

The complaint

Mr K complains that Lloyds Bank PLC won't refund the money he lost when he was the victim of what he feels was a scam.

What happened

Mr K is being represented in this complaint by his daughter, Mrs S, who he has appointed as attorney to act on his behalf. But, for clarity, I will mostly refer to Mr K in this decision.

During 2021, Mr K's daughter, Mrs S, found out about an investment opportunity being run by one of her neighbours. She understood the neighbour was trading in the foreign exchange market and that other neighbours had invested and been able to withdraw profits they had made. Mrs S then invested herself and, after receiving regular reports that her investment was doing well, she encouraged Mr K to invest as well. And so in April 2022, Mr K made a payment of £20,200 from his Lloyds account to bank account details he was given for a company related to the investment company.

Unfortunately, in June 2022, Mr K and Mrs S were contacted by the police and told other neighbours had reported that the neighbour running the investment was carrying out a scam. Mr K then reported the payment he had made to Lloyds and asked it to refund the money he had lost.

Lloyds investigated but said it had shown Mr K a warning when the payment was set up online and then spoken to him over the phone and asked questions about the payment. It said it had provided robust education about scams, but Mr K had chosen to send the money anyway. It also said it didn't think Mr K had a reasonable basis to believe the investment was legitimate. So it didn't agree to refund the money he had lost. Mr K wasn't satisfied with Lloyds' response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think Lloyds had established that Mr K ignored an effective warning or made the payment without a reasonable basis for belief that it was genuine. So they said Lloyds should refund the money Mr K had lost, in full. Lloyds 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.

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

When considering what is fair and reasonable, I'm also 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.

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.

Can Santander delay making a decision under the CRM code?

Since our investigator issued their findings on the complaint, Lloyds has argued that the investment company Mr K made the payment to is the subject of an ongoing complex investigation and so it would be appropriate to wait for the outcome of that investigation before making a decision on whether to reimburse him. But I disagree.

The CRM code says firms should make a decision as to whether or not to reimburse a customer without undue delay but that, if a case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, it may wait for the outcome of the investigation before making a decision.

But this provision only applies before the firm has made its decision under the code – it can't seek to delay a decision it's already made. And Lloyds only raised this after the case was referred to our service and it had already reached a decision on Mr K's claim in its final response letter to him, when it said it didn't feel he had a reasonable basis for belief when making the payment and so wasn't entitled to a refund. So I don't think Lloyds can now fairly rely on this provision here.

Is it appropriate to determine Mr K's complaint now?

I am aware there is an ongoing investigation into the investment company here. And there may be circumstances and cases where it is appropriate to wait for the outcome of external investigations. 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. And I am conscious that any criminal proceedings that may ultimately take place have a higher standard of proof (beyond reasonable doubt) than I am required to apply (which is the balance of probabilities).

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 Mr K'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 Mr K was the victim of a scam rather than a failed investment.

Parliament has given ombudsmen the job of determining complaints quickly and with minimum formality. And so I don't think it would be appropriate to wait to decide Mr K's complaint unless there is a reasonable basis to suggest that the outcome of any external investigation may have a material impact on my decision over and above the evidence that

is already available. And, for the reasons I'll set out below, I think the evidence currently available is enough to reach a fair and reasonable decision and so I don't think it's necessary to wait until the outcome of the investigation or any potential related court case.

Has Mr K been the victim of a scam, as defined in the CRM 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 it doesn't cover a genuine business or investment that subsequently failed. And in order to determine whether Mr K has been the victim of a scam as defined in the CRM code I need to consider whether the purpose he intended for the payment was legitimate, whether the purposes he 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 he's told us, I'm satisfied Mr K made the payment here with the intention of investing with the company. He thought his funds would be used to trade in the foreign exchange market, and that he would receive returns on his investment. And I haven't seen anything to suggest that Mr K didn't think this was legitimate.

But I think the evidence I've seen suggests the investment company didn't intend to act in line with the purpose for the payment it had agreed with Mr K.

Mr K made the payment to account details he was given for a company related to the investment company. And while I can't share details for data protection reasons, I'm satisfied the statements for the investment company's account and the account he sent the money to do not suggest that legitimate activity was being carried out by the investment company at the time Mr K made the payment. While there is evidence the investment company initially did carry out trades, it doesn't necessarily follow that it was a legitimate enterprise. The company and its related companies were not authorised by the FCA to carry out trading, so its operations clearly lacked an important element of legitimacy – it was required to be authorised to do the activity it was carrying out and it wasn't.

From the paperwork provided to investors, including Mr K, the person Mr K thought was running the investment company (who was bankrupt at the time) appears to have personally guaranteed the investments – despite foreign exchange trading being a high-risk investment and the person never being in a financial position to do so. The person also signed contracts on behalf of the company despite not officially being listed as the director of the business. They appear to have acted as a 'shadow director', when they would've been disqualified as a director in their own right due to their bankruptcy. Furthermore, the investment company was listed as an 'IT consultancy' business on Companies' House and not a financial services firm.

So based on this evidence, and the weight of testimony from other consumers who invested with the company, I'm satisfied it is more likely the investment company wasn't acting legitimately and its intentions for the payment did not broadly align with Mr K's intentions. I'm also satisfied the discrepancy in the alignment of the payment purposes between Mr K and the investment company was the result of dishonest deception on the part of the company.

And so I think the circumstances here meet the definition of a scam from the CRM code.

Is Mr K entitled to a refund under the CRM code?

As I explained above, Lloyds is a signatory of the Lending Standards Boards Contingent Reimbursement Model (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 W fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those 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
- The customer made the payment without 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; and/or
 - o the person or business with whom they transacted was legitimate

There are further exceptions within the CRM code, but these don't apply here.

Did Mr K ignore an effective warning in relation to the payment?

The CRM code says 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.

Lloyds has sent us a copy of the warning it says Mr K was shown when setting the payment up online, which said:

"[Mr K], make sure this investment is real

Deals that look too good can be scams

Do lots of research – good deals don't find you

See what your friends and family think

Use the FCA to check an advisor or company

Find out how to stay safe from scams on our Fraud Hub"

But while this warning does mention making sure an investment is real and doing research, I don't think it is specific enough about the checks Mr K could have done or the warning signs he could have looked out for. I also don't think it is clear enough about the ways in which a deal could be too good. And I don't think it does enough to set out the seriousness of the possible consequences of falling victim to a scam. So I don't think this warning was impactful or specific enough to be effective in Mr K's circumstances.

Lloyds has also said it spoke to Mr K on the phone before allowing the payment to go through, and has sent us a transcript of the conversation it had with him.

In this call, Lloyds mentions that it is seeing an increase in fraud and wants to protect its customers from potential investment fraud. It also explains that, if something does turn out to be a scam, there is a high chance it would be unable to recover any of the money.

But the checks it then carries out and the questions it then asks Mr K are mostly focused around how he was given the account details he was making the payment to and the risk of those details having been intercepted and changed by fraudsters – which is a risk that isn't relevant to the scam Mr K has fallen victim to. I don't think Lloyds does enough in this call to explain the steps Mr K could take to address the risk of the investment itself being fraudulent. And so I don't think this call was impactful or specific enough to be an effective warning in Mr K's circumstances either.

I therefore don't think Lloyds has established that Mr K ignored an effective warning in relation to this payment.

Did Mr K make the payment without a reasonable basis for belief?

Lloyds has also argued that Mr K made the payment without a reasonable basis to believe that the investment was legitimate. It said Mr K didn't carry out the checks it would've expected him to complete before investing, and was aware the person running the investment wasn't FCA registered but continued to invest anyway. So I've considered whether Mr K acted reasonably when making the payment, or whether the warning signs ought to have reasonably made him aware that this wasn't a genuine investment.

But Mr K thought the investment company was being run by someone he and his family had known for some time as a friend and neighbour. And I think it's reasonable that he wouldn't expect a person known in this way to scam him.

Several of Mr K's other neighbours were also involved with the investment company, either as investors or in the management of the company. Some of these other neighbours who had invested had said they had made significant profits and been able to withdraw from the investment. And Mr K was encouraged to invest by his daughter, who had invested for some time and been told she had made significant profits as well. So I think it's reasonable that this would have all made Mr K think the investment was genuine.

Mr K's daughter had been to the office of the person running the investment, which she says all looked legitimate, and she'd received regular weekly updates on the investment she'd made. Mr K was also given a contract to sign setting out the terms of the investment, which I think looked relatively professional. And I wouldn't necessarily expect a scammer to have had a physical office or provide regular and professional paperwork in this way. So I think it's reasonable that these things also helped convince Mr K that the investment was genuine.

Mr K and his daughter also waited sometime after initially hearing about the potential investment before choosing to invest themselves. Mr K's daughter only invested after she heard other neighbours were involved in the management of the investment and was told other investors had been able to withdraw their profits, and Mr K only invested after his daughter had seemingly successfully invested for more than 6 months. And I think this suggests Mr K didn't unreasonably rush into the investment and tried to see how it performed before investing.

Mr K also says he looked the person he thought was running the investment up online and didn't find any negative information about them – which I think shows Mr K was trying to check the investment was genuine. And as neither Mr K nor his daughter are experienced investors, and the warning Lloyds showed didn't go into significant detail about potential checks they could carry out, I don't think it's unreasonable that Mr K didn't do any further checks and thought they had done enough to check the investment was genuine – particularly as they thought they knew the people involved in it.

I appreciate that, with the benefit of hindsight, it's possible to identify a number of things about what was happening that could have caused Mr K some concern. But, based on what I've seen, I don't think it was unreasonable that, at the time, he either didn't pick up on these things or wasn't caused enough concern by them to overcome the parts of the scam that felt genuine.

So I don't think it would be fair to say that Mr K acted unreasonably when making the payment, or that Lloyds has established that he made the payment without a reasonable basis for belief that the investment was genuine.

Summary

Overall, for the reasons I've explained above, I think it is fair for our service to consider Mr K's complaint based on the evidence currently available. And having done so, I think the payment Mr K made is covered by the CRM code and Lloyds hasn't established that any of the exclusions to reimbursement apply here. And so I think it is fair and reasonable for Lloyds to fully reimburse Mr K under the CRM code.

My final decision

For the reasons set out above, I uphold this complaint and require Lloyds Bank PLC to:

- Refund Mr K the £20,200 payment he made as a result of this scam
- Pay Mr K 8% simple interest on this refund, from the date it initially responded to his claim until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 28 February 2025.

Alan Millward
Ombudsman