

The complaint

Mrs J is unhappy that Lloyds Bank PLC decided not to refund her after she says she was the victim of a scam.

What happened

Mrs J invested £11,900 in March 2022 into a buy-to-let property investment scheme with S. Mrs Js' payment with S was to reserve a property. The reservation deposit of between 25 to 30% of the property price would then form part of the balance due on exchange of contracts with the developer. This reservation fee was non-refundable. Once the reservation form was completed and the fee paid, S then put investors in touch with solicitors to arrange contracts with the developer. Those contracts were drawn up between the investors and the developer.

Many other investors along with Mrs J found they couldn't take ownership of the property as mortgages couldn't be arranged and they couldn't afford to become cash buyers of the properties.

Mrs J, like many other investors raised a scam claim with her bank – being represented by a professional claims management company when doing so.

Lloyds issued its final response which said it would not be upholding Mrs J's claim. Based on the evidence it had seen, it said this appeared to be a failed investment rather than a scam. It said it was unable to evidence that S was set up with the intention to scam. Rather, it said the investment appeared to have failed due to poor workmanship and management of the developers – E. And it was unable to find any links between S and E which suggest they planned for the investment to fail. And D was unable to arrange the mortgages due to problems with the build.

Mrs J brought her complaint to our service. She's not the only consumer to have brought a complaint about the investment with S.

One of our investigators looked into things and concluded Lloyds' decision not to refund Mrs J was fair and reasonable in the circumstances.

The key points in her view were:

- There were a number of developments, introduced by S where work was started.
- And at least two developments were completed and a further two were in the final stage of work when S ceased trading.
- Our service is aware of an investor who was able to complete on two properties. Although the mortgage couldn't be arranged as S had promised the consumer here received what they paid for.
- Whilst there is an indication of misrepresentation this isn't sufficient to conclude this was an APP scam for the purposes of the CRM code.

Mrs J did not accept the investigators findings. In summary she said:

- There are lots of people in the same position and they can't all be wrong.
- She tried to get a mortgage from different places and failed.
- S lied from the outset which is a clear intention of fraud. This included fraudulent misrepresentation: promising to pay interest until completion – which stopped after three months, the mortgage would be arranged, everything was covered by insurance, and the company rep would support through to completion, none of which was true.
- She added the case is with the police and asked why the police would look into the matter if it didn't think something was wrong.
- She provided evidence that a different bank has refunded her losses and determined she was the victim of a scam and fails to see how the outcome reached by the investigator is the opposite of this.
- Mrs J also described the impact this has had on her family health and finances.

The investigator explained that whilst she was sympathetic to Mrs J's position these points didn't mean she could conclude the investment with S was a scam. One bank's decision to refund a consumer does not impact our decision. We look at each case based on its own merits.

As the complaint couldn't be resolved it's been passed to me to consider 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.

I've come to the same conclusions as the investigator for the same reasons. I know that this will come as a disappointment to Mrs J but I'll explain my reasons below.

I'll start by saying I'm sorry that Mrs J has lost a significant sum of money as a result of this investment. And I'm sorry to hear of the impact this has had on her and her family, both in terms of their finances and well-being.

But not all failed investments are as the result of an authorised push payment (APP) scam. And, in order for Lloyds to be liable to refund Mrs J, then I need to be satisfied that she has been the victim of an APP scam, when applying the Contingent Reimbursement Model (CRM) Code and other relevant industry guidance in deciding the outcome of this complaint. That's not to take away that Mrs J hasn't suffered a loss or, that some fraudulent behaviour was underlying the S's actions. But not all instances of fraud will be enough to say that a bank is responsible for a consumer's losses. I need to see convincing evidence that Mrs J has been the victim of an Authorised Push Payment (APP) scam in order for that to be the case.

It's important to note that I am not deciding a dispute between Mrs J and S – I don't have the power to look into a complaint about that company. My role is limited to deciding the dispute between Mrs J and Lloyds based on the information I have access to, or has been provided by the parties to the complaint. I need to decide whether Lloyds acted fairly, when concluding that this amounted to a civil dispute and not an APP scam. I'm satisfied that it did, and I'll explain why below.

In order to be persuaded on balance that Mrs J has been the victim of an APP scam I need to look to the definitions set out in the CRM code. At

DS1(2)

Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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.

DS2(2) This Code does not apply to:

(b) private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier;

In order for the consumer to have been the victim of APP scam the consumer must have been deceived about the very purpose for which their payment has been procured. Mrs J has not provided any new or different evidence on this point. So, I'm satisfied that the investigators findings here still stand. Which I'll repeat in italics below.

Our service is aware that work was started on a number of the developments S introduced investors to. In at least two cases, the developments were completed, and another two appear to have been in the final stage of work when S ceased trading. It would appear therefore that at the time payments were taken, the developments were real and were progressing towards completion.

Our service is also aware of one S investor that was able to complete on two properties. The investor has taken ownership of the properties and is currently renting them out. While S couldn't arrange a mortgage and the investor had to go through a specialist broker, they took ownership of the properties they paid a deposit for. This shows that at least in one case, an investor did receive broadly what they believed they were paying for. Additionally, it demonstrates there was a way for S clients to buy the properties, whether by paying cash or securing specialist mortgages. But the secured mortgage element of the contract was potentially misleading.

Investors have raised a number of issues, alleging that S exaggerated the value of the properties they were securing and providing misleading information about the accommodation being serviced. However, the properties were built and investors had the opportunity to purchase them, which leads me to conclude the underlying purpose of the contract was fulfilled and therefore this matter is a civil dispute rather than a scam.

Investors have also alleged that S misrepresented the ability of its partner firm, D, to secure mortgages. In communication with investors, D presented itself as an Appointed Representative (AR) of T. However, T has confirmed this wasn't the case as D did apply to be an AR, but was rejected. However, while S and D appear to have misrepresented D's status, I'm not satisfied this is sufficient to conclude the investment was a scam. The purpose of the payment was to reserve a property. These properties were being developed at the time of payment and a number were completed.

Several allegations have been put forward without persuasive evidence to corroborate them. For instance, it's been alleged that S and the developer colluded to take deposits from investors in full knowledge they wouldn't be able to complete and purchase the properties they'd reserved. However, the developer says it wasn't aware when deposits were taken that many S investors would be unable to secure a mortgage and I've seen no evidence to dispute this version of events. I've also not seen sufficient evidence that S itself knew or should have known that many investors wouldn't qualify for a mortgage from the time of payment.

It's also been alleged the properties were built under minimum size requirements. However, no independent evidence has been provided to corroborate this. Additionally, the developer denies this is the case and says the completed apartments were in line with the size they were sold. Furthermore, even if this was the case, this wouldn't in and of itself change the finding that this is not an APP scam. I've also seen no evidence to suggest S could have been aware of this at the time payments were made.

I'm aware of an ongoing police investigation into S. However, it's possible this investigation will find this matter was a case of poor business practices or of a development project that failed due to unforeseen circumstances.

Based on the evidence currently available, I'm not persuaded that on balance I can say this matter meets the CRM definition of a scam. As a result, I'm unable to say Lloyds has acted unfairly in declining this claim on the basis it is a civil dispute.

However, I do accept the possibility that Mrs J may have been the victim of a scam. Should additional evidence arise later, supporting the position that Mrs J has most likely been scammed, she can ask us to consider the matter again.

The findings above set out why there isn't enough persuasive evidence to conclude this was an APP scam. The properties were being built, there was an option to continue with the contracts, although I appreciate the mortgages weren't arranged as they ought to have been. And we know that some investors were able to complete their contracts. These all speak to the very purpose of the contract and agreement between S and investors. And they lead me to conclude, like the investigator, that at present, this does not meet the definition of an APP scam.

I'd like to acknowledge Mrs J's points following the view that:

- S lied and is guilty of fraudulent misrepresentation. As I've said, not all fraud will amount to something being an APP scam. And I don't doubt that fraudulent misrepresentation may have occurred here. But that in and of itself does not make this a scam. And I've said the purpose of the contract between the parties was aligned. Mrs J's inability to secure a mortgage does not mean that the investment was a scam. The same can be applied to the other points that S may have lied about.
- A Police investigation could take years to conclude or may not result in anything material. So, it also isn't an indication in and of itself that we would treat an investment as a scam.
- I appreciate another bank has considered the investment with S a scam and refunded her in full, for the payments made from that account. A decision like this, by the bank, does not set a precedent that all complaints involving S should be considered a scam. And banks will decide to refund consumers for any number of reasons. As the investigator said we decide complaints based on their own merits, but also with the evidence that's available.

Overall, there is not persuasive evidence that the investment with S and the various parties involved in the development of the properties set out to scam, Mrs J (and others) and so I'm satisfied that Lloyds was correct in its application of the CRM code here and doesn't need to refund Mrs J for her losses.

I've also considered if there was any other reason why Lloyds would need to refund Mrs J and I haven't found any.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 17 April 2025.

Sophia Smith
Ombudsman