

The complaint

Mr and Mrs H are unhappy that Lloyds Bank PLC (“Lloyds”) will not refund the money they lost as the result of an investment scam.

Mr and Mrs H’s complaint has been brought by a representative. But Mr H had the dealings with the scammers, so for ease of reading I will refer solely to Mr H in this decision.

What happened

Mr H has explained that in 2017 after being advised by a company – that I will call ‘B’ - he made Faster Payments of £15,000 and £10,00 from his Lloyds current account to fund what he believed was the purchase of bond and a loan note from two separate companies that purportedly dealt with commercial properties and buy to let properties. After receiving some payments from these “investments” the payments then stopped and eventually both of the companies went into liquidation.

When Mr H subsequently got in touch with Lloyds to explain he’d been scammed, Lloyds didn’t reimburse his lost funds. Remaining unhappy, Mr H referred his complaint about Lloyds to this service. As our investigator couldn’t resolve the matter informally, the case has been passed to me for determination.

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.

It’s common ground that Mr H authorised the payments in question here. He was tricked by B into instructing Lloyds to make the payment. So although Mr H didn’t intend the money to go to scammers, under the Payment Services Regulations and the terms and conditions of his account, Mr H is presumed liable for his loss in the first instance.

To reach my decision I have taken into account the law, regulator’s rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time. To note, as the payment pre-dates the Contingent Reimbursement Model (CRM) code its principles do not apply in this case. This means I think that Lloyds should have:

- been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.
- had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which financial institutions are generally more familiar with than the average customer.

- in some circumstances, irrespective of the payment channel used, taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.

When considering the size of the payments compared to Mr H's normal account spend, I think they were unusual enough for Lloyds to have intervened at the point the first payment was made. But like our investigator, I'm not persuaded such intervention would have made a difference to the careful decision Mr H had already taken to send this payment.

If Lloyds had intervened during the first payment (as I think it ought to have), I think it could have asked what the purpose of the payment was for. I think Mr H would have likely explained that he had received advice from B, who was the appointed representative of a regulated company, and that he was convinced that the companies he was dealing with were legitimate.

Further, I can see Lloyds's notes of the contact between Mr H and Lloyds during the second transaction. They indicate that Mr H had confirmed he was receiving financial advice and was happy that this transaction was genuine. I also can't see that there were any credible warnings about either B or the two companies that Mr H was "investing in". So I think Mr H would have been able to assuage any initial concerns that Lloyds had and continued with the payment.

In the circumstances, I think that this was a very sophisticated scam and I don't think Lloyds could reasonably have suspected that Mr H was dealing with a scammer. I recognise the rate of return offered by B was high, compared to what was being offered by high street banks. But I also have to take into account that bonds such as these and loan notes offer a higher rate of return than cash savings tend to do (or at least did in 2017) because of the increased risk posed to the bondholder or note holder. So I don't think the rates offered to Mr H on their own were particularly unusual for the type of products he was investing in to have raised concerns. Whilst the products may have been risky (at least compared to cash savings), Lloyds wouldn't have been obliged to provide investment advice or indeed try to prevent Mr H from getting involved in an investment opportunity that on the face of it appeared legitimate, just because the risk of not receiving all or some of the money back was increased compared to cash savings.

I note that Mr H's representative has highlighted that Lloyds should have asked Mr H to check if the companies that B recommended he invest in were regulated by the FCA. But there was neither a requirement for companies issuing bonds such as these to raise money to be authorised by the FCA, nor companies that issue loan notes at the time of the transactions. So I don't think the fact the companies that B were recommending were not regulated means that Lloyds should've warned Mr H not to invest the money in the way he was choosing to do.

It's also notable there were no warnings at that time about bonds or loan notes such as these as products. The FCA published more information about them in May 2019 and highlighted some risks involved with investing in such instruments. But this information was published nearly two years after Mr H made his payments.

The FCA temporarily banned the mass marketing of speculative bonds such as these to UK retail consumers from January 2020, whilst it consulted on permanent rules. It made the temporary ban permanent the following year. So I don't think Lloyds could have been reasonably aware of this given that this information was published well after Mr H had already made the payments.

So given the above, the most that I think Lloyds was required to do was to give a generic warning about the risk of investing and ensuring he research any investment first before sending money to third parties. But given what Mr H has said, I don't think that this would have changed his decision in proceeding with the transactions – essentially because he seemed convinced at the time that B was legitimate.

Finally, Mr and Mrs H have explained that they were vulnerable consumers at the time of the transfer. And that this combined with the transaction being unusual for their account should have meant that Lloyds denied the transfers or provided a warning. But I don't think that it would have been appropriate for Lloyds to have stopped the transactions based on the information that it had at the time. In relation to a warning, for the reasons stated above, I think that Lloyds should possibly have given a generic warning about the dangers of investing. But as I have said above, I don't think a generic warning would have changed Mr H's decision to proceed with the transactions.

I have then thought about whether Lloyds did what this service would expect it to do to recover the funds, once Mr H (or his representative) raised their concerns about the payments with Lloyds. Given the length of time that had passed between when they raised their concerns and when the payments were made, I'm satisfied that recovery was a not a viable option.

I've seen that Lloyds paid Mr and Mrs H compensation for the poor customer service they received. I think this was fair and reasonable in the circumstances and don't intend to tell it to award anymore.

I appreciate this will likely come as a disappointment to Mr and Mrs H, and I'm sorry to hear they have lost a significant amount of money on an investment. However, in the circumstances, I do not consider it would be fair and reasonable to hold Lloyds liable for their loss.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 10 November 2023.

Charlie Newton
Ombudsman