

## **The complaint**

Ms K is unhappy that Lloyds Bank PLC has decided not to refund her after she was the victim of a scam.

## **What happened**

I set out the background to this complaint in my provisional decision, the facts of which are not in dispute. But in summary Ms K fell victim to an investment scam with T. Several members of Ms K's family had already invested with T and had received returns in the form of payments into their bank accounts.

Lloyds initially declined to refund Ms K but following our investigators involvement, it agreed to refund Ms K 50% of her losses under the CRM code. It did so on the basis that it didn't meet the firms' standards and the investigator at that time didn't think that Ms K had a reasonable basis of belief when deciding to invest with T.

Ms K and her representatives did not accept this outcome and the case was passed to me. I set out my provisional decision which said that having now carefully reviewed Ms K's circumstances I was satisfied that in this particular instance the distinguishing factor was that at least one member of Ms K's immediate family had received real returns into their bank account following investment with V. As a result, I recommended a full refund be paid to Ms K as I was persuaded that she did have a reasonable basis of belief and she was therefore eligible for full refund under the CRM code.

Ms K and her representatives replied to say it accept my provisional decision and recommendations.

Lloyds did not accept it disagreed for two main reasons. It said:

- Whilst the complaint was originally considered under the CRM code it has since come to light that there is an on-going Police investigation. Lloyds as well as other financial institutions, have decided to place any cases like this on hold, pending the outcome of the police investigation. And this is to understand if there was an intention to defraud and if there was, from what point.
- It did not agree that Ms K had a reasonable basis of belief. It said even an inexperienced investor ought to have recognised that returns being promised were too good to be true and not plausible. Especially in light of the economy at the time and interest rates on savings was exceptionally low.
- It referred to other decisions received from our service which highlighted the returns as being unrealistic and impacting the consumers reasonable basis of belief. And it asked how my finding is different to the case that it referenced.

As the complaint could not be resolved following my provisional decision I have considered Lloyds responses to reach a 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'm not minded to change my findings to those set out in my provisional decision. I'll explain why.

*Lloyds's 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 Ms K.

And for there to be *'fraudulent purposes'* (as opposed to legitimate purposes) 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 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 Ms K's payment.

When considering the evidence produced in support of Ms K'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 at all to suggest any trading took place with the funds that Ms K'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 consumers funds were fundamentally being utilised, as agreed between T and the consumers. So, on balance I'm satisfied there is enough persuasive evidence that Ms K, as well as others, have been the victims of an APP scam. Lloyds has said there is an on-going Police investigation and R3(1)(c) of the CRM code applies. 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 has already provided an outcome under the CRM code when it issued its final response saying it declined Ms K's claim. So, it can't retrospectively apply this provision in this case.

But even if Lloyds doesn't consider that it gave an outcome under the CRM code, Lloyds hasn't provided an explanation as to why awaiting the outcome of the police or other statutory body investigation *might reasonably inform* an outcome under the CRM code. 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.

#### *Did Ms K have a reasonable basis of belief?*

It's significant that the way the test is set out in the CRM Code isn't completely objective and it allows me to take into account the characteristics of the customer and consider their individual experiences when it comes to assessing whether a deduction should be made under the CRM code regarding a consumer's reasonable basis of belief.

As I said in the provisional decision, there is a key distinguishing feature in Ms K's experience, prior to deciding to invest with T. As given in my provisional decision I was aware of at least one member of Ms K's family receiving returns directly into their bank account prior to Ms K deciding to also invest. But I'm also aware that there were in fact several members of Ms K's immediate and extended family that had received actual real returns into their bank accounts.

I'm satisfied this experience holds some weight here. In most other cases I've seen regarding T, investors did not see those real returns, rather they saw mocked up spreadsheets of profits being made on their investments or they may have heard through word of mouth that other investors were receiving returns. But here Ms K's family were receiving payments direct from T and/or K. I'm persuaded that Ms K's personal and direct relationship with those individuals and the experience with T holds significance in seeing that the returns were being made and paid as promised.

Ms K's inexperience of investing means I'm not persuaded that she did truly understand that the returns being offered were too good to be true. But even if she did or ought to have known the key factor is that she saw family members were receiving substantial and regular real returns into their bank accounts. This gave the investment validity, that sets Ms K's experience apart.

So I'm satisfied that in this particular and limited set of circumstances, Ms K did in fact have a reasonable basis of belief and Lloyds is not entitled to apply any exception to a refund under the CRM code.

#### **Putting things right**

I'm recommending that Lloyds refund Ms K for her losses in full minus the returns she received. Which I calculate to be £12,000 plus 8% simple interest from the date Lloyds declined the claim to the date of settlement.

#### **My final decision**

I uphold Ms K's complaint in full and I now direct Lloyds Bank PLC to settle the complaint as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 3 April 2025.

Sophia Smith  
**Ombudsman**