

The complaint

Mr and Mrs P complain that Lloyds Bank PLC (as the recipient bank) didn't do enough to prevent the loss they suffered when they sent money to its customer's account as the result of an alleged scam.

Mr and Mrs P have used a representative to bring their complaint, but for ease of reading, I'll mostly just refer to and will ascribe the representative's comments to Mr and Mrs P.

What happened

The background to the complaint is known to both parties and so I won't repeat it at length here. On 26 May 2019 Mr and Mrs P transferred £20,000 from their bank account with 'H' to an account held with Lloyds. The payment was to a company called 'H2' for investment purposes. H2 eventually entered insolvency proceedings, but Mr and Mrs P say, based on information that has since come to light, they believe that H2 were operating a fraudulent "*ponzi scheme*".

Mr and Mrs P complained to Lloyds in 2023. They said that it had likely failed: to meet its obligations when allowing its customer's account to be opened; in its monitoring of the recipient account; and in its response when notified of the fraud. Mr and Mrs P asked that Lloyds refund their loss. Lloyds didn't uphold their complaint as it considered this to be a failed investment – not a scam.

Unhappy with this, Mr and Mrs P referred their complaint to our service. Our Investigator didn't think we could consider all of Mr and Mrs P's complaint. She explained the relationship under which we could consider Mr and Mrs P's complaint, that being DISP 2.7.6R(2B), isn't retrospective, it only applies in relation to a complaint concerning an act(s) or omission(s) which occurred on or after 31 January 2019. She said as the recipient account was opened before 31 January 2019, she couldn't consider Mr and Mrs P's complaint points about the due diligence carried out by Lloyds when onboarding its customer or the monitoring of the recipient account before the same date. And for what she could consider, she didn't recommend the complaint should be upheld.

Mr and Mrs P asked for an Ombudsman's decision. As it wasn't clear whether they accept what our Investigator had explained about our jurisdiction, for the avoidance of ambiguity and so that both parties were clear about the scope of what we can and can't look into I issued a jurisdiction decision first, which set out the extent of their complaint I could consider. This decision is about the aspects of Mr and Mrs P's complaint I do have the power to investigate.

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 outcome as the Investigator, in so much as, I can't uphold Mr and Mrs P's complaint. I know this will be disappointing for Mr and Mrs P, so I'll explain why.

Our Investigator first considered whether at the material time H2 were operating a scam as Mr and Mrs P allege. She concluded that she'd not seen evidence to persuade her that the fundamental purpose of the payment was meaningfully different to what Mr and Mrs P thought. So overall, she didn't think the available evidence supported that the payment from Mr and Mrs P to Lloyds was made as a result of a scam. But I'm not going to make a finding on this point, as in the circumstances of this complaint, I don't need to, to reach what I think is a fair and reasonable outcome.

I say this because firstly, whilst Lloyds are a signatory of the Lending Standards Board's Contingent Reimbursement Model Code (the CRM code) – a voluntary code through which victims of authorised push payment (APP) fraud, in certain circumstances, can receive reimbursement of their losses. The CRM code came into force on 28 May 2019 and only covers APP payments completed between UK domiciled accounts on or after this date. This is set out at section DS2(2), where it says: *"This Code does not apply to ... (c) any payments completed before the coming into force of this Code"*. As the disputed payment here completed on 26 May 2019, it is not covered under the CRM code.

And secondly, even if I were to accept H2 were operating a scam (which to be clear I'm not making a finding on) it still wouldn't automatically entitle Mr and Mrs P to reimbursement from Lloyds. In circumstances such as these, where Lloyds (in relation to the matter being complained about) do not have a contractual relationship with Mr and Mrs P, it wouldn't be fair to ask that it reimburse their losses unless it could fairly and reasonably be concluded that its act(s) and/or omission(s) would've made a material difference and were causal to, all or part of the losses Mr and Mrs P have suffered.

Ultimately, I've not seen anything that persuades me that there has been a failing by Lloyds in the monitoring of its customer's account on or after 31 January 2019 nor the steps it took when Mr and Mrs P notified it of the alleged APP fraud, where it can fairly and reasonably be concluded, that its act(s), or omission(s) were the cause of their loss.

From what Lloyds have shared, the recipient account was established (for a number of years) and operating without any concerns prior to the arrival of Mr and Mrs P's funds. I can't fairly say Lloyds did anything wrong when crediting Mr and Mrs P's payment to the recipient account or in allowing the funds it represented to be paid away without taking any further action. I say this because against the backdrop of how the account was being operated; its general pattern of use; and the prior account activity – the arrival and paying away of Mr and Mrs P's funds wasn't unusual or suspicious. So, I can't fairly conclude that Lloyds acted unreasonably by not intervening prior to Mr and Mrs P's funds being paid away.

And, even if I'm wrong about this, from the evidence I've seen H2 had access to multiple accounts with different firms, either directly or through linked enterprises. So even if Lloyds ought to have acted in relation to this particular account prior to Mr and Mrs P's funds arriving, I don't think they would have ended up in a meaningfully different position. I say this because, on balance, it's most likely that had Lloyds blocked or closed the account, Mr and Mrs P would instead have been directed to make payments to other accounts H2 had access to.

Similarly, if Lloyds had acted in the period after Mr and Mrs P's payment had arrived, and before their funds had been paid away I'm still not persuaded that any reasonable level of scrutiny by Lloyds during that period would have resulted in Mr and Mrs P's loss being prevented because (1) I haven't seen anything that persuades me that Lloyds failed to act upon something that would've resulted in the discovery of a scam/fraudulent intent. At that point in time, Lloyds had not received any notifications of fraud, from what I've seen there wasn't any adverse information about H2 that was readily available or known to them (it also isn't their role to forensically investigate or audit a business to whom they provide banking services) and even now following its collapse (and multiple claims of fraudulent intent), liquidator involvement/investigations a conclusion still hasn't been reached on this matter. So I'm not convinced that this was something Lloyds could've reasonably identified and unearthed during the period in question; and (2) at best if the account operation was outside of its risk appetite, Lloyds would have likely ended its relationship, and in the absence of notification of alleged fraud all it would have done is, upon closure, transferred any balance which remained to its accountholder.

From what I can see H has not sent notification of alleged APP fraud to Lloyds. It wasn't until 2023 (several years after the payment was made) that Mr and Mrs P informed Lloyds that they believed the payment they'd sent to one of its customer's accounts was made as a result of an alleged scam. I'm satisfied that at that point there wasn't much more that Lloyds could reasonably have done to assist in the recovery of Mr and Mrs P's funds from the recipient account.

Having carefully considered everything both parties have provided, in these circumstances, I don't think it can fairly and reasonably be concluded that Lloyds' act(s) or omission(s) were the cause of Mr and Mrs P's loss.

I note in response to our Investigator's assessment, Mr and Mrs P's representatives have commented on the sums which they believe have passed through the account and have suggested that cases should be considered as a whole. However, our service is set up to determine each case (within the scope of our jurisdiction) individually based on its own merits. And here, as I'm required to, I've looked at the individual circumstances of Mr and Mrs P's complaint. This doesn't mean that I haven't taken into consideration the activity on the account or thought about Mr and Mrs P's payment within the broader context of the other transactions. In fact, I have, and this is largely the basis for me saying that Mr and Mrs P's payment or the movement/spending of those funds wouldn't have stood out to Lloyds as suspicious or unusual in the context of the general use of the account.

I'm sorry for the situation in which Mr and Mrs P find themselves. But as I'm not persuaded their loss is as a result of Lloyds' act(s) or omission(s) (within the context of what falls within my jurisdiction), there isn't a fair and reasonable basis upon which I can direct it to do more to resolve this complaint.

My final decision

For the reasons 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 Mr and Mrs P to accept or reject my decision before 18 December 2024.

Sonal Matharu
Ombudsman