

The complaint

A company, which I'll refer to as S, complains that Lloyds Bank PLC ('Lloyds') hasn't reimbursed funds lost by S.

Mr B, who is a director of S, brings the complaint on S' behalf.

What happened

Mr B says he was introduced to an investment with a company I'll refer to as H by a broker who also provided promotional material from H. H offered loan notes with a rate of return of 12% per year. After reviewing the information, Mr B was reassured that H was an established and reputable company that presented an investment opportunity that was safe and secure.

At the end of November 2018 Mr B decided to invest on behalf of S and made payments to H totalling £100,000. Mr B says he received returns of £27,000 in respect of this initial investment. Later, Mr B invested further funds that related to two specific property developments.

In May 2019 Mr B was introduced to a different investment with a company I'll refer to as R. R offered fixed term bonds. Mr B, on behalf of S, invested £50,000 in R.

I have set out in the table below the payments Mr B, on behalf of S, made to H and R.

Transaction	Date	Amount	Payee
1	28/11/18	£50,000	H
2	29/11/18	£50,000	H
3	21/03/19	£50,000	H
4	22/03/19	£50,000	H
5	25/03/19	£50,000	H
6	17/05/19	£50,000	R
7	29/07/19	£50,000	H
	Total	£350,000	

Mr B says he became concerned when payments stopped from H, and communications stopped. He then heard that H had appointed administrators in January 2022 and later went into compulsory liquidation. R has also gone into administration and no returns have been paid.

In September 2023 Mr B's appointed representative contacted Lloyds asking it to reimburse S' full loss plus interest and £1,000 compensation. He said H operated a sophisticated scam, and that Lloyds should have questioned the unusual payments that were made from S' account. In particular, Mr B said Lloyds should have asked to see correspondence between

H and Mr B and considered the delay in H filing accounts. Finally, Mr B said that as an inexperienced investor he was vulnerable so should be reimbursed in full on that basis.

Lloyds didn't agree to reimburse S' loss. It said the majority of the payments were made before the inception of the Lending Standards Board's Contingent Reimbursement Model Code ('CRM Code'). At the time they were made, Lloyds didn't think any intervention by it would have made a difference as H and R appeared to be legitimate businesses offering genuine investments.

Lloyds said both H and R appeared to have offered high risk investments that failed and there was no conclusive evidence of fraud.

Mr B, on behalf of S, was unhappy with Lloyds' response and brought a complaint to this service.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. She said that transactions one to six were made before the inception of the CRM Code and that if Lloyds had intervened at the time of each transaction, it wouldn't have made a difference. Transaction seven was made after the inception of the CRM Code but the investigator felt there wasn't enough evidence to conclude S was the victim of an APP scam. This meant the CRM Code didn't apply. But the investigator said that if material new evidence came to light at a later date, Mr B on behalf of S could ask Lloyds to reconsider transaction seven.

Mr B, on behalf of S, didn't agree with the investigator's findings so the complaint has been passed to me to decide. Mr B provided evidence to support his belief that H operated a sophisticated scam and never intended to provide the returns it promised, including an administrator's report, a press article about H, an article about the FCA targeting banks' anti-money laundering failures, H's loan note marketing material from 2020 and H's 2016 accounts.

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'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – in other words on what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment.

Transactions one to five

Transactions one to six were made before the inception of the CRM Code.

At the time these payments were made, Lloyds should have been on the look-out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And, 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.

Having considered S' statements in the twelve months leading up to the payments to H and R, I can see two £40,000 transactions on 8 October 2018. The first transactions to H were slightly higher in value but broadly in line with normal account activity. Transaction three was made around a week after a genuine payment of £50,000, and some time after the first two transactions, so I can't see that it would have stood out to Lloyds.

I think Lloyds should have intervened when transaction five was made, as over the course of a few days payment requests totalling £150,000 had been made. But I'm not satisfied it would have made a difference or led to the payment not being made. S had already invested in H. H was a legitimate company that at the time the payments were made was paying returns to other investors. Detailed documentation was provided to Mr B and there was nothing in the public domain at the time to suggest Lloyds should have been concerned that Mr B, on behalf of S, might be falling victim to a scam. The concerns Mr B has raised have come to light after payments left S' account.

Transaction six

Transaction six was made to a new payee and Mr B says it related to another investment with R. I'm not persuaded this transaction would have looked unusual to Lloyds so I don't consider it should have asked Mr B any questions about the reason for it. There were other transactions of the same value from S' account including the £50,000 transaction in March 2019, a few months before this payment.

Transaction seven

This payment was made after the inception of the CRM Code, which Lloyds is a signatory to. Under this code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam, except in limited circumstances. But the CRM Code only applies if the definition of an authorised push payment (APP) scam, as set out in it, is met.

I have considered whether S' claim falls within the scope of the CRM Code, which defines an APP scam as:

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

It is for Mr B, on behalf of S, to demonstrate that S is the victim of an APP scam.

To decide whether S is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Mr B, on behalf of S, thought this purpose was legitimate.
- The purpose the recipient (H) had in mind at the time of the payments, and whether this broadly aligned with what Mr B, on behalf of S, understood to have been the purpose of the payment.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

Mr B thought he was investing in a property development company. I haven't seen anything to suggest that he didn't consider this to be a legitimate purpose.

In reaching an answer on what purpose H had in mind, I've considered the wider circumstances surrounding H and any linked businesses. The key information to this case is:

- H completed three different development projects. H also worked on other developments which it then sold to developers when it experienced financial difficulties. The completion of three development projects is strongly indicative of a legitimate business carrying out the activities I would expect of it.
- I've not seen anything from the administrators of the company to suggest the company was operating a scam or that the transactions carried out by the company and connected companies were done with any intention other than putting investors' funds towards development projects.
- I also haven't been provided with evidence following an investigation by any other external organisation which concludes that H wasn't using funds for the intended purpose as a result of dishonest deception.
- I'm aware that H hasn't filed audited accounts. But I'm not persuaded this evidence goes far enough to conclude that the definition of an APP scam is met.

Having carefully considered all the evidence provided to me, I'm not persuaded there is sufficient evidence to conclude that the purpose H had in mind when it took S' payment was different to Mr B's. So, I consider Lloyds acted fairly in not considering S' complaint under the CRM Code.

Mr B's representative has provided me with documents to consider but hasn't drawn out any points for me to address. I confirm that nothing sent in response to the investigator's view leads me to believe there is enough evidence to say S was the victim of an APP scam as set out in the CRM Code.

In his letter of complaint Mr B said it was clear that the promises made by the introducers of H were never going to be honoured. This was based on media reports of very high rates of commission being paid to introducers and high interest rates offered to investors. These points indicate poor business and financial management but don't go far enough to bring S' claim within the scope of the CRM Code.

If material new evidence comes to light at a later date S can ask Lloyds to reconsider its fraud claim in respect of transaction seven.

I'm really sorry to disappoint Mr B, as I know his business has lost a significant amount of money. But I'm not satisfied that I can fairly ask Lloyds to refund S.

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 S to accept or reject my decision before 26 November 2024.

Jay Hadfield
Ombudsman