DRN-4208625

The complaint

Mr T holds a current account with Lloyds Bank Plc. In November 2017, a broker advised him to invest in a company involved in property development (the property company). Mr T accepted the broker's advice and invested some of his savings in the property company.

I understand that the broker led Mr T to expect that the property company would pay him dividends every six months for several years and then return his original investment.

The property company only paid Mr T three dividends and kept his original investment. Mr T doesn't believe it will pay him anything further. He now thinks that the property company was fraudulent, and that Lloyds should have stopped him making the investment. It didn't, so he wants it to refund him all the money he lost and add interest.

What happened

The events which led to this complaint are not in significant dispute. In outline, after some emails and discussions with the broker, Mr T decided to invest in the property company and sent it a cheque for £5,000. Lloyds processed the cheque without question.

Mr T has referred to the three dividends the property company paid him as "*a couple of bits of interest"*, but they seem to have been broadly in line with what he expected at the time. The dividends stopped in 2019. At that time, Mr T spoke to the property company, but did not contact Lloyds.

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.

Before discussing the details of Mr T's case, I would like to say how sorry I am for the situation in which he finds himself. He has lost a significant amount of money in difficult circumstances, and he has my sympathy for what happened to him.

Turning to the complaint itself, Mr T has sent us a great deal of information to explain why he considers the property company to have been fraudulent. Amongst other things, he has pointed out that one of its directors has served time in prison for fraud.

Lloyds has said that it doesn't think the property company was fraudulent. It has told us that at the time Mr T made his investment, the property company was operating legally and offered a legitimate investment opportunity, albeit one that wasn't fruitful for Mr T.
I understand Lloyds' position and if its opinion that the property company was trading legitimately (that is, *not* fraudulently) in 2017 is correct, then it's very unlikely that I would have any grounds to tell Lloyds to give Mr T any money back. However, I'm also aware that Mr T certainly believes he was the victim of fraud.

When reviewing Mr T's complaint, I can only look into the conduct of Lloyds, not the behaviour of the property company, or the broker. So, in order to give Mr T's view full consideration, and *solely* to allow him a fair hearing, for the rest of this decision I have assumed that fraud took place along the lines he has described. I have considered Lloyds' actions accordingly.

I would also like to add that although the broker was clearly involved in encouraging Mr T to make his investment, Mr T has made very few direct comments about what the broker said or did, and how or when the broker passed matters over to the property company. Nor do I know the extent to which the broker may have been acting as a direct agent of the property company. However, as I am only considering Lloyds' actions, these are not significant factors and I have attributed all relevant actions to the property company rather than trying to distinguish those which *may* have been carried out by the broker.

I have seen a copy of the cheque Mr T wrote. He completed it correctly, with the property company as the payee, the correct date, and a full signature. I accept that he only wrote the cheque because of what he now believes to have been fraudulent actions by the property company, but he effectively authorised Lloyds to pay the money for him

While banks are normally expected to act on their customers' instructions, fraud is a significant concern in the banking industry. At the time Mr T made his investment, I would have expected banks to have been alert to frauds and scams and to have been acting in their customers' best interests to help stop them losing money. Where feasible, this could have meant banks calling a customer to ask reasonable questions to check if the customer wanted to proceed with a payment which looked unusual.

The value of Mr T's cheque was certainly unusual for him. In the months prior to it, he had only made one payment of a similar size, and that was to another account in his own name. And he had not made any previous payments to the property company. So, if an intervention was feasible, I think there were sufficient grounds for Lloyds to have made one to ask Mr T if he wanted to proceed. However, processing cheques is highly automated, and in some circumstances, it can be impractical for a bank to intervene.

I'm not sure of the precise circumstances affecting Mr T's cheque, but I do not think they are crucial to the outcome of this complaint, as I doubt a reasonable intervention from Lloyds would have changed Mr T's mind about the investment.

Mr T has used a representative to handle his complaint. The representative has sent us a list of questions it thinks Lloyds should have asked Mr T. The gist of its position is that if Lloyds had intervened to ask Mr T those questions, he would have told it not to process his cheque.

But I'm not convinced that it would have been reasonable or proportionate for Lloyds to have asked Mr T *all* the questions the representative has suggested. And, more significantly, I think that at that time Mr T was very confident that the property company offered him a safe place to invest his money. After all, as Lloyds has pointed out, at the time in question, the property company didn't *seem* to be doing anything obviously illegal and *appeared* to have a plausible investment strategy and to have been registered with Companies House. So, given the full circumstances at the time, even if Lloyds had made a reasonable intervention and asked Mr T a proportionate set of questions, I think he would have told it to go ahead and process the cheque. (Given the difficulties that Lloyds *may* have had in intervening with automated cheque clearance, I would like to add that it's extremely likely I would have reached the same conclusion about this even if Mr T had used a different method of payment, such as electronic transfer, where it *may* have been easier for Lloyds to have intervened).

In many cases, once a customer has told a bank of suspected fraud, I expect the bank to try to claim the money back from the fraudster's bank. This can be very difficult, as once fraudsters receive money into an account they control, they usually move it somewhere else quickly to reduce the chances of such attempts at recovery succeeding. So, time is of the essence.

I understand that Mr T did not tell Lloyds he suspected fraud until November 2022, some five years after he wrote the cheque. Lloyds has said that due to the length of time that had passed, it didn't raise a claim with the receiving bank. In the circumstances, I think this was reasonable. By that time, the chances of such a claim succeeding would probably have been zero.

So, in summary, I am very sorry about Mr T's loss, but I don't think I can reasonably hold Lloyds responsible for it. If it had questioned Mr T about the investment at the time, I think he would have told it to go ahead. And, although Lloyds didn't make any attempt to recover Mr T's money, by the time it knew about the fraud it was too late for recovery to be a realistic possibility.

My final decision

For the reasons I have set out above, I am not upholding Mr T's complaint about Lloyds Bank Plc. I am not going to tell it to give him any money back.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 21 September 2023.
Steve Townsley
Ombudsman