

## **The complaint**

Mr S (on behalf of Company K) complains that Lloyds Bank PLC didn't do enough to protect him from the financial harm caused by an investment scam, or to help him recover the money once he'd reported the scam to it.

## **What happened**

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

On 11 November 2022, Mr S saw a newspaper article regarding an opportunity to invest in cryptocurrency. The article directed him to a website where he was required to enter his details into a contact form. He thought the platform seemed reliable so he made a payment of £200 and soon after he was contacted by someone who I'll refer to as "the scammer". The scammer gave Mr S log in details for a trading account where he could see his initial investment.

Mr S made payments to the scam from his other accounts and as the investments appeared to be doing well, he asked the scammer if he could make a withdrawal. The scammer told him he'd need to pay a fee to release his funds so on 24 February 2023 and 2 March 2023, he transferred £2,000 and £4,400 from Company K's Lloyds account.

He was then told his trading account was closed and the funds had been transferred to another wallet. He realised he'd been scammed when he contacted the new cryptocurrency exchange and was told the account was fake and that no funds existed.

He contacted Lloyds when he discovered he'd been the victim of a scam, but it refused to refund the money he'd lost. It said the payments weren't covered under the Contingent Reimbursement Model ("CRM") code because the funds were sent through Open Banking. It said the transactions weren't out of character when compared to the regular account activity, so it had no reason to flag them for security checks. It also said it had contacted the receiving bank but it didn't receive a response.

Mr S wasn't satisfied and so he complained to this service. He said Lloyds should have done more to protect him because the amounts were unusual for the account. But Lloyds maintained the payments weren't covered by the CRM code as they were done through Open Banking. It also said that Mr S could have done more to verify the investment company was genuine and that he'd gone ahead with the payments without carrying out sufficient due diligence.

It said Mr S wasn't presented with any warnings as the payments were made through Open Banking and the transactions weren't out of character for the account so there was no reason to suspect they were fraudulent.

Our investigator didn't think the complaint should be upheld. She noted the payments were made from a business account and they were done through Open Banking. Further, she explained the payments weren't high value or out of character as there were payments out of

the account for £40,000 and £10,000 on 8 February 2022. She was also satisfied that Lloyds had attempted to recover the payments but it didn't receive a response.

Mr S has asked for his complaint to be reviewed by an Ombudsman. He's argued that open banking is covered by the CRM code and our investigator didn't mention that Company K is a small business.

### **My provisional decision**

In this case, the complainant is Company K of which Mr S is a director who paid money directly from the company account, which was then lost to a scam. I considered the crux of this complaint was the question of whether these payments were made to benefit Company K as a business or to benefit Mr S personally.

Mr S has said that he borrowed the funds from Company K to try to get his invested money back. This indicates the payments from Company K's account were for Mr S's personal benefit.

I considered it relevant here that Mr S had been investing for some time prior to the payments from Company K's account and that he'd seemingly done so in a wholly personal capacity. I also considered it relevant that the nature of Company K wasn't related or obviously connected in any way to the making of investments. And by Mr S's own admission, the payments from Company K were borrowed to try to recover money he'd already invested.

Having considered the evidence before me, while I couldn't know for certain what the intent behind these payments was, I found it was more likely than not that it was intended for the personal benefit of Mr S, not the business of Company K.

I explained the consequences of that finding, in so far as the impact on the complaint I had been asked to decide.

Mr S was withdrawing money from Company K's account for his own benefit – it is not disputed that he authorised the payments or that he had authority to make such a withdrawal. As such he was essentially withdrawing an asset from Company K for his own use. I thought it most likely that would constitute a loan from Company K to Mr S (in the absence of any evidence to the contrary – although the following logic holds for similar reasons were this alternately established to have been a return of capital).

Mr S has then lost those funds to the scam. But Company K has not suffered a loss – Mr S has, which is not the same thing. The money is owed by Mr S to Company K. It follows that any reimbursement now sought by Company K in respect of those payments should be addressed to Mr S. It cannot fairly be directed to Lloyds, as there is no loss on Company K's part for which it could fairly be held responsible.

And similarly, I explained I cannot fairly require Lloyds to consider the payments under the terms of the CRM Code – Company K has not suffered a loss and so the payments do not fall within the scope of what the code is intended to cover. Neither did I consider it fair and reasonable to hold Lloyds liable for these payments for any other reason.

All considered and given what I set out above, I wasn't minded to conclude that it would be fair and reasonable in all the circumstances of this specific complaint for me to require Lloyds to refund Company K.

### **Developments**

Mr S doesn't agree with my provisional findings. He has stated that the money from Company K was part of the repayment of a large loan it owed to him, therefore as Company K owes him money, it is Company K's loss.

He has explained that most of his funds were lost through payments to the scam from his other bank, who reimbursed the funds under the CRM Code. The payments from his Lloyds account were lost in the same way, and so he has questioned why those payments weren't also within the scope of the code. He has also suggested that Lloyds has discriminated against him by refusing to reimburse the funds under the Code.

### **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've carefully considered Mr S's additional comments but I'm afraid my findings remain the same.

Mr S has stated that the funds he paid to the scam from Company K's account were part of the repayment of a loan he was owed by Company K. But as I stated in my provisional decision, even if he could establish this was a return of capital to him from Company K, this wouldn't be considered a loss to Company K, it would simply mean it no longer owed him the funds.

Mr S has also questioned why the payments aren't within the scope of the CRM Code. I understand the circumstances surrounding the scam payments from his other account are similar, but as I don't accept that Company K suffered a loss, these payments don't fall within the scope of the Code. It follows therefore that he hasn't suffered any discrimination.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Company K to accept or reject my decision before 24 April 2024.

Carolyn Bonnell  
**Ombudsman**