

The complaint

Mr and Mrs A complain that Lloyds Bank PLC ('Lloyds') won't refund the money they say was lost as the result of a scam.

What happened

In 2018, Mr and Mrs A attended a property investor show and heard about a company I'll refer to as B.

B would purchase cars with investors funds, then lease the cars out to individuals who might not otherwise be able to access a leased vehicle. Mr and Mrs A were told they would receive a monthly return and, on maturity, a lump sum of capital and interest.

Mr and Mrs A made an initial investment in December 2018 and received monthly returns. Mr and Mrs A aren't complaining about this investment.

In July 2020, Mr and Mrs A decided to invest again and made a payment of £14,000 from their Lloyds account.

Mr and Mrs A received monthly returns between August 2020 and January 2021, of £267.36 per month, for a total of £1,604.16.

In March 2021, B went into administration.

Mr and Mrs A didn't receive any further monthly returns or the lump sum payable on maturity.

Mr and Mrs A believe the investment was a scam, and through a professional representative, raised a fraud claim with Lloyds in July 2023.

Lloyds investigated Mr and Mrs A's fraud claim but declined to refund them. Lloyds say B were a genuine company who fell on hard times, so they're not liable for Mr and Mrs A's loss.

Mr and Mrs A weren't happy with Lloyds' response, so they brought a complaint to our service.

An investigator looked into Mr and Mrs A's complaint and recommended that Lloyds refund their outstanding loss. The investigator said the evidence shows that Mr and Mrs A's funds weren't used for their intended purpose and were obtained by dishonest deception, so their claim is covered by the Contingent Reimbursement Model Code ('CRM Code').

Lloyds responded to the investigator's opinion, saying they are waiting on discussions with UK Finance before providing their response.

Under the Dispute Resolution Rules (found in the Financial Conduct Authority's Handbook), DISP 3.5.13, says, if a respondent (in this case Lloyds) fails to comply with a time limit, the ombudsman may proceed with the consideration of the complaint.

As the deadline for responses to the investigator's opinion has expired, I'm going to proceed with issuing my 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.

In broad terms, the starting position in law is that Lloyds are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations (PSR's).

Are Mr and Mrs A entitled to a refund under the CRM Code?

Lloyds are a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

But, the CRM Code does not apply to 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.

The CRM Code defines what is considered an APP scam as, "where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent".

In order to decide whether the circumstances under which Mr and Mrs A made their payment, meets the definition of an APP scam, I need to consider:

- The purpose of the payment and whether Mr and Mrs A thought this purpose was legitimate.
- The purpose the recipient (B) had in mind at the time of the payment and whether this was broadly in line with what Mr and Mrs A understood the purpose to be.
- And, if I decide there was a significant difference in these purposes, whether I'm satisfied that was as a result of dishonest deception.

Mr and Mrs A were making the payment to B as part of an investment. Based on the evidence that Mr and Mrs A had available at the time, I haven't seen anything to suggest they didn't think this was a legitimate purpose.

So, I've gone on to consider what purpose B had in mind and whether it was in line with what Mr and Mrs A thought.

In reaching an answer on what purpose B had in mind, I've considered the wider circumstances surrounding B, and the linked companies involved in the investment. The key information is:

- Following their investigation, the Serious Fraud Office (SFO) said the defendants had provided false information to investors, "encouraging people to pay in whilst knowing that investments are not in reality backed up by the cars they had been promised".

- One of the linked companies (R) told the Financial Conduct Authority (FCA) that it owned 1,200 cars, but the number of charges registered at Companies House was 69. The cars purchased were supposed to be new cars, but DVLA checks showed that 55 cars appeared to be second-hand. The business model relied to a large extent on securing deep discounts on new vehicles and such discounts would not be available on second-hand cars. There were other discrepancies found between what R told the FCA and what the DVLA checks showed.
- Administrators of one of the linked companies found that it entered into 3,600 investment agreements with individuals, which should've had specific secured vehicles. But the company only had title to approximately 600 vehicles.
- There is no evidence that cars were purchased with Mr and Mrs A's funds, or that security was registered at Companies House, as set out in the investment agreement.

Based on this, I'm satisfied that Mr and Mrs A's funds weren't used for the intended purpose and that B obtained the funds through dishonest deception. So, I'm satisfied that Mr and Mrs A's payment meets the definition of an APP scam and is covered by the CRM Code.

The CRM Code says that Mr and Mrs A are entitled to a full refund unless Lloyds can establish that an exception to reimbursement applies.

Lloyds haven't provided any evidence or arguments that an exception to reimbursement applies, but for completeness, I have considered this point.

Does an exception to reimbursement apply?

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

- The customer made payments without having a reasonable basis for believing that the payee was the person the customer was expecting to pay; the payment was for genuine goods or service; and/or the person or business with whom they transacted was legitimate.
- The customer ignored effective warnings, by failing to take appropriate action in response to such an effective warning.

** There are further exceptions outlined in the CRM Code, but they don't apply to this case.*

I'm satisfied that Mr and Mrs A had a reasonable basis for believing the investment was legitimate. I say this because Mr and Mrs A had previously invested with B and received the monthly returns in line with the investment agreement. Also, B were an active company on Companies House, had positive reviews online and provided professional marketing material. I haven't seen any evidence that suggests there were warning signs that B wasn't offering a genuine investment when Mr and Mrs A made their payment in July 2020. So, Lloyds couldn't rely on basis for belief as an exception to reimbursement.

Lloyds say Mr and Mrs A wouldn't have been provided with a warning when they made the payment as it wasn't unusual or out of character. So, I can't fairly say Mr and Mrs A ignored an effective warning and Lloyds can't rely on this exception to reimbursement either.

As, I'm not satisfied that Lloyds can rely on an exception to reimbursement, Mr and Mrs A are entitled to a full refund of £14,000. Lloyds can deduct from that refund the returns that Mr and Mrs A received (which total £1,604.16), meaning the net refund should be £12,395.84.

The interest award

Prior to the SFO completing their investigation, Mr and Mrs A's payment wouldn't have been covered by the CRM Code.

However, on the conclusion of the SFO's investigation on 19 January 2024, Lloyds should've considered the available evidence and given Mr and Mrs A an answer under the CRM Code within 15 business days - as per R3 (1) (c) of the CRM Code.

This means interest should be calculated from 15 business days after 19 January 2024 (when the SFO investigation concluded) until the date of settlement. Interest is awarded at 8% simple per year.

It's possible that funds could be recovered at a later date through the administrators and Lloyds are entitled to ask Mr and Mrs A to sign an indemnity to cover this eventuality.

Statutory body investigating

In response to the view Lloyds say they wouldn't comment as they're waiting on discussions with UK Finance.

Under the CRM Code Lloyds could defer giving an answer on a CRM complaint based on R3 (1)(c), which says: "if a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm's (Lloyds') decision, the Firm (Lloyds) may wait for the outcome of the investigation before making a decision".

However, in this case, Lloyds made a decision on Mr and Mrs A's claim under the CRM Code, saying it was a civil dispute. Lloyds didn't tell Mr and Mrs A in their Final Response letter that they wouldn't reach a decision, so they can't now rely on that clause.

And, based on all the evidence that I've seen, I'm satisfied that I can reach a decision that Mr and Mrs A's payment is covered by the CRM Code for the reasons explained above. I'm not persuaded I need to wait for any further updates from external parties or organisations to reach my decision.

Claims through FSCS

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 and Mrs A are now complaining to us about in connection with the activities of Lloyds.

As I have determined that this complaint should be upheld Mr and Mrs A 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 and Mrs A have already made a claim at FSCS in connection with B, and in the

event the FSCS pays compensation, Mr and Mrs A are 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>"

Putting things right

To put things right I require Lloyds Bank PLC to:

- Refund Mr and Mrs A £12,395.84 and
- Pay 8% simple interest per year on the refund, calculated from 15 business days after 19 January 2024 until the date of settlement.*
- In order to avoid the risk of double recovery the Lloyds is entitled to take, if it wishes, an assignment of the rights to all future distributions under the administrative process before paying the award.

* If Lloyds considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs A how much it's taken off. It should also give Mr and Mrs A a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint against Lloyds Bank PLC and require them to compensate Mr and Mrs A, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr A to accept or reject my decision before 16 January 2025.

Lisa Lowe
Ombudsman