

The complaint

Mr and Mrs A complain that Lloyds Bank PLC hasn't refunded them after they reported falling victim to a scam.

What happened

Mr and Mrs A invested in what they believed was a legitimate property deal with a company I'll call R. They'd had previous dealings with R through a limited company of which they are joint directors. But the subject of this complaint is money sent from their personal account with Lloyds.

R said it had opportunities to invest in property that was to be used by different councils for emergency and social housing. It explained it had a partner – A – which had secured agreements to provide rental properties, and it was this investment that Mr and Mrs A would make returns on.

A was the company that was securing contracts with local councils and sourcing many of the properties which were to be used and invested in.

Mr and Mrs A's limited company had made several investments already before the point they decided to send money from their personal account. In April 2022 Mr and Mrs A sent R £25,000 from their account with Lloyds towards a further investment. A new contract was signed with R. R then sent the money on to A.

But, after investing, returns weren't received as expected. And this service is aware that most investors were no longer receiving promised returns by July 2022. It was around this time that Mr and Mrs A, 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.

Mr and Mrs A first reported what had happened to Lloyds through a claims management company. It in turn contacted Lloyds to report the scam and request a refund. In doing so, it 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.

The claims management company asked that Lloyds reimburse Mr and Mrs A as the victims of a scam, and in consideration of the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. But Lloyds didn't reimburse them and so the complaint was referred to this service.

One of our investigators considered the complaint but didn't recommend it be upheld, believing Mr and Mrs A had engaged with a legitimate party for legitimate purposes (that being R). The claims management company then stopped representing Mr and Mrs A. They then asked that an ombudsman review their complaint and so it's been passed to me.

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 hear about what's happened to Mr and Mrs A. It's clear they've lost a significant amount of money here, particularly when taking into account the losses suffered through their limited company too. And, from what they've said in correspondence with this service, it's clear to me this has had a huge impact on them, not only financially but mentally, emotionally, and physically too. I don't underestimate just how difficult things have been for them.

It's then with regret that I have to tell them this service is unable to help recover their losses. I'm sorry to disappoint Mr and Mrs A, but I'm not upholding their complaint. I'll explain why.

It's clear Mr and Mrs A made an investment in good faith, and they haven't seen the returns they were promised. Nor has the capital they invested been returned to them. Mr and Mrs A put a substantial sum into this supposed investment. But there aren't grounds here upon which I can say Lloyds ought to refund or otherwise be responsible for their loss. And Lloyds hasn't acted unfairly or unreasonably in declining their claim.

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

The claims management company, in bringing the complaint, referred to the CRM Code as a means for seeing Mr and Mrs A 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 payment made by Mr and Mrs A. That's because the definition of an APP scam hasn't been met with respect to the payment made.

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 Mr and Mrs A didn't have a relationship or any direct dealings with A.

Mr and Mrs A dealt solely with R. It was R that talked them through the investment opportunity, what they would get in return, and how to proceed. It was also with R whom Mr and Mrs A signed agreements for the purposes of the investment, and it was R they sent money to.

The claims management company has said there is no doubt as to R's legitimacy, and Mr and Mrs A haven't disagreed with that position either. Instead, it's accepted R was itself a victim of the scam run by A. But this then means that Mr and Mrs A haven't made payments for a fraudulent purpose which they 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 Mr and Mrs A believed the other person – R – was legitimate. But the purpose of making that payment to R was legitimate too, and not fraudulent.

Mr and Mrs A had a genuine relationship with R. R had made no attempts to deceive them into parting with their money. Mr and Mrs A paid R directly, with the contractually reinforced understanding that it would be R that paid them returns. And they 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. Mr and Mrs A were some of R's clients.

There has also been reference to A being specifically mentioned in the contracts Mr and Mrs A signed. But I've seen no evidence of that being the case. Instead, Mr and Mrs A'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.

I can accept that Mr and Mrs A believed it was ultimately A's projects that their funds would be invested in. And, as I've said, it might be that A was indeed operating a scam. But their funds were sent to R, with the purpose of them being invested through R. R was responsible for handling the money and paying returns.

I know Mr and Mrs A's former representatives disagreed with the position I've explained here, instead believing it is the ultimate destination of the funds (that being A) that ought to be 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.

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 Mr and Mrs A'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 Mr and Mrs A, 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, and how persuasive it was.

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.

I've also taken account of what Mr and Mrs A told us after our investigator provided their opinion on the complaint. I won't set out in detail here all that was said, but Mr and Mrs A touched on their personal circumstances (in terms of financial and medical difficulties) since the scam, the application of the FCA's Consumer Duty, and the sophistication of the scam. But, whilst I've considered these points, they don't lead to a different outcome. And the reasons for my saying so echo what I've already said: I could only look to make an award against Lloyds here if I had found that the payments to R met the definition of an APP scam.

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 Mr A and Mrs A to accept or reject my decision before 6 March 2025.

Ben Murray
Ombudsman