DRN-4368284

The complaint

Mr D is unhappy that Lloyds Bank PLC will not refund the money he lost as the result of an authorised push payment (APP) scam.

Mr D has brought his complaint through a representative, for ease of reading I will refer solely to Mr D in this decision.

What happened

Mr D says in 2017, based on a broker's advice, he decided to invest £10,000 in a bond offered by a property company, company W. He sent a faster payment on 15 August 2017. He received returns from his investment every six months between January 2018 and July 2019. When he chased his return for January 2020 he discovered the company had fallen into administration. Mr D says he later found out the funds were not used for the intended purpose and the director of company W had defrauded many people. His representative raised a formal fraud claim asking for the £10,000 to be refunded in October 2022. Lloyds rejected this claim saying it had made no error, rather Mr D had invested in an unregulated company that has since gone into liquidation.

Mr D brought his complaint to this service saying Lloyds has to refund victims of APP fraud under the Contingent Reimbursement Model. It has failed Mr D as it did not detect the transaction as unusual and it has refused to investigate it further. He provided information that he said conclusively showed company W's property bond was a scam.

Our investigator did not uphold Mr D's complaint. He said Lloyds did not act unfairly by not intervening and asking about the faster payment, and even if it had this would not have changed the outcome as Mr D was investing in a legitimate company - and there was no publicly available information at the time to suggest the investment was a scam. Given the elapsed time between the payments and the fraud claim he did not think Lloyds ought to have done more to try to recover the money.

Unhappy with this assessment Mr D asked for an ombudsman's review. He outlined in detail why this investment was a scam. He then said the transaction was out of character and the bank should have intervened. And he argued that had it done so effectively it would have prevented the scam.

I reached the same conclusion as the investigator but I made different findings in places so I issued a provisional decision to give everyone a chance to comment. An extract follows and forms part of this final decision. I asked for any comments or new evidence by 26 September 2023.

Extract from my provisional decision

The first question we typically look to resolve in cases such as these is whether the company involved, so here company W, was actually operating a scam.

Not every complaint referred to us as an investment scam is in fact a scam. Some cases *simply involve high-risk investments that resulted in very disappointing returns or losses. Some investment companies may have promoted products, like the mini-bond that is the subject of this dispute, which were not regulated by the FCA—using sales methods that were arguably unethical and/or misleading. However, whilst customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).*

Banks and other Payment Services Providers have duties to protect customers against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering. But when simply executing authorised payments, they do not have to protect customers against the risk of bad bargains or give investment advice — and the FCA has confirmed that a fraud warning would not constitute unauthorised investment advice.

Company W was a legitimate private limited company, incorporated in September 2015. It traded for five years until it went into administration in 2020. Mr D has provided detailed information that he says evidences the bond he purchased was part of a scam. I am aware the police are currently looking into allegations of investment fraud against company W. As this an ongoing investigation it is not my role to make a conclusive finding as to whether or not Mr D's bond purchase was part of a scam.

However, this does not mean I can't consider whether Lloyds ought to have identified Mr D's payment as out of character, and therefore intervened before processing it. And if so, I then need to decide had it done so what would the most likely outcome have been. This must be based on what was known publicly and by Mr D about the investment opportunity at the time.

There's no dispute that Mr D made and authorised the payment. Mr D knew why he was making the payment. At the stage he was making this payment, he believed he was investing in a property bond. I don't dispute Mr D didn't receive what he thought he would, but I remain satisfied the transactions were authorised under the Payment Services Regulations 2009.

It's also accepted that Lloyds has an obligation to follow Mr D's instructions. So in the first instance Mr D is presumed liable for his loss. But there are other factors that must be taken into account.

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.*

In this case I think Mr D's payment for £10,000 ought to have triggered further checks by Lloyds. Whilst Lloyds has only provided statements from May 2017, it seems from the information available to me that the high value was out of character for the account. And so Lloyds should have contacted Mr D to ask for some detail about the payment before processing it.

This means I need to decide if Lloyds' intervention would have made a difference to Mr D's decision to send the payment. On balance I don't think it would. I say this based on the questions Lloyds should have asked given the features of investment scams at the time – but taking into account that it had no duty to give investment advice.

At this time investment scams were often characterised by rates of return that were too good to be true and by receiving the opportunity to invest via a cold call or an unsolicited offer, with significant pressure applied to 'act now'.

Mr D's testimony about the sale of the bond is not particularly detailed. His representative says it was initiated from a cold call, but the bank's records show that when Mr D spoke to Lloyds he told it he was actively looking to invest at the time and so had found a broker. The broker had made a few different recommendations and he had chosen company W's 3-year bond with a rate of return of 7.5%. Mr D was funding the investment with savings he had transferred into his account prior to making the faster payment.

Even if the bond purchase had initiated from a cold call, it had none of the other characteristics associated with an investment scam. I have seen no evidence there was urgency placed on Mr D to invest quickly. Mr D recalls he was told the rate of return was 7.5% per annum, and the Investor Manifesto (IM) he submitted to this service shows this was the quoted rate over a three-year term. I don't think a 7.5% rate of return would have caused concern. Mr D has not confirmed when he received the IM, but nevertheless I find it is important contemporaneous evidence. I say this as if Lloyds had been concerned Mr D lacked detail about his investment he would most likely had obtained this – or used it if he had it at the time - to satisfy its questions.

And I don't think the IM, or the answers it would have allowed Mr D to give, would have created any alarm. This set out that the company that was running the financial promotion for company W was authorised by the FCA and that the information should be reviewed by, amongst others, investment professionals – which I think Mr D and in turn Lloyds would have been comfortable with as that's what he believed the broker to be. There was not a requirement for companies issuing mini-bonds to raise money to be authorised by the FCA. So the fact company W was not regulated would not have caused Lloyds any particular concern.

And there is no record of any published regulatory warning about company W in 2017. So it seems at the time of the event there would have been no public information that Lloyds ought to have been aware of and reacted to. Or indeed that Mr D would have come across had Lloyds suggested he first complete more checks.

It's also notable there were no warnings at that time about mini-bonds as a product. The FCA published more information about mini-bonds in May 2019 and highlighted some risks involved with investing in such instruments. But this information was published nearly two years after Mr D made his payment.

The FCA temporarily banned the mass marketing of speculative mini-bonds 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 around 30 months after Mr D made his payment.*

In the round, I don't think a proportionate level of questioning by Lloyds would have led it to conclude Mr D was at risk of financial harm and that it should not process the payment.

I have then thought about whether Lloyds did what this service would expect to recover the funds once Mr D's representative made a formal claim in 2022. Given the length of time that had passed I'm satisfied that recovery from the receiving bank was a not a viable option.

It follows for the reasons set out above I cannot fairly hold Lloyds liable for Mr D's loss.

Neither party sent any comments or new information in response to my provisional 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.

As neither party sent in new evidence or any points for me to consider I have no grounds to change the findings or outcome I set out in my provisional decision.

It follows I am not holding Lloyds liable for Mr D's loss.

My final decision

I am not upholding Mr D's complaint.

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

Rebecca Connelley
Ombudsman