

The complaint

A company, which I'll refer to as C, complain that Lloyds Bank PLC won't refund it for the money lost when its director, Mr K – who brings this complaint on C's behalf – fell victim to a scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But, in summary, I understand it to be as follows.

In around July 2022, Mr K met somebody through an online dating application. After exchanging some messages the person invited Mr K to join a group on a social media messaging platform, which had the purpose to exchange investment news and make profits through trading.

Believing everything to be genuine, between 16 September 2022 and 10 October 2022, across several transactions, Mr K moved £224,700 from the business banking account C held with Lloyds, to a business account C held with another finance provider. From there Mr K transferred funds into a cryptocurrency wallet account which he held in his own name and then, from here, Mr K moved the money on to what he believed were legitimate investment accounts. But unknown to him at the time, Mr K had been communicating with fraudsters and had sent the money to accounts the fraudsters controlled.

Mr K has said he realised he'd been scammed when he was attempting to make a trade and his funds 'literally' disappeared, giving the impression of a total and sudden loss. Mr K raised the matter with Lloyds, but it didn't uphold C's complaint as it didn't consider it had made any errors.

Unhappy with Lloyds response, Mr K brought his complaint to our service. One of our Investigator's looked into things, but didn't think the complaint should be upheld. In summary she said, as Mr K had indicated the investments were for personal gain, it wouldn't be fair and reasonable to ask Lloyds to refund the money to C, as she didn't consider it could be said that C's money had been lost.

Mr K didn't agree with our Investigator's view. In summary he said his decisions directly affect the company and these investments were made to increase shareholder's equity. He added that accounts filed in July 2023, show C made a loss. As well as this, Mr K maintained that Lloyds had breached its duty of care.

As agreement couldn't be reached, the complaint has now been passed over to me for a final 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.

I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

I'm aware in his submissions Mr K has referred to other decisions issued by our service. But I would point out that, while on the surface complaints may seem quite similar, each complaint is determined by its own individual circumstances. Here, as I'm required to do, I've looked at the individual circumstances of C's complaint.

For the avoidance of doubt, this decision is in relation to the payments that left C's business account. In these circumstances, C is the eligible complainant. As the director, Mr K can represent C, but personally he is considered a separate legal entity, distinct from C. It isn't in dispute that Mr K authorised the payments from C's business account that ultimately went to the fraudsters. So, the starting position here is that Lloyds ought to have followed the instructions it was provided with and processed the payments.

I've thought very carefully about what Mr K has told us. Based on everything I've seen, I'm persuaded that it's more likely than not that the money being paid from C's account was for a personal investment being made by Mr K. I say this because I'm not persuaded Mr K has provided evidence that fairly and reasonably demonstrates that the investments were being made by C in its own capacity.

Our Investigator, when reviewing this case, asked Mr K if the payments were for personal gain or for the business. I think what our Investigator asked was unambiguous and Mr K told our Investigator that these investments were made for *personal gain*. It was only later on, after the complaint had not been upheld, that Mr K said the payments related to investments on behalf of C. Mr K said accounts filed in July 2023 show C had made a loss, but these conversations with C's accountant have taken place some months after the payments had been made. I've not seen any evidence to show that conversations took place, at the time the payments were made, with his company accountant showing the funds were being used to raise capital for business purposes.

I'm mindful that Mr K has said that all of his personal savings were held in the company. But a limited company's assets belong to the company itself, not the owner or the shareholder. Based on what I've seen, I'm satisfied that, on balance, the spending on C's account was for the purposes of Mr K's own personal gain, rather than for any business-related activity. I've not seen enough to satisfy me about this change in explanation, nor about how the payments were connected to C. I'd only consider it fair to award C for losses incurred directly due to any errors by Lloyds. Whereas if Mr K was investing personally, it is his loss. While C may be out of pocket because of Mr K's loss, that is not a direct loss.

Having been satisfied of the above, broadly speaking there are two potential scenarios in relation to the debt created by the spending on C's account. Firstly, that this was, in effect, C lending money to Mr K personally. If Mr K had borrowed money in this way from C for personal gain, then he would be liable to repay that debt to the company. And in this situation C can't fairly be considered to have suffered a loss, as it is still owed the money by Mr K as the debtor in these circumstances.

The second potential scenario is that by spending on C's account in this way, C was discharging some debt owed to Mr K. Be that a dividend payment, wages or similar. But in

this situation, again, C hasn't suffered a loss. The debt has been discharged and Mr K was provided with what he was owed (which he then paid to the fraudulent companies).

I'm mindful that Mr K has made detailed representations to say that he feels Lloyds has failed in its duty. Lloyds are expected to be on the lookout and to be alert to the possibility of fraud and scams, in order to protect its customers. But setting all of that aside, I don't think the fair and reasonable outcome here is to tell Lloyds it needs to do more. Whichever approach I take to the spending on C's account, I'm not persuaded that C itself has suffered a loss. So even if I were to conclude that there had been a clear and obvious failing by Lloyds in its handling of matters, it wouldn't be fair and reasonable for me to ask it to do more.

I do understand the impact this scam has had on Mr K and I don't underestimate his strength of feeling and why he is looking to recoup the loss. It's clear he was tricked by a cruel and sophisticated scam, and I'm very sorry to hear how difficult that has been. That said, my role here is to assess Lloyds's liability. Having done so, I don't consider it fair to direct Lloyds to reimburse C for what has happened.

Finally, in his submissions Mr K has mentioned engaging with his lawyers regarding this matter. Mr K doesn't have to accept my final decision, and if he doesn't it won't be binding on him. Subject to any time limits or other restrictions a court might impose, Mr K's right to pursue a legal remedy won't have been prejudiced by our consideration of this complaint.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint against Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 2 January 2024.

Stephen Wise
Ombudsman