

The complaint

Mr D is unhappy that AIB Group (UK) Plc ("AIB") won't refund the money he lost to an investment.

What happened

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

In July 2017, Mr D received information or advice from an investment company (I will refer to as W) to invest money into an investment - with an organisation I will refer to as G. On 31 July £10,000 debited Mr D's account after he issued a cheque to W.

Our investigator did not uphold the complaint. Whilst he thought the amount warranted intervention by AIG, he didn't think any intervention by the bank would have made a difference in this case as G looked to be a genuine company at the time.

Mr D did not accept the investigator's conclusions, so the case has been passed to me for a 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.

When considering what is 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 relevant time.

I have carefully noted the representations made by all the parties, but I won't be addressing every single point that's been raised. No disrespect is intended, and it doesn't follow that the points haven't been considered, simply that I don't need to particularise every point in reaching an outcome I consider to be fair and reasonable in all the circumstances. I've instead concentrated on the issues I think are central to the outcome of this complaint.

I note G has been dissolved. However, it seems that the outcome to whether this is a scam or not is not currently known. But I don't need to wait for that outcome, nor do I need to make a finding on this - to reach an overall outcome that I consider to be fair and reasonable in this particular case.

A cheque is not considered a payment service under the previous or present Payment Service Regulations ("PSRs"), so the provisions of those regulations do not apply to this type of payment.

The starting position is that the bank is expected to process payments that a customer instructs it to make without undue delay. So, presented with a cheque drawn in accordance with the terms of the contract, a bank must honour the payment unless there are legal,

regulatory or contractual grounds which may, in exceptional circumstances, allow refusal of a payment instruction.

At the time, Mr D signed the cheque and intended to pay W believing it was (in turn) going to place this in a valid investment with G and there was no mistake made in the execution of the payment – AIG was complying with Mr D's instruction. So, under the terms and conditions of the account, Mr D is presumed liable for any loss in the first instance.

However, a bank may be in breach of its duty of care by not acting adequately or at all on information that would or should have triggered fraud alerts and systems required for the proper conduct of business.

I don't consider there to be a material difference between the reasonable, good-practice requirements on firms when processing cheques when it comes to monitoring accounts for the prevention of financial crime and having adequate systems and controls in place to prevent misappropriation of funds.

AIG says the cheque was payable to W – a Financial Conduct Authority (FCA) regulated company who deal with investments and are active on Companies House. Mr D did not make any payments to G directly.

If AIG had intervened on the payment, I don't think it would have made a difference in this case broadly for the reasons the investigator previously outlined – which I have expanded on below.

Causation is a critical determination factor in every fraud case. I need to be satisfied that suitable intervention would have made a difference to Mr D's decision making or that AIG could have reasonably prevented the loss. In doing so, I reach my decision on the balance of probabilities – so what I consider more likely than not based on the evidence and wider circumstances of the case.

Mr D made the payment to W - a firm regulated by the FCA as a provider of payment services. So, the payment was going to a legitimate destination. If questions had been asked about the nature and purpose of the payment Mr D was proposing to make, I think it's more likely than not that Mr D would have explained he was investing in G - itself a UK registered company and recommended by W - another genuine UK registered company.

Whilst I appreciate Mr D might have researched things more – I don't think the 'investment' would have been cause for concern at the point of transfer or the events that have now transpired with G foreseeable. Mr D was making a payment to W which appears– through its registration with Companies House - to be legitimate and is still authorised by the FCA as a provider of payment services. If it had probed further, it might have discovered that Mr D was making an investment with an organisation (G). Records held with Companies House indicate G was a genuine limited company that was incorporated in 2007 and was actively trading (with no suggestion of liquidation) at the time Mr D sent his money to W. So, the payment didn't look like fraud or a scam and it would have needed a considerable amount of investigation to unearth the facts about G that have now come to light (and which even now seem inconclusive after a considerable amount of time). So, I don't think AIG ought reasonably to have cause for concern.

I'm sorry Mr D has lost a considerable amount of money and I can understand why he would like to be compensated for his losses. But I'm only considering whether the bank should be held responsible for what happened here, and I don't think that it should.

My final decision

My final decision is I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 25 December 2023.

Kathryn Milne
Ombudsman