

The complaint

Mr B complains that Lloyds Bank PLC ('Lloyds') won't refund the money he says was lost as the result of a scam.

What happened

In 2020, Mr B heard about an investment opportunity on the radio. The investment was through a company I'll refer to as C. C 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 B was told he would receive a monthly return and, on maturity, a lump sum of capital and interest.

Mr B says he attended a presentation about the investment, talked to a previous investor and reviewed C online. Mr B says the promotional material and brochures were professional. Mr B made a payment to C of £14,000 on 7 February 2020.

Mr B received 11 monthly returns of £255.69 between March 2020 and January 2021.

In March 2021, C went into administration.

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

Lloyds investigated Mr B's fraud claim but declined to refund him. Lloyds say it's a failed investment with a genuine company.

Mr B wasn't happy with Lloyds' response, so he brought a complaint to our service.

An investigator looked into Mr B's complaint and recommended that Lloyds refund his outstanding loss. The investigator said the evidence shows that Mr B's funds weren't used for their intended purpose and were obtained by dishonest deception, so his claim is covered by the Contingent Reimbursement Model Code ('CRM Code'). Under the CRM Code, Mr B is entitled a refund as he had a reasonable basis for believing the investment was legitimate when he made the payment.

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 decision.

Having reviewed the case, I reached the same outcome as the investigator. However, there was a point not covered by the investigator and I wanted to give both parties a chance to respond in relation to this point – before I issued a final decision.

My provisional decision

In my provisional decision I said:

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).

Is Mr B 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 B made his payment, meets the definition of an APP scam, I need to consider:

- The purpose of the payments and whether Mr B thought this purpose was legitimate.
- The purpose the recipient (C) had in mind at the time of the payments and whether this was broadly in line with what Mr B 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 B was making the payments to C as part of an investment. Based on the evidence that Mr B had available at the time, I haven't seen anything to suggest he didn't think this was a legitimate purpose.

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

In reaching an answer on what purpose C had in mind, I've considered the wider circumstances surrounding C, 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 B'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 B's funds weren't used for the intended purpose and that C obtained the funds through dishonest deception. So, I'm satisfied that Mr B's payment meets the definition of an APP scam and is covered by the CRM Code.

The CRM Code says that Mr B is 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 B had a reasonable basis for believing the investment was legitimate. I say this because Mr B attended a presentation and talked to a previous investor. Also, C 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 C wasn't offering a genuine investment when Mr B made his payment in February 2020. So, Lloyds couldn't rely on basis for belief as an exception to reimbursement.

Lloyds haven't said that an effective warning was ignored when Mr B made his payment, but they have provided details of a warning that would've been shown.

The warning said:

Just a minute.

Be sure that you know who you're sending money to. Please check the account details with a trusted source.

Fraudsters provide persuasive reasons to get you to make a payment. See all the latest scams fraudsters use on our fraud hub page.

I'm not satisfied that this warning was effective as it's not tailored to the circumstances under which Mr B made his payment. It doesn't bring to life what an investment scam looks like, or how Mr B could protect himself. And, I don't think it was reasonable to expect Mr B to click through a link to a website when the wording of the warning wouldn't have suggested to him he might be at risk of fraud.

So, I can't fairly say Mr B 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 B is entitled to a full refund of £14,000. Lloyds can deduct from that refund the returns that Mr B received (which total £2,812.59), meaning the net refund should be £11,187.41.

The interest award

Prior to the SFO completing their investigation, Mr B's payments 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 B 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 B 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 B's claim under the CRM Code, saying it was a civil dispute. Lloyds didn't tell Mr B 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 B'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, in this case, in order to reach my decision.

My provisional decision was that I intended to uphold this complaint and ask Lloyds to refund Mr B £11,187.41 and pay simple interest of 8% on that refund, calculated from the 19 January 2024 until the date of settlement.

Responses to my provisional decision

Mr B responded saying he accepted my provisional decision.

Lloyds didn't agree with my provisional decision, saying that until the discussions with UK Finance conclude, our service shouldn't issue 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.

Lloyds aren't happy with a decision being issued at this stage. However, I'm satisfied that I have sufficient evidence in order to reach an answer and issue a decision. I'm not satisfied that Mr B's case should be delayed for the reason Lloyds have raised.

In summary

I'm satisfied that there is sufficient evidence that Mr B's payment was taken by C with a different purpose in mind and through dishonest deception – as set out in my provisional decision. So, Mr B's payment is covered by the CRM Code, which requires firms to reimburse customers unless an exception to reimbursement applies. For the reasons set out in my provisional decision, I'm not satisfied that Lloyds have evidenced that they can fairly rely on an exception to reimbursement. So, Mr B is entitled to be refunded for his outstanding loss and be paid simple interest on that refund of 8%.

Claims to the 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 B is now complaining to us about in connection with the activities of Lloyds.

As I have determined that this complaint should be upheld Mr B 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 B has already made a claim at FSCS in connection with C, and in the event the FSCS pays compensation, Mr B is 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 intend to ask Lloyds Bank PLC to:

- Refund Mr B £11,187.41 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 B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he 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 B, as set out above.

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

Lisa Lowe
Ombudsman