

The complaint

Mr O complains that Lloyds Bank PLC ('Lloyds') hasn't refunded the money he believes he lost to an authorised push payment ('APP') scam.

What happened

The circumstances of the complaint are well-known to both parties. So, I don't intend on setting these out in detail here. However, I'll provide a brief summary of what's happened.

In December 2020, Mr O entered into a loan note agreement with a company which I'll refer to as 'N'. Mr O lent £20,000 to N. The terms of the loan note were that Mr O's money would be repaid to him after two years, along with 12% interest. However, N entered administration in August 2021 and Mr O hasn't received his money back or the interest he was promised.

In May 2024, with the help of a professional representative, Mr O made a complaint to Lloyds and asked for a refund of the money he'd lost. Lloyds didn't uphold the complaint. It didn't think Mr O had been the victim of an APP scam and thought the situation was a civil dispute between Mr O and N. As a result, Lloyds didn't think it was responsible for refunding Mr O's loss.

Unhappy with Lloyds' response, Mr O referred his complaint to this service. Our Investigator considered the complaint, but didn't uphold it. They thought Lloyds had come to a fair outcome when concluding the situation was a civil dispute between Mr O and N, rather than an APP scam. So, our Investigator didn't think Lloyds needed to reimburse Mr O's loss.

Mr O didn't accept our Investigator's view. He argued that the £20,000 payment he made to N was out of character and suspicious. In the circumstances, Mr O thought Lloyds ought to have provided investment scam warnings and questioned Mr O about the payment before processing it. If Lloyds had intervened to question the payment, Mr O thinks he would've been persuaded not to send the payment, meaning Lloyds should be held responsible for reimbursing him.

As an agreement couldn't be reached, the complaint 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.

At the time Mr O made the disputed payment, Lloyds was signed up to the Lending Standards Board's Contingent Reimbursement Model Code ('CRM Code'). The CRM Code provided additional protection from APP scams, but only in certain circumstances.

When Lloyds received Mr O's claim, it said it didn't think he'd been the victim of an APP scam, meaning it didn't need to reimburse him under the principles of the CRM Code because it didn't apply to his circumstances. For me to say that decision was wrong – and Lloyds should've refunded Mr O's payment in full – I'd first need to be satisfied that the CRM Code is a relevant consideration in the circumstances.

The CRM Code can only apply where the victim's payment meets the CRM Code's definition of an APP scam. Under DS1(2)(a) of the CRM Code, an APP scam is defined as:

“(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.”

DS2(2)(b) of the CRM Code says it doesn't 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”

There's been no suggestion made that N wasn't who Mr O intended to pay. So, he wasn't *“deceived into transferring the funds to a different person”*. This means DS1(2)(a)(i) doesn't apply in these circumstances.

The purpose of a payment forms part of the CRM Code definition of an APP scam under DS1(2)(a)(ii). As such, the reason Mr O made the payment is a relevant consideration when determining whether the CRM Code applies in these circumstances or not.

For me to say the CRM Code applies in this case, I need convincing evidence to demonstrate Mr O was dishonestly deceived about the very purpose of the payment he made – i.e., that his funds were criminally obtained. To uphold Mr O's complaint under DS1(2)(a)(ii) of the CRM Code, I'd need to be reasonably satisfied that it is more likely than not that N received his funds for a fraudulent purpose.

Mr O believed his loan would be used by N to meet the costs involved in refurbishing and operating a gold mine that N had acquired in Australia. Mr O believed that his payment to N was a loan, which would be returned after two years. So, I've considered whether the evidence demonstrates it's more likely than not that N, at the time the payment was made, intended the payment to be used for a different purpose – i.e., that N didn't intend to use Mr O's funds to refurbish and operate a gold mine or repay Mr O at the end of the loan note agreement.

Contrary to what Mr O was told, his funds weren't secured against N's assets. Mr O has also explained that as part of the application process, he was required to self-certify as a *“Sophisticated Investor”*, and as a *“High Net Worth Individual”* – which Mr O wasn't. Furthermore, after making the payment, the advisor who introduced Mr O to N regularly said N was performing well, until N entered administration in August 2021.

Mr O has made some strong arguments about the sales practices of the advisor that introduced him to N and the misleading updates they provided to Mr O after the payment was made. I accept this behaviour is concerning. I also appreciate that the brochure misled Mr O about his loan being secured against N's assets when it wasn't.

However, the question I must ask myself is not whether the investment was mis-sold to Mr O, but whether he has demonstrated that he's most likely been the victim of an APP scam. And Mr O hasn't explained why he thinks N didn't use (or didn't intend to use) his funds for the purpose in which they were given to N.

The administrator's most recent progress report dated August 2024 makes no reference to N using creditors' funds for a fraudulent purpose or that N wasn't operating as a legitimate business at the time Mr O made his payment. N didn't enter administration until around eight months after Mr O made his payment. During that time, I've seen no evidence to suggest N misappropriated Mr O's funds. As a result, I've not seen convincing evidence to demonstrate Mr O was dishonestly deceived about the very purpose of the payment he made to N and so I'm not persuaded the CRM Code definition of an APP scam has been met in these circumstances.

Mr O feels very strongly that Lloyds ought to have intervened when he made the payment to N and that if it had, his loss could've been avoided. However, I can only fairly hold Lloyds responsible for any errors in the payment journey if I'm satisfied that he has, more likely than not, been the victim of an APP scam.

Based on the arguments and evidence I've been provided, I'm not persuaded Mr O has been the victim of an APP scam. Instead, I think Mr O has most likely been the victim of a failed investment. As a result, I can't say the CRM Code is a relevant consideration in Mr O's complaint or ask Lloyds to reimburse his loss under its principles, regardless of whether Lloyds failed to intervene to question the payment at the time it was made.

I recognise that the circumstances might change in the future. Material new evidence may become available to Mr O – such as the police charging those responsible for N with fraud. If that is to happen, then Mr O can provide further evidence to Lloyds and ask it to reconsider his claim.

My final decision

For the reasons explained above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 12 August 2025.

Liam Davies
Ombudsman