

## **The complaint**

Miss C is unhappy that Lloyds Bank PLC (“Lloyds”) won’t refund the money she lost to an investment opportunity she now believes was a scam.

## **What happened**

The background to this complaint is well known to both parties and was set out in the investigator’s view of 25 June 2024. But briefly, on 23 July 2020 Miss C made a payment for £5,000 to a company I will refer to as M - for what she believed was a genuine investment opportunity. Miss C received her returns as expected from August 2020 to May 2021. On 29 June 2021, Miss C decided to invest a further £5,000 in M. This payment was made via N – a genuine regulated company acting on behalf of M.

However, after receiving a further interest payment on 1 July 2021, her returns stopped, and she now believes she has been the victim of a scam and would like Lloyds to reimburse her. Miss C received a total of £219.95 in returns.

Lloyds said the payment wasn’t covered under the Lending Standard Board’s Contingent Reimbursement Model (CRM) Code. It felt this was a civil dispute and explained that M was a genuine business and this was a failed investment rather than a scam.

Our investigator upheld the complaint. He felt Miss C had been the victim of a scam and the payment was covered by the CRM Code. Miss C accepted the investigator’s view. Lloyds didn’t agree. It said:

- Miss C made the payments towards a high-risk unregulated investment to a company registered on Companies House.
- There is no evidence to show M did not intend to use Miss C’s funds for the purpose described.
- There is no record to show Z were linked to M at the time of Miss C making payments to the investment.

I issued my provisional decision on 15 November 2024 explaining why I was thinking of reaching the same outcome as the investigator.

Miss C accepted my provisional decision. Lloyds did not, it said:

- There is insufficient conclusive evidence to show there was an intention to defraud Miss C at the time she invested.
- Miss C received regular returns for 12 months before M was no longer able to honour the investment. This is a strong indication the company invested Miss C's funds as intended.
- It would expect to see evidence that the investment was fabricated, and Miss C's funds never invested.
- Z's involvement was some time after Miss C invested and had no connection with M in 2020 or 2021 – so would question this rationale as to whether the investment was genuine or not.

### **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 have considered Lloyds' response to my provisional decision and respond as follows:

We do not have the bank statements for M and in this case, payments were made via N.

I appreciate what it has said regarding previous returns, but I don't agree previous returns always means there is no intent to defraud. I also appreciate it feels there is insufficient *conclusive evidence* to show there was an intention to defraud Miss C at the time she invested.

However, I don't think the evidence needs to be conclusive. 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 Miss C'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 Miss C was the victim of a scam rather than a failed investment.

I've reminded myself that Parliament has given ombudsmen the job of determining complaints quickly and with minimum formality. In view of this, I think that it would not be appropriate to wait (as Lloyds previously suggested) to decide Miss C's complaint unless there is a reasonable basis to suggest there is anything that may have a material impact on my decision over and above the evidence that is already available.

I appreciate this is finely balanced but having considered all Lloyds' points, that it feels some of the evidence points towards a legitimate company falling into financial difficulty, for the reasons I outlined in my provisional decision, I've not been provided with sufficient evidence to show that the business was operating in line with the way it described to, and agreed with, its investors prior to their investment. So based on the evidence I have, on balance, I don't think the intended purposes of Miss C and M aligned and I think it's more likely this was due to dishonest deception on the part of M. So, (on balance) I believe this was a scam.

So, I see no reason to depart from the conclusions set out in my provisional decision. I have concluded that the fair and reasonable outcome, in all the circumstances, would be to uphold this complaint. For completeness, I have set this out below.

In deciding what's fair and reasonable, I'm 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 time.

Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

### *The CRM Code*

Lloyds has signed up to the voluntary CRM Code, which provides additional protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an APP scam, as set out in it, is met. I have set this definition out below:

*...a transfer of funds executed across Faster Payments...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.*

I've considered the first part of the definition, and having done so I'm satisfied that Miss C paid the account she was intending to send the funds to. And I do not think there was any deception involved when it comes to who she thought she was paying. So, I do not think the first part of the definition set out above affects Miss C's transactions.

I've gone on to consider if Miss C's intended purpose for the payment was legitimate, whether the intended purposes she and the company (M) she paid were broadly aligned and, if not, whether this was the result of dishonest deception on the part of M.

Miss C believed the purpose was that of an investment providing a fixed rate of return to a green energy investment company or property development business which would, in turn, provide small and medium sized renewable energy or property developers with short term funding. According to the literature it purported to only ever lend to sophisticated renewable energy investors and experienced renewable energy developers.

I've considered whether there is convincing evidence to demonstrate that the true purpose of the investment scheme was significantly different to this, and so whether this was a scam or genuine investment.

Looking at M's records on Companies House – it hasn't posted accounts since 2021 and doesn't appear to have been audited. The nature of the business was listed as development of building projects and, whilst the listing had also included activities auxiliary to financial intermediation by the time Miss C made her investment, this doesn't appear to be in line with the investment purposes Miss C was led to believe she was investing in. I also note the business has now dissolved as a result of a compulsory strike-off and they no longer have an online presence in the form of a website.

The FCA provided a warning in October 2021 about M providing financial services when it was not authorised to do so. Miss C invested before this date. Z took over M in October 2022 (this change in ownership was communicated to investors by M in an email in October 2022). Z told investors the FCA warning was due to clone companies impersonating M - which doesn't appear to be true. And there's no current evidence to suggest a clone company was in operation as Z claimed. While I appreciate this occurred after Miss C took out the investment, I think it is relevant to the overall picture of M and its legitimacy as a business.

I appreciate Lloyds feels some of the evidence points towards a legitimate company falling into financial difficulty. However, it's important for me to state that, to date, I've not been provided with any evidence to show that the business was operating in line with the way it described to, and agreed with, its investors prior to their investment. So based on the evidence I have, on balance, I don't think the intended purposes of Miss C and M aligned and I think it's more likely this was due to dishonest deception on the part of M. So, I believe this was a scam.

#### *Reimbursement under the CRM Code*

In broad terms, the starting position in 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.

Under the CRM Code the starting principle is that a firm should reimburse a customer who is the victim of an APP scam, like Miss C. The circumstances where a firm may choose not to reimburse are limited and it is for the firm to establish those exceptions apply. R2(1) of the Code outlines those exceptions. Although Lloyds has not established that any of those exceptions apply, for completeness I find that none apply in this case. I have explained why below:

#### *Did Miss C have a reasonable basis for belief?*

I need to consider not just whether Miss C believed she was sending money for an investment, but whether it was reasonable for her to do so.

Miss C's first investment with M had paid out some returns. The investment material I've reviewed appears professional and there was nothing in the public domain at the time about M that Miss C could've reasonably inferred from that a scam was taking place. M used a firm regulated by the FCA at the time of the scam, to gain legitimacy and this was highlighted in the literature. I also don't think the indicative rates of return suggested that the investment was too good to be true. And, in line with a genuine investment opportunity, the company's website stated that capital is at risk.

#### *Did Miss C ignore an effective warning?*

Another exception to reimbursement is if Miss C ignored an effective warning.

The CRM Code says that effective warnings should be risk based and, where possible, tailored to the APP scam risk indicators and any specific APP scam types identified through the user interface with which the customer is initiating the payment instructions. The CRM

Code sets out the minimum criteria that a warning must meet to be an 'Effective Warning'.

The CRM Code also says that when assessing whether the firm has met those standards, consideration must be given to whether compliance with those standards would have had a material effect on preventing the APP scam that took place.

Lloyds's has been unable to say for certain what payment purpose Miss C chose at the time of the payments (and therefore which warning would have been displayed) so I don't think it can fairly apply this exception.

But it has shown us the electronic warning that would have been displayed if Miss C has chosen 'investment' as the payment purpose. So I have gone on to consider whether this would constitute an effective warning.

It warned that deals that look too good can be scams – but as I've said above – I don't think the indicative returns were too good to be true. It advised to check that the adviser or company is authorised by the FCA and to only invest with a company who are allowed to offer product and services. But M's literature provided reassurance by the fact that its 'custodian' was authorised by the FCA at the time. In my view, Miss C had already been through the steps suggested to avoid an investment scam. And overall, I don't think the warning was sufficiently impactful or specific as required by the CRM Code.

In any event, I'm not convinced a better warning would have made a difference in this scenario anyway given the sophistication of this particular scam and so the effective warning exception cannot be fairly applied.

As none of the exceptions to reimbursement apply, Lloyds should refund Miss C in full.

### **Recovery of funds**

In light of my conclusions above, it is not necessary in this case to consider whether the bank also exercised enough care and urgency in trying to recover the stolen funds from the payee bank before they were irretrievably removed by the scammers. But for completeness, even if there was a delay, I don't think it likely would have made a difference here. By the time Miss C raised the claim M had gone into liquidation so no funds were recoverable from the beneficiary bank account.

### **Putting things right**

In order to put things right for Miss C, Lloyds Bank PLC should:

Refund Miss C in full so £10,000 less the returns she received £219.95 (so £9,780.05).

Because Miss C has been deprived of this money, I consider it fairest that Lloyds Bank PLC add 8% simple interest to the above from the date of the declined claim to the date of settlement.

If Lloyds Bank PLC is legally required to deduct tax from the interest it should send Miss C a tax deduction certificate so she can claim it back from HMRC if appropriate.

**My final decision**

My final decision is that I uphold this complaint and Lloyds Bank PLC must put things right for Miss C as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 13 February 2025.

Kathryn Milne  
**Ombudsman**