

The complaint

Mrs E and Mrs W complain that Lloyds Bank PLC ('Lloyds') declined to reimburse payments they made to what they now believe to be a scam.

What happened

The circumstances of this complaint are well known to both parties, so I will not repeat every detail of what happened again here. However, in summary, Mrs E and Mrs W believe they have fallen victim to a scam.

Mrs E was introduced to a company which I will refer to as 'W' by her father. He told her he had invested with W after being introduced to it by an investment broker he had dealt with previously. W offered investments in whisky from a number of different distilleries. Mrs E was persuaded to invest in two casks as a five-year investment with a promised return of 20%, so sent a total of just under £30,000 towards this from her joint account with Mrs W at Lloyds. She also decided to invest in a five casks as a three-year investment with a return of 15-18%, and sent around £46,000 in respect of these casks, from the same account.

Mrs E said that she later learned that the first two casks simply did not exist and there was no record of those in her name at the specified distillery warehouse. She said that the further five casks did exist but were misrepresented to her – they contained different and less valuable whisky. She said she then discovered that police were investigating W for defrauding investors. So, Mrs E and Mrs W asked Lloyds to reimburse their losses on the basis that they had been the victims of a scam.

Lloyds declined to reimburse any of Mrs E and Mrs W's losses, on the basis that it did not think they had been the victims of a scam. It said that it believed that this amounted to a failed investment, on the basis that W had fallen into financial difficulties. And so it said that this represented a private civil dispute, rather than a scam. It did say it would pay them £100 for poor customer service, in recognition of delays in raising their scam claim.

Unhappy with Lloyds response, Mrs E and Mrs W escalated their concerns to our service. One of our investigators looked into what happened and recommended that their complaint should be upheld, in part. They said that the evidence suggested that the first two casks she invested in did not exist, or if they did exist they were not held in Mrs E's name. Therefore, the payments towards these two casks did meet the definition of a scam and were covered by the Lending Standard Board's Contingent Reimbursement Model and should be refunded in full along with 8% simple interest from the date Lloyds declined Mrs E and Mrs W's claim under the code until the date of settlement. In respect of the payments towards the other casks, they said that whilst there was evidence the casks had been misrepresented, they did appear to exist. This meant that Mrs E and W's purposes for the payments towards these casks was broadly the same – to purchase barrels of whisky. So, they said these did not meet the bar for the definition of a scam and so they did not ask Lloyds to reimburse the losses for these.

Lloyds did not agree with our investigator's recommendations. Lloyds asserted that all of the payments Mrs E and Mrs W made to W represent civil disputes rather than a scam. It says

that it would seem unlikely that if W had intended to scam them from the outset, that they would later supply casks for investment. It said that whilst it is sometimes the case that a legitimate company moves into scams, it would seem strange that a scam company would then start providing genuine investment. So, it says that it seems more likely that there being no barrels in Mrs E's name is more likely down to an administrative error at the distillery, the cask warehouse, or at W. It said that there was a winding up order in place for the W, and that there was evidence that other investors had received returns to it appeared to be a genuine business in difficulties.

As no agreement has been reached, the case has 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'd like to start by saying I was so sorry to read of what Mrs E and Mrs W have been put through. I understand that there has been an immense impact on them and their finances at a time that has already been very difficult for them both for personal reasons. I could tell from the evidence they provided that what has happened has had a profound impact on them.

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.

It is important to note that I am not deciding a dispute between Mrs E and Mrs W, and W. I do not have the power to consider any potential criminality or complaints about W. My role is limited to deciding the dispute between Lloyds and Mrs E and Mrs W. So, I need to decide whether Lloyds acted fairly when it concluded that this amounted to a civil dispute and not a scam, such that the CRM code did not apply in this case.

It isn't in dispute that Mrs E and Mrs W authorised the payments that left their account. The starting position – in line with the Payment Services Regulations 2017 – is that they are liable for the transactions. But they say that they have been the victim of an Authorised Push Payment (APP) scam and that W's intent from the outset was to deceive them.

Lloyds was a signatory to the voluntary CRM Code which was in place at the time of these payments. This was a scheme through which victims of APP fraud could sometimes receive reimbursement from the banks involved. The CRM code is quite explicit that it does not apply to all push payments. It says:

“DS2(2) This code does not apply to:

(b) 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.”

Subsections (a) and (c) have been omitted as they are not relevant to this complaint.

The CRM Code does not clearly define what a 'private civil dispute' amounts to, but a civil dispute can be ordinarily defined as a disagreement about, for example, quality of goods between private individuals or companies. The code broadly describes examples of what is considered an APP scam and this includes where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent.

This can be considered a dishonest scheme, where the payee never intends the same purpose as the payer. In this case, that purpose would be the purchase of specific casks of whisky as an investment.

So, I can only apply the CRM Code to Mrs E and Mrs W's payments, or consider Lloyds' liability to them under the CRM Code, if I'm satisfied that the payments were made as part of an APP scam. As opposed to a situation where B didn't fulfil the contract with Mrs E and Mrs W due to, for example, the business failing, a breakdown in relationship between the two parties, ill health or dissatisfaction with the quality of goods which would be considered a 'civil dispute' not covered by the CRM Code.

I've carefully considered all the reasons that Mrs E and Mrs W believe they were the victims of an APP scam. Having done so, I agree with our investigator that with regard to the first two casks they were indeed victims of a scam. However, I am not satisfied that I can safely reach the same conclusion with regard to the other five casks. I will deal with the two investments in turn.

As our investigator outlined in their view of this complaint, Mrs E corresponded with both the whisky manufacturer and the warehouse in which it was said to be stored with regard to the first two casks. The distillery's response said that the certificates they had been provided for the casks were from W and did not give any level of certainty that the casks existed, nor that they had title to any casks. It said they were not on the distillery register as the owner of any casks from their distillery. It said the warehouse should have sent a copy of the certificate of ownership. The distillery said that a number of other people had found themselves in a similar position with W.

Mrs E also contacted the warehouse that was said to be holding the first two casks. It said that the certificates they had been given did not have the proper serial numbers on them, so they could not trace any casks mentioned within them. It confirmed that there were no casks there being stored in Mrs E name at all. The certificate issued to her purportedly from this warehouse makes clear that the casks are held in her name, and gives them serial numbers.

The police are conducting an investigation into W. Whilst this is not concluded, and so does not provide conclusive evidence of a scam taking place, it is of note.

Lloyds have said the lack of evidence of the barrels does not show that W were operating a scam, or that they intended to deceive Mrs E from the outset. But when considering all of this, I do think that the CRM Code ought to have been applied to the payments made towards these barrels. It was clear that Mrs E's intention for the payments was to purchase specific casks of whisky as an investment. There is no evidence to suggest that W ever bought or intended to buy these barrels on her behalf. There is no trace of any casks in her name at either the distillery or the warehouse, and yet she was furnished with certificates. These certificates were originally not given to Mrs E, and so she had to repeatedly request them. They make it clear that casks should exist in her name, and have false or incorrect serial numbers on them which do not relate to any casks at either the distillery or the warehouse. On balance, it seems more likely than not that W intended to defraud Mrs E from the outset in relation to these casks, rather than some kind of clerical error which happened between W, the distillery and the warehouse.

The other casks have been shown to exist, albeit filled with an inferior and therefore less costly whisky. This misrepresentation does not meet the definition of a scam such that the CRM Code ought to apply to the loss of these funds. Mrs E's intention for these payments was to buy casks of whisky as an investment, and W did buy casks of whisky with those funds. Whilst the quality of the goods was not as described, this does meet the definition of a civil dispute under the Code.

On Lloyd's assertion that the business would not scam a customer and then provide a genuine investment – I cannot say that I agree. Whilst the latter payments towards the second set of casks do not meet the bar of a scam, they do not appear to represent entirely legitimate business conduct either. It is clear that both sets of circumstances *could* represent criminal acts – though this is not something I have the power to make any findings on and is still being investigated by the police. It is also clear that the age and quality, and therefore the value of, the casks were misrepresented to Mrs E substantially. So, I think that it could be that W were using different methods in order to obtain funds from customers through misrepresentations – some of which meet the bar for the definition of a scam, some that do not. I think that on balance W operated a course of conduct which included misleading claims, about one set of casks, and outright fabrications about the existence of the other barrels. On balance, I think it is most likely that W operated in more than one deceptive manner. And this does not prevent my conclusions that Mrs E and Mrs W ought to be reimbursed for the losses relating to the first two casks under the Code.

Do any exceptions to reimbursement under the CRM Code exist in this case?

Lloyds is a signatory of the Lending Standards Board Contingent Reimbursement Model ('CRM') Code which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. It sets out standards that banks, such as Lloyds, are expected to meet in terms of protecting their customers from financial harm. But it also sets out expectations that a customer should meet, too. As a starting point, a customer should receive a full refund if they fall victim to an authorised push payment scam such as this one.

I have already outlined above that I think it is more likely than not that Mrs E and Mrs W were the victims of an APP scam in relation to the non-existent casks. But, Mrs E and Mrs W would not be entitled to a full refund if Lloyds can fairly and reasonably demonstrate that Mrs E and Mrs W failed to meet the requisite level of care under one of more of the listed exceptions set out in the CRM Code.

Those exceptions are:

- The customer ignored an effective warning in relation to the payment being made;
- The customer made the payment without 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.

*There are further exceptions within the CRM Code, but they do not apply in this case.

Did Mrs E ignore an effective warning?

The code sets out standards that banks are expected to meet. Lloyds needed to be on the lookout for factors that might indicate an enhanced risk that Mrs E and Mrs W's payment instructions were being made as part of a scam. Where they identify such a risk, the bank needs to take reasonable steps to provide the customer with an effective warning.

The CRM code says that an effective warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. And it says that, as a minimum, an effective warning should be understandable, clear, impactful, timely and specific.

Lloyds showed us a copy of the warning it said Mrs E would have seen when she made payment to W. It said:

"(Customer Name), we'll never call you to tell you to move your money to another account.

If you get a call like this, it's a scam.

*Fraudsters can even copy our telephone number.
Don't believe them, hang up the phone.
Find out how to stay safe from scams on our Fraud Hub".*

I do not think that this warning can be considered effective. It is not relevant to the type of scam Mrs E was falling victim to, so it did not explain the risk she was in or what practical steps she could take to protect herself from that risk. So, I do not think Lloyds have established that Mrs E ignored an effective warning.

Did Mrs E make the payments without a reasonable basis for belief that she was paying a legitimate investment scheme?

I have also considered whether Mrs E and Mrs W acted reasonably when making the payments, or whether any warning signs ought to have reasonably made them aware that W was not genuine. Having done so, I do not think it would be fair or reasonable for Lloyds to rely on this exception to reimbursement in this case either. I say this because Mrs E was introduced to the investment opportunity by her own father, who had received returns on his investment. He had been introduced to it by an investment broker, whom he had invested through before. The investment and returns did not seem too good to be true. I have seen nothing in the correspondence or other documentation that I think ought to have put Mrs E or Mrs W on notice that W were not genuine.

Therefore, I do not think it would be fair or reasonable to apply any exceptions to reimbursement under the Code in this case.

Putting things right

In order to put things right, Lloyds must reimburse the losses relating to the two payments of £14,775 each, along with 8% simple interest from the date they declined to reimburse Mrs E and Mrs W under the CRM Code, until the date of settlement.

My final decision

I uphold this complaint, in part, and require Lloyds Bank PLC to reimburse Mrs E and Mrs W in line with the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E and Mrs W to accept or reject my decision before 11 February 2026.

Katherine Jones
Ombudsman