

The complaint

Mr S is unhappy that Lloyds Bank PLC hasn't refunded him in full after he was the victim of a scam.

Mr S is using a professional representative to bring his complaint to our service. I'll refer to the representative as D.

What happened

The facts are known to both parties, but I'll set them out here briefly.

- Mr S found out about an investment opportunity with T.
- Mr S understood that T was a highly experienced FX trader and had built up skills as a professional trader.
- Mr S said he acted on the advice of a friend (I'll refer to them as L) who had invested with T and received a return. Mr S says he's known this friend since 2016.
- Mr S did not receive any key information documentation relating to the investment, he was shown statements showing what other people had invested and had returned.
- L introduced Mr S to K – who was working with T.
- K and T produced statements forecasting 10% returns. T said he was in the process of setting up a hedge fund based abroad.
- D said Mr S has no other investment experience of this kind. D says Mr S did not know the importance of checking the FCA website and so did not do this or review any of the FCA warnings pages.
- Mr S transferred £20,000 to T's personal bank account in November 2020.
- Months later when Mr S asked to withdraw his profits, he found he wasn't able to. He was met with a number of excuses before realising he'd been scammed, along with many others.

Following our involvement, we asked Mr S to provide evidence of how he had seen the returns that L received from T. Mr S said L showed him, on his phone, his monthly statements from T, and that he'd had been able to withdraw some of his profits which persuaded Mr S it was genuine. Mr S provided evidence of his friendship with L dating back to 2019. In Mr S's submission via D, a screenshot was provided of L's mobile banking, showing a payment from T. We asked for evidence of when Mr S was provided this. L shared this with Mr S in 2023.

What did B say?

Lloyds considered Mr S's claim it said it could have done more to help stop the fraud, before he decided to go ahead with the payment. It said although it stopped the payment and spoke to Mr S it did not do enough to alert him to the possibility of this type of scam.

It applied CRM code and refunded Mr S 50% of his losses, totalling £10,000. It went on to say, to be able to refund all of Mr S's losses it would need to know what he did to confirm he was dealing with a genuine authorised investment representative, offering a reasonable return on his investment when compared to the rest of the market. Lloyds said the predicted monthly return of 10% was unreasonable and should have been a red flag. D brought Mr S's complaint to our service, seeking a full refund.

What the investigator concluded

One of our investigators looked into the complaint. She concluded the offer from Lloyds was fair and she didn't recommend any further refund to be paid. She concluded Mr S did not have a reasonable basis of belief when deciding to invest with T.

She said:

- Although Mr S said his friend was able to make withdrawals from his investment with T – there were a number of red flags that the investment wasn't genuine.
- Mr S didn't complete any research about the company/hedge fund that T was proposing to set up.
- T was personally guaranteeing monthly returns of 10% – which were unrealistic.
- T was accepting payments into a personal bank account and not a company or business account.

Overall, she concluded that these factors meant she didn't think Mr S, had a reasonable basis of belief when making the payments and as a result she thought Lloyds was reasonably entitled to rely on the exception to full reimbursement under the CRM code. Mr S and D didn't accept the investigators findings. D said Mr S did have a reasonable basis of belief for the following reasons:

- He knew K for a long time and believed him to be a trusted individual.
- There were legal documents and processes for the hedge fund – which were commonplace.
- Mr S was shown the trades that were being made and the logic and this explained how the returns were so high.
- He was given a contract which detailed the profit share.
- He saw returns his friend - L - was receiving and lived in the same local area as T.
- Online searches showed positive testimony for T. And T had a good knowledge of currency.
- Forex is high risk, so the returns were realistic and commonly achievable.

The investigator considered these points, but they didn't change her opinion. She added:

- As forex is high risk then, it ought to be concerning T was guaranteeing a monthly return of 10%, with no risk to Mr S's capital.
- The hedge fund hadn't been set up and Mr S continued to pay T's personal bank account so it's not clear what legal paperwork he was presented with that persuaded him about the hedge fund.
- Mr S hasn't been able to provide any evidence in support of his claim that he saw other investors' returns.
- The monthly updates sent to Mr S came after he invested, so these wouldn't have been a persuasive factor when initially deciding to invest.

- Mr S hasn't provided any evidence regarding the positive online presence of T, and none can now be found in support of this either.

D responded by saying – although Mr S appreciated the trading itself carried some risk, it was personally guaranteed by T, that any shortfall would be made up by his own personal funds. T could show he had £30m in his trading account which was shown to be legitimate by a law firm.

The investigator confirmed this letter was received two years after Mr S invested and again had no bearing on his decision to initially invest with T.

D added that at the time of the investment Mr S was under a great deal of stress due to a family members health condition and the support they required. Whilst the investigator was sympathetic to Mr S's circumstances, she didn't think this impacted his reasonable basis of belief to the extent he ought reasonably to have considered the investment as legitimate. Lloyds responded to the view to say this case was on hold pending a live police investigation and had been ring-fenced. In order for there to be a valid claim under the CRM code there would need to be clear intention to defraud, and this couldn't be determined until the police investigation was complete.

As the complaint couldn't be resolved it has been passed to me to consider. I am only commenting on Mr S's complaint against his bank – Lloyds. Mr S has also raised a complaint about the bank that received his funds. This is being dealt with under a separate complaint.

In reviewing the complaint, I contacted D asking Mr S to provide evidence of his friendship with L – which he did. I can see they had conversations which were business related and had suggestions of social meetings. I also asked Mr S to evidence when he was provided the screenshot of L's bank account showing the return from T. D said this was discussed over the phone and L only sent the screenshot during the call they had and there was no evidence of this. But D had produced a screenshot as part of its evidence in this case. So I asked for the evidence of when and how Mr S came to receive this screenshot. The original text where Mr S received the screenshot was then shared by D. In the text messages I can see this was sent to Mr S after he raised a scam claim with Lloyds.

I reviewed this evidence and explained to D that this did not persuade me that Mr S saw this at the time he invested with T and was therefore not a persuasive factor when he decided to invest. As a result, I was not changing the outcome, from that reached by the investigator, that Mr S didn't have a reasonable basis of belief when deciding to invest with T.

I asked D if it had any further evidence or comments to provide in response to that update, but the deadline passed, and we've received no response. And so, I'm ready to proceed with my final decision on this complaint.

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.

Having done so I've come to the same conclusions as the investigator for largely the same reasons.

Lloyds' request for the case to be placed on hold

In order for the consumer to have been the victim of an APP scam the consumer must have been deceived about the very purpose for which their payment has been procured. *'fraud'* in this instance would mean that there had been a dishonestly made false representation, with the intention of making a gain for T or to cause a loss to Mr S.

And for there to be *'fraudulent purposes'* (as opposed to legitimate purposes) it would require that test for fraud to be met in relation to the *purposes* for which the payment was procured. That must have been at the time the payment transaction occurred, or earlier. It does not follow that fraud at a later date can engage the CRM Code's definition of an APP scam.

Neither would fraud which doesn't speak to the *purpose* of the payment. I take it to follow that there may be situations where false representations were made which could amount to fraud under the Fraud Act, but which don't have the effect of the payment falling within the scope of the definition of an APP Scam set out under the CRM Code.

I don't have the power to conduct a criminal investigation into T. Part of what is required here is to establish the intent and state of mind of the person(s) accused of this fraud about the purpose of Mr S's payment.

When considering the evidence produced in support of Mr S's claim of an APP scam, I'm required to reach my findings on a balance of probabilities rather than to the criminal standard. But given the serious nature of the allegations involved I consider that this must involve convincing evidence to lead me to find it more likely than not the underlying purpose of the payment transaction was a fraudulent purpose.

I have not seen any evidence to suggest trading took place with the funds that Mr S transferred to T's account. We've also seen a number of receiving account statements and there's no activity that would suggest T was operating or carrying out the activities as he described, or the consumer's funds were fundamentally or wholly being utilised, as agreed between T and the consumer. So, on balance I'm satisfied there is enough persuasive evidence that Mr S, as well as others, have been the Victim of an APP scam.

Lloyds has said there is an on-going Police investigation and I assume is attempting to rely on R3(1)(c) of the CRM code. R3(1)(c) says:

If a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm's decision, the Firm may wait for the outcome of the investigation before making a decision.

Lloyds hasn't provided a persuasive explanation as to why awaiting the outcome of the police or other statutory body investigation *might reasonably inform* an outcome under the CRM code. Especially given the strength of evidence that is already available.

And Lloyds has already provided an outcome under the CRM by considering its liability and paying Mr S 50% of his losses. It now can't seek to retrospectively apply this provision. It only applies where no outcome under the CRM code has been given.

A Police investigation and decision to charge will be based on a criminal burden of proof. That may well take many months or years to decide or may not happen at all. In this case I'm deciding if Lloyds, under the voluntary CRM code, is liable to refund the consumer where it's more likely than not, that the consumer was the victim of an APP scam. I appreciate a Police investigation may reveal more detail but as I'm of the opinion that it is not in question that this was a scam, then that isn't necessary in this particular instance.

A criminal prosecution is not necessary to determine if something is an APP scam under the code. I'm satisfied on balance that this was more likely than not a scam. I've seen no evidence that T intended to use the consumers funds as they agreed between them. And Lloyds has not provided any evidence to contradict this either. As such I'm satisfied this meets the definition of an APP scam under the CRM code.

Has Lloyds met the Firms standards under the CRM code?

Lloyds notes suggest it didn't delve far enough into the purpose of the payment, when it was made. This appears to be the reason why it decided to refund Mr S 50% of his losses. This appears to be a fair assessment of its actions. Lloyds hasn't provided evidence of the intervention it did provide and so I can't say that it did meet the firms standards under the CRM Code, as such I agree Lloyds was at fault but has applied the correct standards to reach the offer of a 50% refund.

What remains in dispute, is whether Mr S should receive any further refund of his losses from Lloyds. In order to reach a finding on this, I must consider if he had a reasonable basis of belief when making the payment to T.

Did Mr S have a reasonable basis of belief when making this payment?

I haven't seen any persuasive evidence from Mr S that he thought this was a legitimate investment. He appears to have decided to invest based on very little information.

- Mr S says his friend invested and received returns and this persuaded him the investment was genuine. Whilst I have seen that L received a return, I haven't seen any persuasive evidence that this would have been shared or seen by Mr S at the time he decided to invest. I'm satisfied that Mr S and L knew each other, before Mr S invested with T. And I think it's likely L introduced Mr S to the investment itself. But given the red flags about the investment - the lack of paperwork, research and understanding of the profits, payments to personal accounts etc. (more of which I'll detail later), I'd need to see persuasive evidence that Mr S saw L's returns before deciding to invest, especially given Mr S made a high value payment to T, and I'm not persuaded he did. L shared the proof of his returns, after both of them raised scam claims with their banks, and I've seen nothing to support a discussion, or that this information was shared, before Mr S decided to invest.
- Mr S has provided a basic agreement, between him and T, which says he will give T money and in return, T will invest his funds in forex and provide the profits, as described in the background of this complaint. And, like the investigator, I agree that the high return rates that T guaranteed, with no risk to capital, should have been a red flag for Mr S.
- Mr S says he was told T was an experienced trader. Mr S hasn't said if he was told this directly by T or not. But Mr S hasn't said that he questioned this or saw any evidence that substantiated this claim. Given T's age at the time (23) if Mr S was told this I would have expected him to have asked more about this, given the young age T would have needed to start trading for the years of experience he claimed to have.
- The payments were being made to T's personal account rather than to a business or Ltd company account. It's not clear how Mr S thought he would receive his returns or if they were held in any sort of client account. And I can't see that he asked these questions or thought about this when sending this money to T.
- If Mr S had made enquiries with T, he would have found that in order to carry on the activity that T claimed to be doing, trading or investing on behalf of others, he required FCA authorisation, which he didn't have.

- T doesn't appear to have provided details about how he would be able to generate such lucrative profits without any risk. And Mr S hasn't provided evidence or explained that he asked about this either.
- And although Mr S has said he received the monthly statements showing his profits, these were basic spreadsheets, which don't provide any indication of what is happening to generate those "returns". In any event this wouldn't have had any bearing on Mr S's initial decision to invest as these would have only been sent to him after he began to invest. But if he saw this spreadsheet from a friend or from other investors, at the point he was deciding to invest, and they were an influencing factor, then I'm not sure what it was about these spreadsheets that Mr S found persuasive, or that made him think the investment was legitimate, given their sparse detail and basic format.
- Mr S says he was also provided with screenshots of the trades placed by T, with his profits, but again hasn't provided evidence of this. But, in any event, I don't think this has any bearing on his reasonable basis of belief when he made the initial payment to T – as these would have been received after Mr S had begun investing with T, or at least after his initial payment.
- Mr S's representatives say that he wasn't an experienced investor and was unaware of the paperwork or checks needed. However, that doesn't mean that Mr S wouldn't have been aware of the red flags that were presented here. His lack of experience does not mean he could continue regardless of the "too good to be true" offer being promised.
- Whilst I appreciate Mr S wasn't the only consumer who fell for this scam, I haven't seen any persuasive evidence that Mr S reasonably thought this was a legitimate opportunity given all the red flags that it presented.

I agree that he should be held partly liable for his losses and agree that the refund amount already offered by Lloyds is fair and reasonable in the circumstances.

Vulnerability

Lloyds notes from the time it investigated the claim, show that Mr S was asked about his personal circumstances at the time. Other than looking to invest prior to retirement there isn't any indication that Mr S deemed himself, or that Lloyds considered, Mr S vulnerable at the time he decided to make these payments. He added that later his business collapsed but at the time of making these payments his business was not struggling. So, I've not made a finding that he was vulnerable at the time he made the payment, that this warrants a different outcome to be given in these circumstances.

My final decision

I don't uphold this complaint. Mr S has already received the appropriate refund from Lloyds Bank PLC and I don't recommend that it needs to make any further award or refund.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 June 2025.

Sophia Smith
Ombudsman