

The complaint

Mr W complains that Lloyds Bank PLC did not refund the £20,000 he says he lost to a scam.

What happened

Mr W was looking to invest and was introduced to a company I'll call 'HS' for the purpose of this decision. HS had several different building projects they were providing investments for in the form of loan notes. Mr W agreed to take out a one-year loan note for a specific building project and he received brochures, terms and conditions and a loan agreement. He decided to invest £20,000 and made a transfer from his Lloyds account for the amount on 17 December 2019.

Mr W did not receive any returns on his investment and received a number of updates from HS about the situation with COVID-19 as well as the general economy in Britain and how it was affecting the building projects. Eventually, following significant delays, issues with income and repaying investors, HS went into administration in December 2021.

Mr W felt he had been the victim of an investment scam and that HS set out to defraud him. He raised a scam claim with Lloyds who issued a final response in which they explained HS appeared to be a genuine company who had entered into financial difficulties. So, they felt it was more likely this was a failed investment rather than a scam, and they didn't agree to reimburse Mr W. As a result, he referred the complaint to our service.

Our Investigator looked into the complaint and reviewed it under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. Having done so, they agreed it was more likely a civil dispute between Mr W and HS. On balance, they did not think the evidence showed HS never intended to act in line with the agreement or pay the funds described in the contract. And instead, they felt it was more likely this was an investment that failed, so they didn't agree Lloyds needed to refund Mr W.

Mr W's representative disagreed with the findings. As an informal agreement could not be reached the complaint has been passed to me for a final decision.

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.

It isn't in dispute that Mr W authorised the payment in question. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that he is liable for the transactions. But he says that he has been the victim of an authorised push payment (APP) scam.

Lloyds has signed up to the voluntary CRM Code, which provides additional protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an APP scam, as set out in it, is met.

I have set out the definition of an APP scam as set out in the CRM Code below:

...a transfer of funds executed across Faster Payments...where:

(i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or

(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.

I've therefore considered whether the payment Mr W made to HS falls under the scope of an APP scam as set out above. Having done so, I don't think that it does. I'll explain why in more detail.

In order to determine if Mr W has been the victim of a scam, I have to consider if his intended purpose for the payment was legitimate, whether the intended purposes he and the company he paid were broadly aligned and, if not, whether this was the result of dishonest deception on the part of the company.

Based on the evidence available to me, it appears Mr W was intending for the funds to be invested in a specific building project. He then expected to receive returns on the maturity of his investment of 12%. The paperwork he received prior to investing appeared to be professional and detailed, and I can see HS was on Companies House and had been incorporated since 2011. So, I see no reason why Mr W would not have thought this was a legitimate investment.

I've gone on to consider whether HS's intended purpose for the payments aligned with what Mr W intended as set out above. I've seen evidence that three building projects were completed by HS. They had other projects ongoing, however these had to be sold to other developers after they entered into financial difficulty. On balance, I think this shows HS was a legitimate company involved in legitimate building projects and I think it's unlikely a scam company would have completed three large scale building projects at significant cost in order to entice more funds from investors.

Mr W's representatives have said HS paid unregulated introducers a high level of commission which in turn made the level of interest offered to investors unlikely to be possible. They felt that a credit event was inevitable in the circumstances. However, whether or not unregulated investors were used to introduce the investment does not indicate that HS set out to defraud investors of their funds, with no intention to invest the funds into building projects. And while I have not seen evidence of the levels of commission paid to introducers, I don't think there is a correlation between the level of commission and Mr W being a victim of a scam in the circumstances.

It should be noted that the liquidator for HS has not provided any evidence to suggest they were acting fraudulently or operating a Ponzi scheme. They are still in the process of investigating a significant number of transactions made from HS to various subsidiary companies, due to the way in which the HS network was set up. However, at the moment there is no indication that these transactions were made with the intention of hiding these funds and not using them towards development projects.

On balance, I think HS's intended purpose for the funds aligned with Mr W's and nothing I have seen indicates to me that HS intended to defraud him. Instead, I think it's more likely this was a failed investment, So I don't think it meets the definition of an APP scam. And I think Lloyds acted reasonably when it treated the case as a civil dispute.

It is possible that further evidence may come to light at a later date, which may indicate HS was operating a scam. Should such evidence come to light, then Mr W can complain to Lloyds again, and refer the matter to this office, should he not be happy with the outcome.

My final decision

I do not uphold Mr W's complaint against Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 12 November 2024.

Rebecca Norris
Ombudsman