DRN-5303095

The complaint

Mrs I complains that Lloyds Bank PLC won't refund money she says she lost to an investment scam.

What happened

In 2018, Mrs I first invested in a company – Buy2Let/Raedex Consortium Ltd ("R") – which leased cars. She invested a second sum of £14,000 by making a faster payment from her Lloyds account on 31 October 2020 and expected to receive a return of 12% per year on her investment. This complaint only concerns this 2020 payment.

R positioned this opportunity so that investors understood their money would fund a new lease car for a UK driver for three years. Mrs I understood she would be repaid her capital in monthly instalments over the term with a final payment plus the interest being paid at the end of this.

R went into liquidation early 2021. In 2023, Mrs I complained to Lloyds that she'd been scammed by R and asked to be reimbursed under the Lending Standards Board (LSB)'s Contingent Reimbursement Model (CRM) Code (or "the Code"). Lloyds declined her claim for a refund and said this was a civil dispute between the parties.

One of our investigators looked into Mrs I's complaint and recommended it be upheld. Mrs I accepted the outcome, but Lloyds didn't. It said that cases involving R were ringfenced and paused, and so it wasn't appropriate to reach a decision on them now. As an agreement couldn't be reached informally, the case has been passed to me to decide.

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.

When considering what is 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 relevant time.

It's important to highlight that with cases like this I can't know for certain what has happened. So, I need to weigh up the evidence available and make my decision on the balance of probabilities – in other words what I think is more likely than not to have happened in the circumstances.

In broad terms, the starting position in law is that a payment service provider is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (PSRs) 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 provider to reimburse the customer even though they authorised the payment.

The CRM Code is of particular relevance to this case. It's a voluntary code which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this in all but a limited number of circumstances. Lloyds was a signatory to the Code at the time the payments in dispute were made.

In order for me to conclude whether the CRM Code applies in this case, I must first consider whether the payments in question, on the balance of probabilities, meet the Code's definition of a scam. An "APP scam" is defined by DS1(2)(a)as:

> *"Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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."*

If I conclude that the payment here meets the required definition of a scam then Mrs I would be entitled to a reimbursement, unless Lloyds has shown that any of the exceptions as set out in R2(1) of the Code apply.

Is it appropriate to determine Mrs I's complaint now?

Lloyds responded to the Investigator's view and said that cases involving R continued to be ringfenced by it and were paused at this time. But it also said in its business file to us that it felt this wasn't a scam, but a genuine investment gone wrong.

The CRM Code says firms should make a decision as to whether or not to reimburse a customer without undue delay. There are however some circumstances where I need to consider whether a reimbursement decision under the provisions of the CRM Code can be stayed. If the case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, the CRM Code allows a firm, at R3(1)(c), to wait for the outcome of that investigation before making a reimbursement decision. By asking us to also pause on reaching an outcome, it's possible Lloyds considers that R3(1)(c) applies in this case.

In deciding whether R3(1)(c) is applicable in this case, there are a number of key factors I need to carefully consider:

- Where a firm already issued a reimbursement decision - for example by telling the consumer they will not be reimbursed because they are not the victim of an APP scam – then R3(1)(c) has no further application. The LSB confirmed in its DCO letter 71 to firms dated 6 November 2024 that *"a firm should not seek to apply this provision where it believes that the case is a civil dispute and therefore outside of the scope of the CRM Code".*
- The Financial Ombudsman Service does not have the power to restart R3(1)(c) – so where a firm has made a reimbursement decision a consumer is entitled, under the DISP rules, for our service to decide the merits of the complaint about the payment(s) they made fairly and reasonably on the balance of probabilities.

So, this provision only applies before the firm has made its decision under the CRM Code, meaning Lloyds can't seek to delay a decision it's already made. It had already reached a decision on Mrs I's claim in its final response letter and also reiterated this in its initial submissions to this service, as above. So, I don't think Lloyds can now rely on this provision

or that this prevents us from considering this complaint now.

The Serious Fraud Office (SFO) had been carrying out an investigation into the car leasing company and several connected companies. That investigation concluded on 19 January 2024 when the SFO published the outcome of the investigation, which included the charging of R's former company directors with fraud, on its website. The court case is currently scheduled for 2026.

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations and/or related court cases. But that isn't necessarily so in every case, as it will often be possible to reach conclusions on the main issues on the basis of evidence that is already available. And I'm conscious that any criminal proceedings that may ultimately take place have a higher standard of proof (beyond reasonable doubt) than I'm required to apply (which – as explained above – is the balance of probabilities).

The LSB has said that the CRM Code doesn't 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 Mrs I's complaint, I have to ask myself whether I can be satisfied, on the balance of probabilities, that the available evidence indicates that it's more likely than not that she was the victim of a scam rather than this being a failed or a bad investment.

I'm required to determine complaints quickly and with minimum formality. In view of this, I don't think it would be appropriate to wait to decide Mrs I's complaint unless there's a reasonable basis to suggest that the outcome of the related court case may have a material impact on my decision over and above the evidence that is already available.

It's not clear if Lloyds is concerned that any subsequent court action regarding R's actions may lead to Mrs I being compensated twice for the same loss, i.e., by Lloyds and by the courts. But I don't know how likely it is that any funds will be recovered as part of those proceedings.

Similarly, I'm aware that there is an ongoing administration process – including liquidation. This might result in some recoveries; but given this would initially be for secured creditors, I think it's unlikely that victims of this scheme (as unsecured creditors) would get anything substantive. That said, in order to avoid the risk of double recovery, 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.

I'm also aware that the Financial Services Compensation Scheme (FSCS) is accepting customer claims submitted to it against R. More information about the FSCS's position on claims submitted to FSCS against R 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 payment service providers related to the R's investment scheme. Whether the FSCS pays any compensation to anyone who submits a claim to it is a matter for the FSCS to determine, and under its rules. It might be that R has conducted activities that have contributed to the same loss Mrs I is now complaining to us about in connection with the activities of Lloyds.

As I've determined that this complaint should be upheld, Mrs I should know that as she will be recovering compensation from Lloyds, she can't claim again for the same loss by making a claim at the FSCS (however, if the overall loss is greater than the amount she recovers

from Lloyds, she may be able to recover that further compensation by making a claim to the FSCS, but that will be a matter for the FSCS to consider and under its rules). Further, if Mrs I has already made a claim at the FSCS in connection with this matter, and in the event the FSCS pays compensation, she's required to repay any further compensation she receives from her complaint against Lloyds, up to the amount received in compensation from FSCS.

The Financial Ombudsman Service (FOS) and FSCS operate independently, however in these circumstances, it's 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

While the FSCS may be taking on these cases against R as a failed unregulated investment, it doesn't automatically follow that this was *not* a scam. This is not something that the FSCS would make a finding on before considering those claims.

As Lloyds can ask Mrs I to undertake to transfer to it any rights she may have to recovery elsewhere, I'm not persuaded that these are reasonable barriers to it reimbursing her in line with the CRM Code's provisions.

So as the SFO has reached an outcome on its investigation, and I don't think it's fair or necessary to wait until the outcome of the related court case (which isn't scheduled for 18 months' time). Nor do I consider it's necessary to wait for the administration process to complete or wait for a claim with FSCS to be made. I therefore don't think it's fair for Lloyds, or our Service, to delay making a decision on whether to reimburse Mrs I any further.

For the reasons I discuss further below, I don't think it's necessary to wait until the outcome of the court case for me to reach a fair and reasonable decision. And I don't think it would be fair to wait for other investigations to complete before making a decision on whether to reimburse Mrs I.

Has Mrs I been the victim of a scam, as defined in the CRM Code?

As referenced above, Lloyds has signed up to the voluntary CRM Code which provides additional protection to scam victims. Under the Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances).

The Code doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but hasn't received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier. So, it wouldn't apply to a genuine investment that subsequently failed. And the CRM Code only applies if the definition of an APP scam is met, as set out above.

I don't consider the first part of the definition quoted above (DS1(2)(a)(i)) is met in this case. This isn't in dispute. But what is in dispute is whether Mrs I's payment meets DS1(2)(a)(ii). So I've gone on to consider if Mrs I's intended purpose for the payments was legitimate, whether the intended purposes she and R had were broadly aligned and, if not, whether this was the result of dishonest deception on the part of R.

From what I've seen and what Mrs I has told us, I'm satisfied that she made the payments with the intention of investing with the car leasing company. She thought her funds would be used to purchase a vehicle which would then be leased out, and that returns would be received on this investment. I haven't seen anything to suggest that Mrs I didn't think this was legitimate.

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.

The evidence I've seen suggests the car leasing company didn't intend to act in line with the purpose for the payments it had agreed with Mrs I. She was told her capital would be used to fund a specific vehicle and that it would be secured in her favour until the loan was repaid, by way of a fixed charge. But I've seen no evidence this was the case or that Mrs I's funds were secured against a specific vehicle.

The FCA also checked a sample of the vehicles the companies held against the DVLA database and found a significantly larger proportion of these were second-hand than R's business model suggested or would support – as it relied on securing significant discounts on new vehicles, which wouldn't be available on second-hand vehicles. It also found a number of leases started significantly before the vehicles were put on the road, and some vehicles were not found on the database at all. And the FCA said it considered the companies' valuation of the vehicles held was unrealistic and that the group's liabilities significantly exceeded its assets.

A report by the administrators of one of the connected companies also said that the total number of loan agreements was 3,609, relating to 834 investors, but that the number of vehicles held by the group at the appointment of the administrators was 596 – or less than one car for every six loan agreements.

Having checked online, I've not seen a record at Companies House of any charge in Mrs I's favour over any vehicle with the company following her investment. And, as I think the evidence shows the company was largely not carrying out this key aspect of the investments, I think it's safe to conclude that this wasn't done in Mrs I's case either.

So, I think the evidence shows the car leasing company wasn't acting in line with the business model and features of the investment it had led Mrs I to believe she was making. And so, the purpose the company intended for the payments Mrs I made wasn't aligned with the purpose she intended for the payments.

The SFO has also said that the former company directors are accused of providing those who invested with false information and encouraging people to pay in while knowing that investments weren't, in reality, backed up by the cars they had been promised. So, I think the discrepancy in the alignment of the payment purposes between Mrs I and R was the result of dishonest deception on the part of the company.

As a result, I think the circumstances here meet the definition of a scam as set out under the CRM Code.

Is Mrs I entitled to a refund under the CRM code?

Under the Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam, like Mrs I. 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.

One such circumstance might be when a customer has ignored an Effective Warning. A second circumstance in which a bank might decline to reimburse, if it can be demonstrated that the customer made the payments without having a reasonable basis for belief in a specific set of things.

Lloyds hasn't argued that it provided an Effective Warning in this case – it acknowledges that due to the time passed it can't be sure what warning Mrs I would've seen. And, as part of its submission to our Service, it has said that it's *"not saying the customer didn't have a reasonable basis for belief"*.

I can't see that any other exceptions to reimbursement could apply in this case. And I don't think Lloyds has established that any of the applicable exceptions to reimbursement under the Code do apply here. I've not seen evidence of an 'Effective warning' (as per the Code) being show to Mrs I, that she then ignored. And I'm in agreement that she had a reasonable basis for belief in this payment being for a legitimate opportunity – she was paying an account she knew belonged to R and understood she'd successfully invested with it before. So I'm satisfied it should refund the money Mrs I lost in full.

Putting things right

As Mrs I received monthly interest payments back from R, I think it would be fair for these payments to be deducted from the amount Lloyds has to refund her. These amounted to £802.08. So her actual loss is £13,197.92.

I don't think any intervention action I reasonably would've expected Lloyds to take would've prevented Mrs I from making the disputed payments. This is because I don't think any of the information that I would've reasonably expected Lloyds to have uncovered at the time of the payments would've uncovered the scam or caused it significant concern. Also, I don't think it would've been unreasonable for Lloyds to initially decline Mrs I's claim under the Code, as when she first contacted it, it wasn't clear from the evidence available at that time that this was most likely a scam.

But the CRM Code allows firms 15 days to make a decision after the outcome of an investigation is known. So, considering this provision, I think Lloyds should've responded to Mrs I's claim and reimbursed her losses under the CRM Code within 15 days of the SFO publishing the outcome of its investigation in January 2024. So I think Lloyds should now pay 8% interest on the refund, from 15 days after the SFO published its outcome on 19 January 2024 until the date of settlement.

Therefore, in order to put things right for Mrs I, Lloyds Bank PLC must:

- Refund Mrs I the payment she made as a result of this scam in October 2020 (£14,000), less the payments she received back from the company (£802.08) so £13,197.92
- Pay Mrs I 8% interest on that refund, from 15 days after 19 January 2024 until the date of settlement

As the car leasing company is now under the control of administrators, it's possible Mrs I may recover some further funds in the future. In order to avoid the risk of double recovery 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 Bank PLC considers that it's required by HM Revenue & Customs to deduct income tax from the interest award, it should tell Mrs I how much it's taken off. It should also provide a tax deduction certificate if she asks for one, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint and I require Lloyds Bank PLC to put things

right for Mrs I as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs I to accept or reject my decision before 4 March 2025.

Amy Osborne
Ombudsman