

The complaint

Mr E complains that Lloyds UK Bank PLC ('Lloyds') won't refund money he lost when he says he fell victim to a scam.

What happened

Mr E says that he was persuaded to invest with a company I'll refer to as H in my decision. H was a private rental development company which offered loan notes to investors to raise money for its projects. It was the parent company of a group of companies. Mr E says that sale and rent of H's assets would later generate company income which would be used to pay investors income and capital. In January 2020 Mr E decided to invest and paid H £20,000.

H has gone into administration. Mr E believes the investment wasn't genuine and that he is the victim of a scam. He complained to Lloyds in January 2024 and said it failed in its duty of care and should reimburse him under the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code).

Lloyds said that Mr E had entered into a high risk investment with a genuine company which had failed. It said Mr E had speculated that H operated a Ponzi scheme but there was no conclusive evidence of fraud or record of any legal or police action taken. But if new information comes to light of legal or police action taken which proves H ran a scam it would reconsider its position.

Mr E was unhappy with Lloyds' response and brought a complaint to this service. He said H ran a sophisticated scam. His representative provided a detailed submission, which I have considered in full. I have summarised the main points below.

- Projects were completed to show legitimacy for future investments and because the intention was to extract future assets from the group.
- A property was purchased for £2.5m and an administrator's report says it was worth around £16m. Mr E said it was very unlikely the company would spend more than the potential value of the property on it, so concluded that the maximum spend on the property would be £30.5m. Mr E said this meant £17m wasn't used for property development.
- In respect of another property Mr E said, *"it is safe to assume that the company would not have ran the project at a loss and as such with a break even value of £22m, at least £6m was not used for property development."*
- Another development doesn't appear in the subsidiary company accounts.
- A company that supposedly lent £2.1m to H didn't exist.
- The group's accounts have been manipulated to show loans as assets to present a more favorable investment opportunity.
- H's accounts show some concerning activities and clever accounting.
- H was concealing a bank account which is indicative of a scam.
- A director has removed an asset rich company from the group for his own benefit.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. He said there was insufficient evidence to conclude that H didn't intend to provide the agreed investment or make the returns it set out. This meant that he couldn't ask Lloyds to consider Mr E's complaint under the CRM Code.

Mr E didn't agree with the investigator's findings and asked for a final decision, so his complaint has been passed to me to review.

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.

Under the CRM 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 APP scam, as set out in it, is met.

I have considered whether Mr E'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 E to demonstrate that he is the victim of an APP scam.

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

- The purpose of the payment and whether Mr E thought this purpose was legitimate.
- The purpose the recipient (H) had in mind at the time of the payment, and whether this broadly aligned with what Mr E 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 E 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 appreciate that Mr E believes H completed these developments to draw in investors and with the intention of removing assets from the group. But no persuasive evidence has been put forward to make me believe this is the more likely scenario. The additional points raised by Mr E in response to the view are largely based on assumptions and indicate poor business management but don't go far enough to bring his claim within the scope of the CRM Code.

- I haven't been provided with evidence following an investigation by an external organisation which concludes that H was operating fraudulently.
- I'm aware that H hasn't filed audited accounts. I have also noted the inaccuracies highlighted by Mr E in respect of accounts that have been filed. But I'm not persuaded this evidence goes far enough to demonstrate that H operated fraudulently. In the absence of the kind of evidence I have referred to above, I consider that Mr E has provided evidence of financial mismanagement but not of an intention to defraud.

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 Mr E's payment was different to his. So, I consider Lloyds acted fairly in not considering Mr E's complaint under the CRM Code.

If material new evidence comes to light at a later date Mr E can ask Lloyds to reconsider his fraud claim.

I've gone on to think about whether Lloyds should be held responsible for Mr E's loss for any other reason. In broad terms, the starting position at law is that a financial institution such as Lloyds is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

Taking into account the law, regulations, guidance, standards, codes, and industry practice I have referred to above, (including the PAS Code), 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) though. 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.

I haven't been provided with Mr E's statements for the period before the scam, or with any information about whether Lloyds intervened or provided him with warnings. But I consider it likely that a £20,000 transaction was unusual and so Lloyds ought to have taken steps to satisfy itself Mr E wasn't at risk of financial harm.

I can't fairly require Lloyds to reimburse Mr E solely on the basis it didn't intervene when I think it should have. I need to go on to consider what is most likely to have happened if Lloyds had asked the kind of questions I think it should have at the time the payment was made. In deciding this point, I need to consider what was known about H at the time, rather than information that has subsequently come to light.

I'm not persuaded that Lloyds would have had any concerns or that the payment would not have been made if it had intervened. H was a legitimate company that at the time the payment was made was paying returns to other investors. Detailed documentation was provided and there was nothing in the public domain at the time to suggest Lloyds should

have been concerned that Mr E might be falling victim to a scam. Many of the points raised by Mr E have come to light after detailed analysis years after he made the payments.

I'm really sorry to disappoint Mr E, as I know he has lost a significant amount of money. But I'm not satisfied that I can fairly ask Lloyds to refund him based on the evidence that is currently available.

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 E to accept or reject my decision before 25 February 2025.

Jay Hadfield
Ombudsman