

The complaint

A company, which I'll refer to as E, complains that Lloyds Bank PLC won't refund the money they lost to a scam. Mr F, who is a director of E, brings this complaint on E's behalf.

What happened

The details of this complaint are well known to both parties, so I won't repeat them all again here. Instead, I'll summarise the key points, and focus on giving reasons for my decision.

Mr F was introduced to a company I'll refer to as L by a friend. He understood it was a horse racing betting syndicate. He says L's social media, email updates and website all seemed professional. And they had been operating since 2010. So he thought L were legitimate.

From E's account with Lloyds, Mr F made two payments of £25,000 to L in January 2018. In January 2019, he made a further payment of £50,000. Followed by four payments of £25,000 a few days later. Shortly after, public concerns were raised that L might be a scam.

Mr F contacted Lloyds about this, and it tried – unsuccessfully – to recall his payments. Mr F complained about how his fraud claim was being handled. But that was simply in relation to the ongoing service and recall requests. Following this complaint, Lloyds declined the fraud claim around August 2019.

In 2022, supported by a professional representative, Mr F complained about Lloyds' decision not to refund E. He said the payments were out of character, so it should have intervened. And if it had done so, it would have uncovered the scam and prevented the loss. Lloyds didn't agree to refund him, so he referred the complaint to our service.

Our investigator looked into the matter but didn't think all the payments to L looked suspicious, given the value of payments E frequently made. Although she thought the last payment – the fourth in one day, totalling £100,000, to L – looked unusual, she wasn't persuaded the scam would have been unravelled at that point if Lloyds had intervened.

Mr F disagrees. In summary, he suggests L should have been regulated by the Financial Conduct Authority (FCA) but weren't – indicating their dishonest intentions. And Action Fraud had issued a warning about scams relating to horse racing being presented as investment opportunities – as well as the FCA issuing a warning about unregulated collective investment schemes. So he thinks, through speaking to him about the payments, Lloyds would have realised L were a scam.

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 agree with the conclusions reached by the investigator. I'll explain why.

In line with the Payment Services Regulations 2017, the bank is expected to execute authorised payment instructions without undue delay. As Mr F authorised these payments, the starting position is that E is liable for them.

Although Lloyds is a signatory of the Lending Standards Board's Contingent Reimbursement Model (CRM) code, which offers some protection to victims of APP scams, this didn't come into force until May 2019. As that is after these payments were made, and the code isn't retrospective, the code doesn't apply here.

But there are still some situations where we believe that banks—taking into account relevant rules, codes and best practice—ought to have identified a fraud risk, so should have looked at the wider circumstances surrounding the transaction before making the payment.

E's account regularly made high-value payments. So the payments didn't immediately look so out of character that I would have expected Lloyds to have been concerned about fraud. When E paid L £100,000 via four payments on one day, that arguably looked unusual enough to prompt Lloyds to look into the circumstances further. But I'm not persuaded that, in doing so, Lloyds would have succeeded in uncovering the scam.

I haven't found any public reports raising concerns about L until after Mr F made these payments. At the time, L appeared to be a genuine company, registered publicly on Companies House, which had been operating successfully for a long time. So I don't think a discussion about the payments would have made it obvious to Lloyds, or Mr F, that L were operating a scam.

Looking at the Action Fraud warning Mr F has provided, that talks about situations where a bet is placed then the individual can't get hold of the company. But here, Mr F had an ongoing relationship with L. So I don't think his situation would have struck him, or Lloyds, as relevant to that warning.

The warning also says some investments into racing horses as part of a syndicate may *in some instances* be subject to FCA regulation. But that also means not all such syndicates should be. And it goes on to say betting syndicates don't require a licence. So I don't think the fact L weren't regulated would reasonably have caused concern.

As mentioned, by the time I think Lloyds should have intervened, Mr F had paid L previously – so had a trusted relationship with them. He was also relying on his friends' recommendation. Overall, based on the public information about L at that point, and the nature of Mr F's dealings with them, I don't think that questioning by Lloyds was likely to have uncovered the scam.

I appreciate this will be disappointing to Mr F. But I'm not persuaded Lloyds' failure to intervene caused or contributed to the fraudulent loss. And so, in all the circumstances, I don't consider it fair to direct Lloyds to refund E.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 6 October 2023.

Rachel Loughlin
Ombudsman