

The complaint

Mr M complains that Clydesdale Bank Plc ('Clydesdale') won't refund the money he lost when he fell victim to a scam.

What happened

Mr M says that he came across an investment opportunity with a company I'll refer to in this decision as K. K offered fixed term mini bonds. Mr M says he checked there wasn't an FCA warning in respect of K, looked at reviews and completed some wider research to check that K was legitimate before deciding to invest. Mr M initially decided to invest £10,000. His payment went via an FCA regulated firm (N).

Mr M received returns of £7.22, £19.92, £244.26 and £199.20 between October 2020 and April 2021. Encouraged by these returns, Mr M made a further investment of £25,000 on 26 April 2021. During the pandemic, Mr M was told monthly payments would stop and he'd receive returns in full after the pandemic. But this didn't happen, and Mr M was unable to withdraw his funds.

Mr M complained to Clydesdale through his representative in August 2023.

Clydesdale said Mr M had made a bad investment and it couldn't raise a scam claim. It also said that when each of the payments were made there was no bank error. In respect of the first payment made in branch, Clydesdale said Mr M was provided with relevant warnings and confirmed the transaction wasn't fraudulent. The second payment wasn't placed on hold as it was to a trusted payee and Mr M was provided with a warning.

Mr M was unhappy with Clydesdale's response and brought a complaint to this service. He said Clydesdale failed to protect him at the time the payments were made.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. She said that Clydesdale should have recognised the transactions as unusual or suspicious and asked questions, but had it done so the loss wouldn't have been prevented. This was because at the time K presented as a genuine company and Mr M received detailed documentation, so Clydesdale wouldn't have had concerns. The investigator also noted that the Contingent Reimbursement Model Code (CRM Code) doesn't apply in this case as Clydesdale only became a signatory to it after Mr M made the payments to K. Given the length of time that had elapsed between the payments and reporting the scam, the investigator also thought there was no prospect of recovering Mr M's lost funds.

Mr M didn't agree with the investigator's findings. He said that Clydesdale should have intervened and it's not possible to say what would have happened if it had followed the correct procedures. Mr M went on to say that he had completed his own due diligence, but Clydesdale would have been in a better position to educate him and advise what to look out for.

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.

In deciding what's fair and reasonable, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

Where I can't know for certain what has or would have happened, I need to weigh up the evidence available and make my decision on the balance of probabilities – in other words what I think is more likely than not to have happened in the circumstances.

In broad terms, the starting position in law is that Clydesdale is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations (PSR's). It's not disputed that Mr M made and authorised the payments, which I consider likely relate to a scam.

But that's not the end of the story. Taking into account relevant law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Clydesdale should:

- have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams;
- have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which firms are generally more familiar with than the average customer;
- in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

I can't consider the provisions of the CRM Code in this case as Clydesdale hadn't signed up to it when Mr M's payments were made.

I've thought about whether Clydesdale acted fairly and reasonably in its dealings with Mr M when it processed the payments.

I've considered Mr M's statements in the 12 month period before the first scam transaction. Having done so, it's clear the payment was unusual and out of character given Mr M's usual account activity. It was significantly greater in value than any other payment. Mr M made the payment in branch, so Clydesdale staff had the opportunity to ask probing questions to satisfy itself he wasn't at risk of financial harm.

Clydesdale has provided this service with a form that Mr M was asked to sign in branch on 27 August 2020. The form includes a section headed, "Are you sure this payment isn't fraud" which says that if the payment turns out to be a scam the customer might not get their money back. Underneath is a set of ten red flags to look out for. The last of these says,

"Has an investment firm asked you to send them money? If so, check they are legitimate and regulated by the FCA."

At the bottom of the form Mr M was asked to sign a declaration to say he was sure the payment wasn't fraudulent.

I'm not satisfied there is evidence that Clydesdale went far enough when the payment was made. It seems the responsibility was passed to Mr M as a novice investor when the onus

was on Clydesdale as the expert here to ask appropriate questions and protect Mr M from fraud. There is no evidence that Clydesdale sought to understand the nature of the investment and the research Mr M had completed, or that it provided appropriate warnings about the risks involved in a way that would have resonated with Mr M.

I've gone on to consider whether further intervention by Clydesdale would have made a difference in this case. On balance, like the investigator, I don't think it would and I'll explain why.

Mr M has told this service that he completed extensive research before deciding to invest with K including looking at the FCA register, reviews and other sources to check that K was legitimate. His research didn't highlight anything untoward.

I can also see that Mr M received an introductory email from K on 11 August 2020 which included a company brochure. The email explained that the brochure gave an overview of K's business model, and the fixed rate returns K offered. Also included in the email was a link to the FCA register in respect of what K described as "FCA Escrow with [N]. N was an FCA registered firm.

Mr M also received a new registration email a few days later that included a link to verify his email address and complete the sign up process, followed by an email to say that registration was complete. On 26 August 2020, Mr K received a detailed "Bond Subscription Agreement". So it's clear that K completed the same processes as a legitimate firm and provided legitimate looking documentation before Mr M made a payment. In the circumstances, I'm not persuaded that even if Clydesdale had asked additional questions in branch the scam would have been uncovered and Mr M's losses prevented.

Clydesdale provided an on screen warning when Mr M made a second payment of £25,000 in April 2021. By the time this payment was made, Mr M had received returns from his original investment, making it even more difficult to uncover the scam. So although I think further intervention was warranted, given the size of the payment and the lack of information recorded when the initial transaction was made, I'm not persuaded it would have uncovered anything concerning or led to Clydesdale refusing to make the payment.

Overall, I'm satisfied this was a sophisticated scam that has come to light after Mr M made his payments. So, whilst I'm sorry to hear of Mr M's loss, I can't fairly ask Clydesdale to reimburse him.

My final decision

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 23 October 2024.

Jay Hadfield
Ombudsman