

The complaint

Mrs L complains that Lloyds Bank PLC hasn't refunded her after she reported falling victim to an investment scam.

What happened

Mrs L was offered an opportunity to invest through the business of a family friend whom she'd known for a long time. The friend's business – which I'll call R – was involved in property investment and development. Mrs L was told all about the investment and how it would work. She decided to invest and she sent £10,000 to R on 13 and 14 October 2021. She started receiving returns and invested a further £13,000 on 12 January 2022 and £10,000 on 11 April 2022.

R was the company Mrs L was dealing with and had a contractual relationship with. R was going on to send Mrs L's money to another company – which I'll call A.

A said it had opportunities to invest in property that was to be used by different councils for emergency and social housing. A was the company which claimed to be securing contracts with local councils and sourcing many of the properties which were to be used and invested in.

Mrs L received returns as promised through to July 2022. She received a total of £11,001.30 (paid to her by R) during that time. But, after July, the payments stopped.

It was shortly after this that R and some other involved parties, began to suspect A had been operating a scam, in the form of a Ponzi scheme. As more information was revealed over time, it became apparent that A had never secured the contracts with local councils it said it had. These were essential to the proposition A had put forward, and so there appeared to be evidence a scam had taken place.

Mrs R contacted Lloyds for help, reporting that she'd fallen victim to a scam. In doing so, she set out that there was no consideration that R had been operating a scam and, had instead, been unwittingly caught up in a Ponzi scheme being run by A.

Mrs L asked that Lloyds reimburse her as the victim of a scam, and in consideration of the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. But Lloyds didn't reimburse Mrs L and so the complaint was referred to this service.

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'm sorry to disappoint Mrs L, but I'm not upholding her complaint. I'll explain why.

I don't doubt that Mrs L has lost money here. It's clear she made an investment in good faith, and she hasn't seen the returns she was promised. Nor has her invested capital been returned to her. Mrs L put a substantial sum into this supposed investment, and I realise this will have had a significant impact on her finances, as well as her emotional and mental health. But there aren't grounds here upon which I can hold Lloyds responsible for her loss.

The starting point at law is Mrs L is responsible for payments made from her account which are properly authorised. This is set out in the Payment Service Regulations (2017) and confirmed in Mrs L's account terms and conditions. There's no dispute here as to whether Mrs L authorised the payments; she's confirmed she did and we know they went to R as intended.

In bringing the complaint, Mrs L has referred to the CRM Code as a means for her to be reimbursed. It is true that the Code is in place to see the victims of scams refunded in most circumstances. But I'm not persuaded it applies to the payments made by Mrs L. That's because they don't meet the definition of an APP scam.

I can broadly accept, for the purposes of this decision, that A was operating a scam. There does appear to be some significant evidence of that being the case. But Mrs L didn't have a relationship or any direct dealings with A.

Mrs L dealt solely with R. She knew the owner and director personally, and that was her route into the investment. It was R that talked her through the opportunity, what she would get in return, and how to proceed. It was also with R whom Mrs L signed agreements for the purposes of the investment, and it was R she sent money to and received returns from.

Through Mrs L's complaint – and from those of other consumers that have been involved in this scheme – it's been said there is no doubt as to R's legitimacy, instead accepting that R was itself a victim of the scam run by A. But this then means that Mrs L hasn't made payments for a fraudulent purpose which she otherwise believed to be legitimate.

The CRM Code states that it applies to payments where, *"the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent"*.

There's no doubt Mrs L believed the other person – R – was legitimate. But the purpose of making that payment to R was legitimate too, and not fraudulent.

Mrs L had a genuine relationship with R. R had made no attempts to deceive her into parting with her money. Mrs L paid R directly, with the contractually reinforced understanding that it would be R that paid her returns, as indeed it did for several months. And she relied on R's expertise in sourcing the investment, and trusting in its due diligence, when deciding to invest.

It's been suggested that R was only ever established as a means of investing in A. But I disagree. It might be true that A was the only project R was involved with at the time, but it's clear R was set up as a business in its own right. It had its own accounts, was a properly registered company, and entered into contracts with clients. R was making (or intended to make) money from clients it introduced to A's investment scheme. Mrs L was one of R's clients.

There's no mention of A in the contracts signed by Mrs L. Instead, Mrs L's contract is only with R and states the money would be loaned to R for its property business. There is no mention of A, or of specific projects. Indeed, during the course of our investigation, Mrs L has said she didn't know A was going to be involved at all, reflecting that she had no connection to it.

As I've said, it might be that A was indeed operating a scam. But her funds were sent to R, with the purpose of them being invested through R. R was responsible for handling her money and paying her returns.

It isn't the case that the ultimate destination of the funds (that being A) is the determining factor in establishing payment purpose and whether a payment has been made as a result of a scam. My findings explain why that isn't the case. In addition, the Financial Ombudsman Service has discussed this precise scenario with the LSB, and it agreed that the CRM Code would not apply to payments made in this way, where a legitimate business with whom all

agreements/contracts were entered into, providing what it itself believed to be a legitimate service, is involved.

I'm also not persuaded that A might have been involved without Mrs L's express knowledge means the definition of an APP scam has been met. Even if she didn't know the specifics about how her money would be used, it appears evident she gave permission for R to invest her money as part of its property business. R then took the decision to invest that money with A, and it is at that point the funds have become lost.

Looking beyond the CRM Code, at a firm's responsibilities to protect customers from financial harm through fraud, I can still not find reason to say Lloyds ought to bear responsibility for Mrs L's loss. The reasoning here is broadly the same as above, given the payments wouldn't be defined as being made as part of an APP scam. But, beyond that, if Lloyds had perhaps intervened in the payments and questioned Mrs L, I'm not persuaded it could have uncovered that an APP scam was taking place. In making that finding I've considered the level of sophistication of the scam, how persuasive it was, and the fact the director of R was a well-known and long-standing family friend.

As for attempts to recover funds, such attempts could only ever be made if a scam were established. And the attempts would only go as far as the account that received them, that being the one held by R. It's evident that, as a legitimate entity, it transferred the money on as intended, which meant there was nothing left to recover.

My final decision

I don't uphold this complaint against Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 15 January 2025.

Ben Murray
Ombudsman