

## **The complaint**

Mrs S complains that Lloyds Bank PLC won't refund the full amount of money she says she lost to a scam.

## **What happened**

The background to this complaint is well-known to both parties, so I won't repeat it in detail here. But in summary and based on the submissions of both parties, I understand it to be as follows.

Mrs S complains that in May and August 2019 she made three payments from her account held with Lloyds to what she believed was legitimate investment companies.

Mrs S met with an IFA and was recommended companies with whom she could invest. So, Mrs S invested a total of £110,000.00 by cheque between three different entities. When Mrs S didn't get the promised returns, or her capital back, she raised a claim with Lloyds.

Lloyds looked into the complaint but didn't uphold it. It said Mrs S wasn't covered under the Contingent Reimbursement Model Code (CRM code), firstly as the first two payments were made before the scheme was put in place, because it deemed it was a civil dispute, and because Mrs S paid by cheque (and this method of payment isn't covered under the code). Lloyds went on to say that Mrs S received advice from an Independent Financial Advisor (IFA).

As Mrs S remained unhappy, she brought her complaint to our service.

Our investigator looked into the complaint but didn't uphold it. Our investigator didn't think that had someone from Lloyds intervened on the payments, it would've stopped Mrs S from making them. He said Lloyds couldn't have given investment advice and would've most likely referred Mrs S to an IFA. As Mrs S got the recommendation from an IFA, he didn't think Mrs S would've chosen not to make the payments.

Mrs S didn't agree with the investigator's view. She said intervention would've "woken her up" to the mistake she was making. Mrs S went on to say she would've got advice from other IFA's.

As the investigator wasn't persuaded to change his view, the complaint's 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.

I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual

point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

I've decided to not uphold this complaint for materially the same reasons as our investigator. I'll explain why.

I'm sorry if Mrs S lost money but this doesn't automatically entitle her to a refund from Lloyds. It would only be fair for me to tell Lloyds to reimburse Mrs S if I thought it reasonably ought to have prevented the payments or it unreasonably hindered recovery of the funds.

### Prevention

Banks have various and long-standing obligations to be alert to fraud and scams and to act in their customers' best interests. These are predicated on there having been a fraud or scam. So, a first consideration in determining Lloyds's obligations here would normally be: was Mrs S scammed as she alleges?

Here though, I don't think the answer to this question makes a difference to the fair outcome to this complaint. This is because if Mrs S wasn't scammed, Lloyds had no obligation to prevent Mrs S's payments, and so I couldn't reasonably hold it responsible for not preventing the payments. On the other hand, if Mrs S was scammed:

- A bank's principal duty is to act on its customers payment mandate under the terms of the account. This position has long been recognised in common law. So, if a bank fails to comply with a validly executed payment order, it could be held liable for damages – as could the drawer- where the payment method used is a cheque.
- What that means is the starting point is that a bank is expected to process payments and withdrawals that a customer instructs it to make without due delay. So, presented with a cheque drawn in accordance with the terms of the account, a bank must honour the payment unless there are legal, regulatory, or contractual grounds which may, in exceptional circumstances, allow refusal of the payment instruction.
- Here it is accepted that the payment was validly authorised by Mrs S, so, under the terms of the account, Mrs S is presumed liable for the loss in the first instance. That said, as a matter of good industry practice Lloyds should have taken proactive steps to identify and help prevent transactions – particularly sufficiently unusual, uncharacteristic or suspicious transactions – that could involve fraud or be the result of a scam. However, there are many payments made by customers each day and it's not realistic or reasonable to expect a bank to stop and check every payment instruction. There's a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments.
- In this case, having considered the circumstances of the payments Mrs S made, the payments were unusual and extremely large compared to other payments she had made from her account in the previous six months. I understand Mrs S had made one large payment shortly before these, but given the size of these payments, I still think they look high for the usual spending on Mrs S's account. So in these particular circumstances, in order to meet its obligations summarised above (assuming, for the sake of argument, that Mrs S was scammed), I would reasonably expect Lloyds to have flagged the payments, and then called Mrs S to ask who the payments were for, what they were for, and for the basic surrounding context, and to then have proceeded appropriately from there, with the intention to disturb or unearth a potential fraud or scam.

So, I've gone on to think about whether appropriate intervention or further questions would likely have made a difference. Ultimately, I don't think any intervention by Lloyds would have made a difference or prevented the payments. I say this because when Mrs S made the payments, she was led to believe she was investing into a legitimate company and product. I'm not aware of any information Lloyds could or should have known at the time from which it ought to have been concerned Mrs S was being scammed. It could have given Mrs S general fraud and scam advice in relation to investing in particular. But ultimately, I don't think I can fairly say it would have been able to give Mrs S any information that would have led her to doubt what she already knew about what she was doing, including if she'd undertaken further reasonable research at the time. I say this as Mrs S had been receiving advice from an IFA.

So, even if Mrs S had been questioned in more detail about the investment by Lloyds, I don't think it would've highlighted anything that would've caused concern or led Lloyds to believe Mrs S was at risk of financial harm from a fraud or scam. Furthermore, even if Lloyds did intervene and tell Mrs S to conduct further checks on her investment, I'm not persuaded she would have found any negative information online, as Mrs S hasn't supplied anything from that point in time that shows this might have been a scam.

Mrs S has said that she would've sought advice from more IFA's if Lloyds had stopped and questioned her about what she was investing in. I've thought about this point carefully, but it doesn't change my decision. Mrs S had sought professional advice, and I'm not convinced any Lloyds advisor Mrs S would've likely spoken to would've been in a position to question what she had been told by the IFA, as their role is not to provide investment advice.

Cheques are not covered under the Contingent Reimbursement Model, so the code does not apply here.

### Recovery

I've also looked at whether Lloyds took the steps it should have once Mrs S contacted the bank to dispute the payments.

After the payments were made, I couldn't reasonably expect Lloyds to have done anything further until Mrs S alleged to Lloyds that she had been scammed.

As the company Mrs S sent the money to is now in administration and dissolved, I find it fair and reasonable that Lloyds has directed Mrs S back to the administration/liquidator to log a claim rather than try and recover funds through the bank.

I realise this means Mrs S is out of pocket. And I'm sorry she lost this money. But I think this was ultimately caused by the investment company here, and not Lloyds. I can't reasonably ask Lloyds to reimburse Mrs S in circumstances where I don't think it ought reasonably to have prevented the payments or recovered them.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 14 April 2025.

Tom Wagstaff  
**Ombudsman**