

The complaint

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

Mrs O is bringing her complaint using a professional representative which I'll refer to as P.

What happened

Mrs O said she came to know about an investment with V, from friends that had invested in the scheme. She says she initially decided not to invest but followed its progress over the following year. When she heard how well the investment was working and the returns that were being made, by word of mouth, she decided to invest.

Mrs O understood that V would use her money to place trades in forex. He would split the profits 50/50 from his trades with Mrs O. Mrs O would receive a guaranteed 10% profit a month, on her investment. In addition to that, she was told none of her upfront capital was at risk. She was also told that there was a possibility that she might earn more than 10% per month and that the extra would be split between her and V.

Mrs O believed V to be an experienced and successful investor. She said she checked if V had set up a legal business but was told he was in the process of doing this. Trading would start prior to this from V's personal trading platform before being moved the hedge funds based abroad.

Mrs O never dealt with V, she only dealt with and met K. Mrs O says she was not worried about this, as V was paying returns to other friends who had invested. Mrs O received a contract with V and K which she thought was detailed and professional.

Mrs O says she was shown a statement by K – that he'd produced for a friend which looked professional. She was told V was the "mastermind" behind it and lived in Canada but K facilitated the introductions. She was told V was about to increase the minimum investment to £100,000 as the business was growing fast and so she needed to be quick as V wouldn't be looking for smaller investors. Mrs O decided to invest £20,000, borrowing the full amount from her mother (who also invested). Mrs O says her husband also invested £10,000 separately.

Mrs O says each month she received monthly updates of her 10% returns. With photo proof of the trades being placed. Mrs O says this was all managed on a group WhatsApp chat. Mrs O says she attempted to withdraw funds in September 2021 but was met with excuses. She says eventually other investors came together, coming to the conclusion they had all been the victims of a scam.

Mrs O raised a scam claim with Lloyds. It issued a final response without investigating the claim or providing an outcome. But it did give Mrs O referral rights to bring her complaint to our service.

One of our investigators looked into things initially she concluded that Mrs O should receive a full refund. But she later reviewed the evidence and Mrs O comments in more detail and ultimately concluded that thought Lloyds ought to refund 50% of Mrs O's losses but not anymore. She included 8% simple interest from the date the claim was declined to the date of settlement.

She said she didn't think Mrs O had a reasonable basis of belief when deciding to invest. She thought there were several red flags about the investment that Mrs O ought to have questioned whether what she was investing in was legitimate. This included: the investment being unregulated, payments being made to V's personal accounts, although they were told a hedge fund would eventually be set up they ought to have been concerned about investing prior to that being in place. She also considered the 10% a month guaranteed profits with no risk to their capital as a "too good to be true" offer. And the agreement they signed with V contained very little detail about how those profits would be achieved.

She said Lloyds did not meet the firms' standards under the CRM code. She said it didn't provide its business file so she couldn't conclude that it provided an effective warning when Mrs O made the payment to V – as it was required to under the CRM code. She went on to say that she thought given the size of the payments Lloyds ought to have gone beyond an online warning, as required by the code and it ought to have discussed the payment with Mrs O. If Lloyds had intervened, she thought the scam would have been exposed and Mrs O's losses prevented.

P didn't agree. It said it had received other outcomes from our service where the consumer received a full refund. The deduction made for Mrs O's reasonable basis of belief are the same circumstances that everyone that fell victim to this scam, was impacted by – the rate of return and the contracts.

The investigator explained that a consumer's reasonable basis of belief will be fact specific to the individual circumstances, which is why not all consumers would receive the same outcome.

Lloyds responded to the investigators view to say this complaint, and others that invested with V, have been ring-fenced, and it was premature to conclude they were covered under the CRM code. It said there was an on-going police investigation into V. And, with other firms, Lloyds' is awaiting the outcome of that investigation before determining if this case (and others) are covered by the CRM code, and if they are, from what point in time. It said the CRM code was not intended to underwrite investments that go bad. Lloyds also referenced our website which says complaints that involved court action maybe be dismissed by our service.

It asked for evidence reviewed by our service that this was a scam. And it said it didn't agree that beyond the CRM code, it ought to have intervened with the payment, given the value usual account activity.

As the complaint couldn't be resolved it has been passed to me. I'm only commenting on Mrs O's complaint with Lloyds. A separate complaint dealing with the receiving bank is being considered by a different ombudsman and I'm aware the ombudsman is intending to not uphold that complaint. I've taken that into account when making any recommendation on this linked complaint and my decision is based on what I know to be the case at this time.

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 V or to cause a loss to Mrs O.

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 V. 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 Mrs O's payment.

When considering the evidence produced in support of Mrs O'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 Mrs O transferred to V's account. We've also seen a number of receiving account statements and there's no activity that would suggest V was operating or carrying out the activities as he described, or the consumer's funds were fundamentally or wholly being utilised, as agreed between V and the consumer. So, on balance I'm satisfied there is enough persuasive evidence that Mrs O, as well as others, have been the victims 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.

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 V 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.

The dismissal reason Lloyds' has referred to about on-going court action being a reason we might not consider a complaint, is not applicable here. Here the complaint with Lloyds is not being considered by any court. V is being investigated but that does not impact our decision to make a finding under the CRM code.

Has Lloyds met the firms' standards under the CRM code?

Like the investigator, I'm satisfied that Lloyds, ought to have identified Mrs O's payment represented an APP scam risk, and provided a tailored risk-based warning – as required to do so under the CRM code.

Lloyds hasn't responded to the investigators findings, with regard to it not meeting the firms requirements under the CRM code. And so, I agree that it ought to be held liable for reimbursement under the CRM code for this reason.

Intervention

The investigator concluded that the payment ought to have warranted human intervention from Lloyds at the point it was made. However, given the value and nature of other payments being made on the account, prior to this payment, I'm not persuaded Lloyds needed to do more than provide the online warning – as required to do so anyway under the CRM code. This finding only has an impact on the date that interest is awarded from. And the investigator in her view, recommended 8% simple interest, be paid from the date the claim was declined, to the date of settlement. That is correct and is in line with my finding above, so I'm not changing the recommendation on the point of interest.

Did Mrs O have a reasonable basis of belief when making these payments?

I haven't seen any persuasive evidence from Mrs O that she thought this was a legitimate investment. She appears to have decided to invest based on very little information. And despite the view from the investigator setting out the change in outcome around Mrs O's reasonable basis of belief – P has provided very little in the way of its response or any further evidence to support Mrs O's claim.

- Firstly, Mrs O says she initially decided not to invest, and followed the investment for 18 months. It was then that she decided to invest. She says she saw friends and family getting returns – although she's provided no detail about who these individuals were or what exactly she saw in terms of their "returns". And it doesn't appear that beyond this she made any other checks before deciding to invest – despite initially appearing to be cautious about investing.
- As I've said Mrs O says friends invested and received returns but has provided no evidence to support this. Either who these individuals were, if they were friends or that they did in fact receive funds (and not just told they'd made a profit from the monthly spreadsheet statements that we know most consumers received).
- Mrs O has provided a basic agreement between her and V which says she will give V

money and in return V will invest her funds in forex and provide the profits as described in the background of this complaint. And like the investigator I agree that the high guaranteed returns, with no risk to her capital should have been a red flag for Mrs O.

- Mrs O says she was told V was an experienced trader. Mrs O hasn't said that she questioned this or saw any evidence that substantiated this claim and she says she never met, or spoke to V in person. Given V's age at the time (23) if Mrs O was told this I would have expected her to have asked more about this, given the young age V would have needed to start trading for the years of experience she was told he had.
- The payments were being made to V's personal account rather than to a business or Ltd company account. It's not clear how Mrs O thought she would receive her returns or if they were held in any sort of client account – I can't see that she asked these questions or thought about this when sending this money to V.
- If Mrs O had made enquiries with V she would have found that in order to carry on the activity that V claimed to be doing, trading or investing on behalf of others, he required FCA authorisation, which he didn't have.
- V doesn't appear to have provided detail about how he would be able to generate such lucrative profits without any risk. And Mrs O hasn't provided evidence or explained that she asked about this either, other than understanding the forex trading specifically related to trades involving Canadian currency.
- And although Mrs O has said she received the monthly statements showing her profits, these were very 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 Mrs O's initial decision to invest as these would have only been sent to her after she began to invest. But if she saw this spreadsheet from her friend or from someone else, at the point she was deciding to invest, and they were an influencing factor, then I'm not sure what it was about these spreadsheets that Mrs O found persuasive or that made her think the investment was legitimate, given their sparse detail and basic format.

Whilst I appreciate Mrs O wasn't the only consumer who fell for this scam, I haven't seen any persuasive evidence that Mrs O reasonably thought this was a legitimate opportunity given all the red flags that it presented.

I'm afraid I agree that Mrs O should be held partly liable for her losses and agree that the refund amount here due from Lloyds is limited to 50% plus 8% interest from the date the claim ought to have been considered by Lloyds to the date of settlement.

Putting things right

I now direct Lloyds to pay Mrs O 50% of her losses.

Plus pay 8% simple interest from the date the claim ought to have been considered by Lloyds (15 days after the claim was raised by Mrs O) to the date of settlement.

My final decision

I uphold Mrs O's complaint in part against Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 10 April 2025.

Sophia Smith

Ombudsman