

The complaint

Mrs W is unhappy that Lloyds Bank PLC (“Lloyds”) won’t refund the money she 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 September 2016, Mrs W received information or advice from a financial adviser to invest money into an investment - with an organisation I will refer to as G. She initially sent a faster payment of £45,000 and later in April 2017, a cheque for £66,000. Both payments were not made directly to G but to an organisation I will refer to as B. Mrs W received some returns from the investment during 2017-2018. The company then announced it had gone into liquidation.

Our investigator did not uphold the complaint. Whilst he thought the amounts warranted intervention by Lloyds, 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.

Mrs W 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 or a faster payment, in accordance with the terms of the contract, a bank must process the payment unless there are legal, regulatory or contractual grounds which may, in exceptional circumstances, allow refusal of a payment instruction.

At the time, Mrs W made the payment in branch for £45,000 and later, when she signed the cheque for £66,000, she intended to pay B believing she was making a valid investment and there was no mistake made in the execution of the payments – Lloyds was complying with Mrs W's instructions. So, under the terms and conditions of the account, Mrs W 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 or faster payments 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.

Lloyds says the cheque and faster payment were payable to B. Mrs W did not make any payments to G directly.

If Lloyds 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 Mrs W's decision making or that Lloyds 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.

Mrs W made the payment to B. The payment was going to a legitimate destination. If questions had been asked about the nature and purpose of the payment Mrs W was proposing to make, I think it's more likely than not that Mrs W would have explained she was investing in G - itself a UK registered company and recommended by her financial adviser. Whilst I appreciate Mrs W 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. Mrs W was making a payment to B which appeared to be legitimate. If Lloyds had probed further, it might have discovered that Mrs W 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 Mrs W sent her 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 Lloyds ought reasonably to have cause for concern.

I'm sorry Mrs W has lost a considerable amount of money and I can understand why she would like to be compensated for her 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 Mrs W to accept or reject my decision before 27 December 2023.

Kathryn Milne
Ombudsman