

The complaint

Mrs and Mr G complain that Lloyds Bank PLC (“Lloyds”) won’t refund the money they lost when they fell victim to an investment scam.

The investment under discussion here was made in Mrs G’s sole name. However, the payments were made from a joint account held by both Mrs and Mr G.

What happened

Mrs and Mr G were actively looking for an investment opportunity that paid a monthly income when they found a company I will refer to as “B” on the internet.

Interested, Mrs and Mr G read some online reviews and spoke to other investors. They also viewed a presentation by the director of B.

They were told that for every £14,000 they invested, a car would be bought on their behalf and leased out by a connected company – “Raedex”. They would receive monthly returns and a final gross payment at the end of the term. The vehicle(s) themselves would act as security for the investment.

Mrs G originally decided to invest £70,000 across a series of 3 payments in September and October 2020 and she received returns totalling £5,347.20 in relation to this investment. However, when the monthly returns stopped, Mrs G began to think she might’ve been the victim of a scam.

In July 2023, Mrs and Mr G complained to Lloyds through their representatives. They said Lloyds failed to protect Mrs and Mr G at the time they made the payments to B and they should be reimbursed under the Lending Standards Board’s Contingent Reimbursement Model Code (CRM Code).

Lloyds didn’t agree to reimburse Mrs and Mr G’s loss. It said they had paid a legitimate company that had ultimately gone into administration. Because of this, Lloyds concluded Mrs and Mr G’s circumstances amounted to a failed investment rather than a scam.

Unhappy with Lloyds’ response, Mrs and Mr G brought a complaint to this service.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld in full.

They said that the CRM Code required Lloyds to provide an outcome within 15 days of the completion of the Serious Fraud Office Investigation on 19 January 2024 but had it not done so.

The investigator went on to explain why they felt Mrs and Mr G's complaint was covered by the CRM Code - and recommended Lloyds reimburse Mrs and Mr G in full. On top of this, the investigator said that Lloyds should add interest at the rate of 8% simple per year from 15 days after 19 January 2024 to the date of settlement.

Finally, the investigator said it would be fair for Lloyds to ask Mrs and Mr G to sign an indemnity confirming they would return any funds that may later be recovered in the administration process.

Mrs and Mr G accepted the investigators findings. But Lloyds said it wasn't in a position to respond.

As an agreement could not be reached, the case has been passed to me for a final decision.

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.

In deciding what's 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 time.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam, except in limited circumstances. But the CRM Code only applies if the definition of an authorised push payment (APP) scam, as set out in it, is met. I will discuss this later in my decision.

Is the CRM Code definition of an APP scam met?

Firstly, I have considered whether Mrs and Mr G's claim falls within the scope of the CRM Code, which defines an APP scam as:

...a transfer of funds executed across Faster Payments...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.

To decide whether Mrs and Mr G are the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Mrs and Mr G thought this purpose was legitimate.
- The purpose the recipient (B) had in mind at the time of the payments, and whether

this broadly aligned with what Mrs and Mr G understood to have been the purpose of the payments.

- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

From the evidence I have seen I'm satisfied Mrs and Mr G intended to invest in B. They understood that B would use the funds she paid to buy vehicles that would be leased, and they would receive returns on their investment. I haven't seen anything to suggest that Mrs and Mr G didn't consider this to be a legitimate purpose.

I've then gone on to consider the purpose B had in mind at the time it took the payments.

After careful consideration, I'm not satisfied B intended to act in line with the purpose agreed with Mrs and Mr G. I will explain why in more detail below:

In its first supervisory notice in respect of Raedex in February 2021 the FCA noted said it had entered into approximately 1,200 vehicle leases in the period between January 2018 to January 2021, but only 69 charges had been registered.

In the same notice, the FCA said it had conducted a sampling of Raedex's leaseholder list against the DVLA database and identified various discrepancies between its business model and vehicle inventory. The FCA report referred to the fact that 55 cars appeared to be second hand (although its business model relied to a large extent on securing heavy discounts on new vehicles), to vehicles that couldn't be found, and to leases entered into at a date significantly before the vehicle was put on the road. The FCA also concluded that the group's liabilities significantly exceeded its assets, and its business model was fundamentally unsustainable.

I have also seen evidence from an SFO news release dated 19 January 2024 which confirms that two directors of B have been charged in relation to the car lease scheme. The news release noted that directors were accused of providing those who signed up with false information, encouraging people to pay in with false information whilst knowing that investments weren't backed up by the cars they had been promised.

The SFO also noted that the investment was backed by a tangible asset – a car. In Mrs and Mr G's case the "Vehicle Funding Form" Mrs G was provided with when she made her investment didn't specify a particular vehicle but did refer to the number of units being funded. The evidence I have referred to above shows this aspect of the investment wasn't being performed.

A report by the administrators of one of the connected companies said that the total number of loan agreements relating to 834 investors was 3,609. But the number of vehicles held by the company at the time it went into administration was 596, equating to less than one car for every six loan agreements.

Overall, I'm satisfied B didn't provide the investment it offered to Mrs G and didn't follow its business model. The purpose B intended when it took Mrs and Mr G's funds wasn't aligned with theirs. Given the information provided by the SFO in respect of what the directors of B are accused of, I'm persuaded that the purposes each party had in mind for the payments weren't aligned as a result of dishonest deception. This means that I'm satisfied the CRM Code definition of an APP scam has been met.

Should Mrs and Mr G be reimbursed under the CRM Code?

Lloyds is a signatory to the CRM Code which requires firms to reimburse victims of APP scams like this one unless it can establish that it can rely on one of the listed exceptions set out in it. Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that:

- The customer made payments without having a reasonable basis for believing that: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.
- The customer ignored an effective warning by failing to take appropriate steps in response to that warning.

There are further exceptions outlined in the CRM Code that do not apply to this case.

It is for Lloyds to establish that an exception to reimbursement applies. Here, Lloyds hasn't considered Mrs and Mr G's complaint under The Code and didn't respond to any points made by the investigator in respect of its application. So, it hasn't demonstrated that any of the listed exceptions can fairly be applied.

For the sake of completeness, I'll briefly cover why I'm not persuaded any of the listed exceptions can be fairly applied.

I'm satisfied Mrs G would be considered to have had a reasonable basis for believing that the investment she was entering into was legitimate. Mrs and Mr G first heard about B when it was well-established. Mr G had already invested with B and was receiving the agreed returns. Others had also received returns on their investments too. Mrs G had been provided with a Vehicle Funding Form that looked legitimate and the rate of return didn't appear to be too good to be true. So, I don't think there was anything that ought reasonably to have caused Mrs and Mr G concern at the time of making the payments.

Lloyds has said it is unsure whether it provided Mrs and Mr G with an effective scam warning for the first payment but it has said scam warnings were provided for the following two payments. I've reviewed a copy of the warning that Lloyds has said Mrs and Mr G would've seen at the time and I don't think the warning meets the bar of an effective scam warning as it isn't relevant to Mrs and Mr G's circumstances. And so, Lloyds hasn't demonstrated that Mrs and Mr G ignored an effective warning for the purposes of the CRM Code.

I've also thought about whether there is any other reason why Lloyds should reimburse Mrs and Mr G. But even if I conclude that Lloyds ought reasonably to have intervened and asked Mrs and Mr G probing questions about the nature of the payments and provided scam advice, I don't consider the scam would have been uncovered and Mrs and Mr G's loss prevented. I say this because I don't think there was enough information available at the time that would have led Lloyds to be concerned that Mrs and Mr G were at risk of financial harm.

Lloyds' response to our investigator's opinion

In response to our investigators opinion, Lloyds said it was waiting for an update from UK Finance before providing a response. However, based on all the evidence that I've seen, I'm satisfied I can reach a decision that Mrs and Mr G's payments are covered by the CRM Code for the reasons explained above. I'm not persuaded I need to wait for an update from UK Finance, in this case, in order to reach my decision.

Claims made to the FSCS

The Financial Services Compensation Scheme (FSCS) is accepting customer claims submitted to it against Raedex Consortium Ltd. More information about FSCS's position on claims submitted to FSCS against Raedex 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 banks related to the Raedex investment scheme. Whether the FSCS pays any compensation to anyone who submits a claim to it is a matter for FSCS to determine, and under their rules. It might be that Raedex Consortium Ltd has conducted activities that have contributed to the same loss Mrs and Mr G are now complaining to us about in connection with the activities of Lloyds.

As I have determined that this complaint should be upheld Mrs and Mr G should know that as they will be recovering compensation from Lloyds, they cannot claim again for the same loss by making a claim at FSCS (however, if the overall loss is greater than the amount they recover from Lloyds they may be able to recover that further compensation by making a claim to FSCS, but that will be a matter for the FSCS to consider and under their rules.) Further, if Mrs and Mr G have already made a claim at FSCS in connection with B, and in the event the FSCS pays compensation, Mrs and Mr G are required to repay any further compensation they receive from their complaint against Lloyds, up to the amount received in compensation from FSCS.

FOS and FSCS operate independently, however in these circumstances, it is 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/>)”

Putting things right

Lloyds should now refund Mrs and Mr G should now refund the total outstanding loss from this account - minus any returns received.

Interest

I'm not persuaded Lloyds acted unreasonably in not upholding Mrs and Mr G's claim when it was first reported in July 2023. At the conclusion of the SFO investigation though I consider Lloyds should have assessed all the available evidence and made a decision within 15 business days of 19 January 2024. So Lloyds should pay interest at the rate of 8% simple from 15 business days after the SFO published its outcome on 19 January 2024 on the above refund.

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.

My final decision

I uphold this complaint about Lloyds Bank PLC.

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

Emly Hanley Hayes
Ombudsman