

The complaint

Mr and Mrs A complain that Lloyds Bank PLC didn't do enough to protect them from the financial harm caused by an investment scam, or to help them recover the money once they'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.

Mr and Mrs A were referred by a friend to an opportunity to investing in Company J. They met with the owner at their house where he told them they could make a return of 15% in a year by investing £20,000. After a year they could either withdraw their profits or extend the investment.

On 28 March 2019, Mr and Mrs A transferred £20,000 to J from a joint account they held at Lloyds. Over the next few months, they communicated with the owner of J by phone, but the contact became less frequent, and they eventually lost contact completely.

On 11 January 2021, a liquidator was appointed, and after about eighteen months, they were informed there was no money left. J is showing as dissolved on Companies House as of 27 July 2023.

Mr and Mrs A complained to Lloyds with the assistance of a representative who argued that it owed a duty of care to counter various risks, including preventing fraud and scams. They said this was a significantly large payment and it should have asked them what it was for, how they heard about the opportunity, what rate of return they'd been promised and what they knew about the company. They said Mr and Mrs A wanted a full refund, with interest, and £1,000 compensation for trouble and upset resulting from poor service.

Lloyds refused to refund any of the money Mr and Mrs A had lost. It explained the Contingent Reimbursement Model ("CRM") Code was introduced to help reduce occurrences of APP Fraud, but the code didn't apply because it came into force after the payment was made. It also said the code didn't cover disputes between a genuine company and their client. It further explained J was a genuine company because there was information on Companies House confirming it was trading normally and providing a service until it went into liquidation. It also appointed a liquidator, and there were no fraud concerns on the account it held at Lloyds.

Mr and Mrs A weren't satisfied and so they complained to this service with the assistance of their representative who argued that their banking history ought to have alerted Lloyds to the unusual nature of the payment, which represented a sudden increase in spending.

Responding to the complaint, Lloyds said Mr and Mrs A made multiple faster payments, some of high value, in the 12 months prior to the payment. It also said J was operating normally when they made the payment, and this was a genuine failed investment/civil dispute, so they weren't entitled to a refund.

Our investigator didn't think the complaint should be upheld, explaining J was a legitimate company which had operated until its liquidation in January 2021. He also noted there were no warnings on the Financial Conduct Authority ("FCA") website, so there was no evidence it was operating a scam.

He further explained that even if Lloyds had contacted Mr and Mrs A when they made the payments, it wouldn't have made any difference because they were investing in what had appeared to be a legitimate company, which held a legitimate account with Lloyds. And as J entered liquidation on 11 January 2021, Mr and Mrs A should contact the appointed representative to identify whether there were any funds remaining.

Mr and Mrs A have asked for their complaint to be reviewed by an Ombudsman. Their representative has explained that J was subject to a full investigation in May 2020, and the owner's accounts were frozen. In December 2020, J was wound up and declared as owing its creditors over £4,000,000. They maintain J was operating a scam.

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.

Having done so, I've reached the same conclusion as our investigator. And for largely the same reasons. I'm sorry to hear that Mr and Mrs A have lost money. I know they feel strongly about this complaint, and this will come as a disappointment to them, so I'll explain why.

The Contingent Reimbursement Model ("CRM") Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Mr and Mrs A say they've fallen victim to, in all but a limited number of circumstances. Lloyds has said the CRM code didn't apply in this case because the code came into force after the payment was made, and I'm satisfied that's fair.

I'm also satisfied Mr and Mrs A 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although they didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of their bank account, they are presumed liable for the loss in the first instance.

Not every complaint referred to us and categorised as an investment scam is in fact a scam. Some cases simply involve high-risk unregulated investments that resulted in disappointing returns or losses. Some of these investments may have been promoted using sales methods that were arguably unethical and/or misleading. However, while 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).

There is a dispute in this case as to whether J was operating a scam, but I don't need to make a finding on that because even if it was, I don't think there was anything Lloyds could have done to prevent Mr and Mrs A's loss and so I can't fairly ask it to reimburse them.

Prevention

Lloyds ought fairly and reasonably to be alert to fraud and scams, so I've considered what would have happened if it had intervened. Mr and Mrs A sent £20,000 to a legitimate Lloyds account about which there were no concerns. J wasn't regulated by the FCA, but it was registered with Companies House and there were no warnings against it on the FCA website or any other suggestions that it might be a scam. Further, I don't think the proposed return was too good to be true and even though Mr and Mrs A didn't have any paperwork, they'd been referred to the investment by a friend who also invested, and they met the owner of the company who explained how the investment would work, when they would be able to access their profit, and how much it would be. So, if Lloyds had contacted them to discuss the payment and provide advice on additional due diligence, there would have been no reason for them to question the investment or anything to expose the investment as a scam. So, I'm satisfied they'd have gone ahead with the payment, therefore I don't think Lloyds missed an opportunity to prevent their loss.

Recovery

Mr and Mrs A have been informed that no funds remain for recovery.

Compensation

I haven't found any errors or delays to Lloyds's investigation, so I don't think Mr and Mrs A are entitled to any compensation.

I'm sorry to hear Mr and Mrs A have lost money and the effect this has had on them. But for the reasons I've explained, I don't think Lloyds is to blame for this and so I can't fairly tell it to do anything further to resolve this complaint.

My final decision

For the reasons I've outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr A to accept or reject my decision before 17 April 2025.

Carolyn Bonnell
Ombudsman