given that it’s no longer accessible.
- A had an entry on Companies House showing incorporation from 2019, with two sets of micro-company accounts submitted at the time J invested.
- Mr J also says he saw reviews on a trusted website, which at the time, showed all positive reviews – albeit they were limited in number.

- At the time J entered into the contracts with A, there wasn't anything in the public domain that would have put J on notice that this wasn't a legitimate investment.
- The returns promised didn't seem too good to be true. J's contract contained a property that could be found on the land registry, the monthly rental payment seemed reasonable, given the property was being refurbished and used as home of multiple occupancy.
- J's contract included a genuine housing association – P, incorporated since 2012. And J had no way of knowing P's involvement was a lie.

On this basis, I'm satisfied, that in these circumstances, Lloyds has not established that an exception to full reimbursement should be applied. Therefore, Lloyds needs to refund J for its losses.

Putting things right

- I direct Lloyds to pay J - £51,875 – which is made up of £57,250 J paid to A and received £3,875 in returns, minus a further £1,500 in sourcing fees that weren't returned to F.
- Lloyds needs to pay 8% simple interest from the date it declined J's claim to the date of settlement.

My final decision

I uphold J's complaint against Lloyds Bank PLC and direct it to settle the complaint as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask J to accept or reject my decision before 5 May 2025.

Sophia Smith
Ombudsman