

The complaint

Mr S complains Lloyds Bank PLC ('Lloyds') hasn't reimbursed him following an authorised push payment ('APP') investment scam he fell victim to. He says Lloyds should reimburse him for the money he lost.

In bringing his complaint, Mr S has used the services of a professional representative. Within this decision, for ease of reading, I will refer solely to Mr S.

What happened

As both parties are familiar with the circumstances of this complaint, I've summarised them below.

In late 2022, Mr S was introduced to an investment company whom I'll refer to as 'V'. Mr S was introduced to V by someone whom I'll call 'Mr B'. Mr S had known Mr B for some time and Mr S says Mr B was well known and respected within the property industry which is the same profession as Mr S. Mr S says he trusted Mr B as a result.

Mr S has explained that Mr B told him he had been investing through V for around six months and showed him his online account with V where Mr B had made impressive returns of around 6 to 12% a month and showed Mr S where he had withdrawn funds from V also.

Mr B told Mr S that V was fully regulated, was audited every month, and he had met V's founders in person and had carried out as much due diligence on V as possible.

Mr S was provided with brochures and marketing materials about V by Mr B which he thought looked professional and convincing. Mr S was also given a 90-minute recorded presentation / question and answer session to watch. The presentation was carried out by someone whom I'll call 'Mrs J' and it was with the founders of V – whom I'll call 'Mr C' and 'Mr R'.

Mr S says Mr B and Mrs J had become friends and Mrs J's own company was Financial Conduct Authority ('FCA') regulated.

Mr S says he was told that the investment with V was regulated with the Commission de Surveillance du Secteur Financier ('CSSF') in Luxembourg, but with the funds kept with an FCA regulated broker which was based within the UK. Mr S says he knew of the FCA regulated broker firm so was assured with the legitimacy of the investment.

Mr S says he carried out some checks himself such as looking on the internet and looking at the LinkedIn profiles of the founders of V and didn't find any adverse information.

Mr S, believing everything to be genuine, decided to invest with V. Mr S initially invested £50,000 in January 2023, transferring funds from his account with Lloyds to the personal account of Mr C. Mr S received email confirmation which stated his funds had been deposited into V's FCA regulated broker's account.

Mr S was given access to an online portal which showed how his investments were doing. And, happy with how things were seemingly progressing with his investment, Mr S transferred a further £100,000 to the investment with V in March 2023. For these payments, they were made to V's business account.

In March 2023, Mr S was also given access to a new platform / online portal V had created, which showed how his investments were doing. Mr S was required to complete 'know your customer' checks by V in order to access V's new platform and online portal.

In total, Mr S made the following payments from his account with Lloyds to V:

Payment number	Date	Payment type and beneficiary	Amount
1	06/01/2023	Faster payment to Mr C	£20,000
2	06/01/2023	Faster payment to Mr C	£5,000
3	09/01/2023	Faster payment to Mr C	£25,000
4	10/03/2023	Faster payment to V's business a/c	£500
5	13/03/2023	Faster payment to V's business a/c	£99,500
		Total	£150,000

On 18 May 2023, V emailed its investors. V advised that it had been working with the FCA and the FCA had requested information from V on a number of details. V explained it was working with its lawyers to ensure it provided everything the FCA needed. V explained as part of the process it had been asked to temporarily pause any trading until the situation was resolved. In June 2023, a message was added to V's website saying V had been in communication with the FCA since 18 April 2023 and if investors had any queries, they needed to contact the FCA.

Mr S carried out some research and went on the CSSF website again and discovered a warning advising that V weren't regulated by the CSSF. Mr S also advised that the information suggested there were large losses alluded to that were never shown on his portal with V. Mr S contacted Mr B advising that if V had said it was registered with the CSSF, and wasn't, then it was a scam. Mr B responded advising he didn't think it was a scam, and that V had fallen foul of trading without the correct paperwork.

Ultimately Mr S wasn't able to retrieve any of the funds he had invested or any profits he thought he had made from V.

Mr S reported the matter to Lloyds in September 2023, to try and recover his funds or be reimbursed his loss under the Lending Standards Board ('LSB') Contingent Reimbursement Model Code ('CRM Code'). This was a voluntary code that Lloyds was a signatory of. The CRM Code required firms to reimburse customers who had been the victims of APP scams in all but a limited number of circumstances.

Lloyds issued its final response to Mr S in February 2024. It considered the payments Mr S had made were towards a genuine investment company which was unsuccessful. It advised there was no evidence to support the claim that V had set out with intent to scam from the outset explaining people had invested with V and received profits.

It further advised that there was an ongoing FCA investigation into V and upon completion of that investigation if evidence was found indicating criminal wrongdoing or that there was intent by V to defraud investors then it would look at Mr S's claim again.

Lloyds offered £150 for the level of service it provided in not keeping Mr S updated with its position on the matter.

Unhappy, Mr S subsequently referred his complaint to our service.

One of our Investigators looked into the matter and upheld Mr S's complaint. In short, they explained that they did not think it was fair for Lloyds to wait for the FCA's investigation into V to be concluded, before making a reimbursement decision under the CRM Code. Having reviewed the complaint, they felt it was more likely V was operating as a scam – and this was based on a number of factors. They therefore assessed the complaint under the CRM Code and did not think any exception to reimbursement applied.

They therefore recommended a full refund of the payments Mr S made totalling £150,000, as well as 8% simple interest from 15 days after Mr S raised his fraud claim with Lloyds until the date of settlement.

Mr S accepted the findings, however Lloyds did not.

In short, Lloyds reiterated that it was of the position that it needed to await the conclusion of the investigation by the FCA and understand if any charges have been brought against the directors of V and what the charges may relate to. So, it considered it was unable to agree to reassess Mr S's claim under the CRM Code. It advised upon conclusion of the investigation it would reconsider its position.

As an informal agreement could not be reached, the complaint 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 in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Lloyds was a signatory to the CRM Code. It required firms to reimburse victims of APP scams in all but a limited number of circumstances.

The main point of dispute here is whether V was operating as a scam or not. Lloyds appear to be relying on R3(1)(c) of the CRM Code to defer making a decision on this point. 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.”

So, I have considered whether it would be appropriate to delay my decision in the interests of fairness, as I understand that the FCA investigation is still ongoing.

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations. But that isn't necessarily so in every case, as it may be possible to reach conclusions on the main issues on the basis of evidence already available. And it may be that the investigations or proceedings aren't looking at quite the same issues or doing so in the most helpful way.

In order to determine Mr S's complaint, I have to ask myself whether, on the balance of probabilities, the available evidence indicates that it's more likely than not that Mr S was the victim of a scam rather than a failed investment. But I wouldn't proceed to that determination if I consider fairness to the parties demands that I delay doing so.

I'm aware that Mr S first raised his claim with Lloyds in September 2023, and I need to bear in mind that this service exists for the purpose of resolving complaints quickly and with minimum formality. With that in mind, I don't think delaying giving Mr S an answer for an unspecified length of time would be appropriate unless truly justified. And, as a general rule, I'd not be inclined to think it fair to the parties to a complaint to put off my decision unless, bearing in mind the evidence already available to me, a postponement is likely to help significantly when it comes to deciding the issues.

I'm aware the above processes involved with the FCA investigation might result in some recoveries for V's investors; in order to avoid the risk of double recovery, I think Lloyds would be entitled to take, if it wishes, an assignment of the rights to all future distributions to Mr S under those processes in respect of this investment before paying anything I might award to him on this complaint.

For the reasons I discuss further below, I don't think it's necessary to wait for the outcome of the ongoing FCA investigation for me to fairly reach a decision on whether Lloyds should reimburse Mr S under the provisions of the CRM Code.

In order to reach a decision, I've considered the definition of an APP scam under the CRM Code. Under DS1(2) an APP scam is defined as:

"...a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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."

DS2(2)(b) explains that the CRM Code does not 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"

Of particular relevance here is whether Mr S transferred funds to V for what he believed to be legitimate purposes, but which were, in fact, fraudulent.

It's evident that V had some features that gave it the impression of operating legitimately. There are identifiable individuals associated with V who held in-person and online events to promote the investment. And many people who lost money had been introduced to the scheme through personal recommendations (sometimes by people who'd successfully withdrawn significant 'profits' from the scheme).

There is also evidence that some of the money that was received by the founding individuals at V (though not the limited company V) did end up with a foreign exchange ('Forex') platform (which wasn't FCA regulated but was part of a group of companies – of which one was FCA regulated). It also appears that some funds sent to V's bank account were converted into cryptocurrency and sent to the Forex platform.

However, I've found the following facts to be persuasive evidence that V was operating as a scam:

- We are now aware that V's claims of being at least in the process of being regulated with relevant bodies such as the FCA in the UK and the CSSF in Luxembourg are false.
- V's account provider has shown that when V applied for accounts it lied at least twice, this was about partnering with an FCA authorised trading exchange and that it was regulated.
- Approximately half of the funds sent to the two founding individuals of V was potentially used for the intended purpose of Forex trading. Whereas Mr S sent funds to V with the understanding they would immediately be moved to an FCA regulated trading account to be used in Forex trading, as was Mr S's understanding of his agreement with V and as he was told in communication following his investment deposits. But this didn't happen.
- Of the investors' funds that were sent to V's business account, these were either sent to a cryptocurrency exchange platform or paid to other investors as withdrawals. Investors were led to believe they were investing with a regulated entity and that their funds would be deposited in a regulated trading account. It wasn't advertised to investors that their funds would be moved/invested into unregulated cryptocurrency. Furthermore, approximately 20% of the funds moved to the cryptocurrency exchange platform weren't subsequently forwarded to the Forex trading account.
- There is no evidence to substantiate V's claims around the profits they say they were able to generate via Forex trading.
- The returns from the Forex platform are significantly less than the returns paid to investors, suggesting returns were funded using other investors' money and weren't profits made from investing.

Taking into account all of the above, I'm satisfied, on the balance of probabilities, that the money that was sent to V was not used for its intended purpose. The evidence suggests that Mrs P wasn't involved in a failed investment but a scam.

Returning to the question of whether, in fairness, I should delay reaching a decision pending developments from external investigations, I have explained why I should only postpone a decision if I take the view that fairness to the parties demands that I should do so. In view of the evidence already available to me, however, I don't consider it likely that postponing my decision would help significantly in deciding the issues. There is no certainty that any prosecutions will result from the FCA's investigations nor what, if any, new light they would shed on the evidence and issues I've discussed.

So, as I'm satisfied Mr S has most likely been the victim of an APP scam, I've considered whether he should be reimbursed or not under the CRM Code.

Is Mr S entitled to reimbursement under the CRM Code?

I've considered whether Lloyds should reimburse Mr S under the provisions of the CRM Code. There are generally two exceptions to reimbursement:

- Mr S made the payments without a reasonable basis for believing that they were for genuine goods or services; and/or V was legitimate.
- Mr S ignored what the CRM Code deems to be an 'Effective Warning'

And importantly, when assessing whether it can establish these things, Lloyds must consider whether they would have had a 'material effect on preventing the APP scam'.

I have considered whether Mr S had a reasonable basis to believe V was legitimate and was providing a genuine investment product.

In doing so, I have given careful consideration as to how Mr S was introduced to V. I find this to be an important factor when considering whether Mr S held a reasonable basis of belief when making payments to V. Mr S was introduced to V by Mr B whom Mr S had known and respected for a considerable time as a result of working within the same industry. And Mr B had been investing through V already, showing Mr S the profits made and the withdrawals. So, I can understand why, after receiving contact from Mr B about investing through V, and being shown how well the investment was going, Mr S thought it was a genuine investment opportunity that was being presented to him.

Mr B was also friends with Mrs J who had also invested with V and her own firm was FCA regulated. And Mr S was provided with supporting / promotional materials about V and was shown the recorded presentation that Mrs J had hosted with the founders of V prior to initially investing.

When I consider this, and think about the sophistication of this scam, so being introduced to V by Mr B (who Mr S had known and trusted), seeing the returns Mr B had made, the marketing materials provided, being told it was regulated by the CSSF in Luxembourg and also having an FCA regulated broker, the recorded presentation with the founders of V, the account opening process, V's website, the client portal and the ability to track supposed investments, I can understand why Mr S felt the investment was a genuine one at the time.

I accept some of the claims made by V about the returns it could generate seem unlikely. I note the marketing materials set out that V's worst month for returns was 9%, and its best month provided a return of 23%. But, and importantly, alongside this I also have to weigh up what Mr S had been told about V by others. Mr S was told by Mr B that he had received consistent monthly returns that ranged between 6 and 12%. I think the sophisticated aspects of the scam, particularly with Mr S receiving reassurance about the investment being safe and regulated alongside the literature and marketing he received and the ability to see how his investments were performing on a daily basis on V's platform and coupled with the evidence that Mr S says he saw of the returns Mr B had made (which is consistent with other victim's testimony), outweighs the concerns that Mr S perhaps ought to have had about the returns being claimed.

On balance, I think there was enough to reasonably convince Mr S at the time that this was a genuine investment company. With this in mind, I don't think Mr S made the payments without a reasonable basis of belief that V and the investment itself was genuine.

Lloyds has not provided any evidence that it warned Mr S before he went ahead with the payments, so it cannot demonstrate he ignored any 'Effective Warnings' and therefore cannot rely on that exception to reimbursement.

I appreciate Lloyds hasn't provided any evidence in relation to any warnings it may have provided Mr S at the time he was making the payments – due to it considering it should await the outcome of the FCA investigation. But it had the opportunity to provide its submissions about the payment journey steps Mr S undertook when the complaint was with our service and didn't.

I am also mindful the CRM Code explains that a firm, in assessing whether an exception to reimbursement applies such as ignoring an effective warning, has to take into account whether it would have had a 'material effect on preventing the APP scam'.

Here Mr S had no reason to believe that V wasn't a genuine investment company at the time. So even if Lloyds were to have provided Mr S with a relevant or tailored warning about investment scams – I think it is fair to say it wouldn't have had a material effect on preventing the scam, such was his belief in V and that things were legitimate. So, I do not think an exception to reimbursement can be applied for this reason in any event.

Overall, I do not consider it necessary to await the outcome of the FCA investigations into V and any subsequent proceedings. I am satisfied, based on the evidence available, that Mr S was more likely than not the victim of an APP scam. And his fraud claim is therefore covered by the provisions of the CRM Code. I'm also satisfied no exceptions to reimbursement under the CRM Code apply. So, it follows that I'm satisfied Lloyds should reimburse Mr S under the provisions of the CRM Code. And Lloyds is entitled to take, if it so wishes, an assignment of the rights to all future distributions to Mr S under the processes relating to the FCA investigation and any potential compensation that may be returned to victims.

In relation to compensatory interest, I think it should be paid from the date our Investigator gave their view of this complaint (5 February 2025). I'm satisfied that the information disclosed in that view was sufficient for Lloyds to conclude that Mr S had been the victim of a scam and that it wasn't necessary to wait for the outcome of any ongoing investigations. This has been explained to Mr S's representatives who have agreed.

Finally, Lloyds has offered, and seemingly paid, £150 for the poor level of service it provided Mr S in not keeping him updated on its stance on his fraud claim. I think that is a fair amount in the circumstances and reflects the unnecessary inconvenience Mr S would have been put to in chasing Lloyds for an update with what was going on with his fraud claim.

Putting things right

I uphold this complaint. Lloyds Bank PLC should pay Mr S:

- £150,000 he lost to the scam orchestrated by V;
- 8% simple interest on that amount from 5 February 2025 to the date of settlement; and
- £150 compensation (if it hasn't done so already) for the poor level of service it provided.

My final decision

For the reasons given above, I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 8 July 2025.

Matthew Horner
Ombudsman