

## The complaint

Ms D complains that Lloyds Bank PLC ('Lloyds') won't refund the money she lost after falling victim to a scam.

## What happened

In 2021, Ms D was recommended an investment by a friend. I'll refer to the investment company as S. Ms D says her friend had invested with S approximately 12 months prior and had received his capital back as well as getting regular returns on his investment. Ms D's friend had done significant research into the company and the investment including speaking to other investors. Ms D checked that S were a UK registered company on Companies House, reviewed their website and also did checks on their director – who I'll refer to as M. Based on the friend's recommendation and her own research, Ms D decided to invest with S. She received a contract which said she would be investing £20,000 which S would use to trade on forex markets including gold.

Ms D made her first payment from her Lloyds account on 31 August 2021 for £20,000.

In early September 2021, Ms D received a statement from S which showed the trades that had been made and said she'd earned profit of £760.72, which was a 3.80% return. Later in September 2021, Ms D received an updated statement from S, which said her profits had increased to over £2,800. Based on the returns her investment appeared to be making, Ms D made a further two payments to S on 25 October 2021. The first payment was for £25,000 and the second payment was for £5,000. In total, Ms D had invested £50,000 with S. Ultimately, Ms D didn't receive any money back from S.

In July 2022, Ms D was contacted by the police who suggested she had been the victim of a scam. Ms D contacted Lloyds and raised a fraud claim, asking that they refund her.

Lloyds considered Ms D's complaint under the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code), however they declined to refund her. Lloyds say Ms D should've done independent research on S to satisfy herself it was a legitimate investment, and that Ms D ignored a relevant warning that was shown when she made the first payment.

Ms D wasn't happy with Lloyds' response, so she brought a complaint to our service.

An investigator looked into Ms D's complaint and recommended it be upheld in full, and asked Lloyds to pay 8% interest on the refund.

Lloyds disagreed with the investigator's opinion and asked for an ombudsman to review the case. Lloyds highlighted that the police haven't finished their investigation yet and said it's not clear why we believe Ms D's situation meets the definition of an APP scam under the CRM Code.

## 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.

*Are Ms D's payments covered by the CRM Code?*

Lloyds are a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

The CRM Code defines what is considered an APP scam as "where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent".

In order to decide whether the circumstances under which Ms D made the payments meets the definition of an APP scam, I need to consider:

- The purpose of the payment and whether Ms D thought this purpose was legitimate.
- The purpose the recipient had in mind at the time of the payments and whether this was broadly in line with what Ms D understood the purpose to be.

And, if I decide there was a significant difference in these purposes, whether I'm satisfied that was as a result of dishonest deception.

In reaching an answer on what purpose S had in mind, I've considered the wider circumstances surrounding S, its directors and any linked businesses. The key information to this case is:

- M signed the contracts on behalf of S and arranged the investments for Ms D, despite not being a director.
- S weren't authorised by the FCA to carry out trading, despite telling investors that they were in the process of obtaining authorisation, and were trading without FCA authorisation.
- S shows as being an IT Consultancy on Companies House – not a financial services firm.
- Information we've seen suggests that S initially paid out returns similar to a ponzi scheme, to attract new investors.
- S advised consumers on how to avoid their transactions being stopped by the bank and what consumers should say if questioned about the purpose of the payment – which isn't something a genuine firm would do.
- I've reviewed beneficiary statements which for data protection reasons I can't give specific details about. But I'm satisfied these support that Ms D has a valid APP scam claim and it's more likely than not the funds weren't used for their intended purpose. And in any case, her intended purpose for the funds was for a legitimate investment, whereas S were never trading legitimately.

Taking all of these points into consideration as a whole, I'm satisfied there is sufficient evidence to say it's more likely than not, that Ms D's funds weren't used in the manner agreed by S and that S obtained the funds by dishonest deception. On that basis, I'm satisfied that Ms D's payments meet the definition of an APP scam as per the CRM Code.

As I'm satisfied that the CRM Code does apply to the payments Ms D made, I've gone on to consider whether she is entitled to a refund under the CRM Code.

*Is Ms D entitled to a refund under the CRM Code?*

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that\*:

- The customer ignored effective warnings, by failing to take appropriate action in response to such an effective warning.
- 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.

\* there are further exceptions outlined in the CRM Code, but they don't apply to this case.

*Did Lloyds provide Ms D with an effective warning?*

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

The warning Ms D was shown said:

*[Ms D's name], make sure this investment is real*

- *Deals that look too good can be scams*
- *Do lots of research – good deals don't find you*
- *See what your family and friends think*
- *Use the FCA to check an adviser or company*
- *Find out how to stay safe from scams on our Fraud Hub*

The warning suggests "Do lots of research" but it's not clear what research Ms D should've done or what she should be looking for when researching.

It says to check the FCA and has a link to their website. However, I'm not satisfied that Ms D knew why she would need to check the FCA website or what concerns she should have if a company isn't on there.

It also refers to Ms D talking to family and friends, which she did as the investment was referred to her by a friend.

I'm not satisfied that this warning clearly explained what an investment scam might look like, what research Ms D should be doing to protect herself, or that it would have been impactful in her circumstances. On that basis, I'm not satisfied that Lloyds have evidenced they have provided an effective warning as defined by the CRM Code and therefore can't rely on it as an exception to reimbursement.

*Did Ms D have a reasonable basis for believing the investment was genuine?*

I'm satisfied in this case that Ms D did have a reasonable basis for believing this investment was genuine, for the following reasons:

- Ms D was recommended the investment by a friend who had invested themselves, received a regular return and been returned the capital they invested. This friend is a data scientist and Ms D says they had studied the company, the methods they used for trading and spoken to other investors which satisfied them that this was a legitimate investment opportunity. I think this provided a lot of reassurance for Ms D, especially as the friend had received the promised returns and got their capital back.
- Ms D did some checks herself before investing, including checking that the company was registered on Companies House and online research on the director which suggested they were a credible individual.
- Ms D was also reassured as she was making payment to a business account, and says she knew what requirements had to be met in order to open a business account, which reassured her that the business was operating legitimately.
- Ms D also found the website to be professional, easy to navigate and met her expectations of a corporate website.

Overall, I'm satisfied that based on the information available to Ms D at the time she made the payments, she did have a reasonable basis for believing the investment was genuine. I think any concerns or questions over the return being offered or the capital being guaranteed, which I agree is not in line with the type of investment it was and the risk that would normally carry, was outweighed by the experience of her friend who had previously invested. Also, Ms D has told us that while she had some previous investment experience, that was through investing in government bonds, unit trusts or through banks. So, I don't think she had a lot of personal experience in relation to this type of investment and relied on the experience of her friend and their recommendation.

So, I'm not satisfied that Lloyds can rely on this exception to reimbursement.

#### *Statutory body investigating*

In response to the view Lloyds say that the police haven't finished their investigation, therefore we can't make a finding that the payments are covered by the CRM Code.

Under the CRM Code Lloyds could defer giving an answer on a CRM complaint based on R3 (1) (c), which says: "if a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm's (Lloyds') decision, the Firm (Lloyds) may wait for the outcome of the investigation before making a decision".

However, in this case, Lloyds made a decision on Ms D's claim under the CRM Code, relying on exceptions to reimbursement. Lloyds didn't tell Ms D in their Final Response letter that they wouldn't reach a decision until the police had finished their investigation, so they can't now rely on that clause. And, based on all the evidence that I've seen, I'm satisfied that I can reach a decision that Ms D's payments are covered by the CRM Code for the reasons explained above. I'm not persuaded I need to wait for the police to finish their investigation, in this case, in order to reach my decision.

#### *In summary*

As I'm not satisfied that Lloyds can rely on any exception to reimbursement, they should refund Ms D in full and pay simple interest at 8% per year.

I've considered the point from which Lloyds should calculate the interest on the refund. In this case, I'm not satisfied that these payments were so unusual or out of character that I would've expected Lloyds to have intervened before following Ms D's payment instructions. So, I can't fairly say Lloyds could've uncovered the scam at the time Ms D made the

payments. On that basis, Lloyds should pay 8% simple interest per year, calculated from the date they declined Ms D's claim under the CRM Code until the date of settlement.

### **Putting things right**

To put things right, I require Lloyds Bank PLC to:

- Refund Ms D in full (being £50,000)
- Pay interest on that refund at 8% simple interest per year, calculated from the date Lloyds declined to refund under the CRM Code until the date of settlement\*

*\* If Lloyds considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms D how much it's taken off. It should also give Ms D a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.*

### **My final decision**

My final decision is that I uphold this complaint against Lloyds Bank PLC and require them to compensate Ms D as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 11 September 2024.

Lisa Lowe  
**Ombudsman**