

The complaint

Mr and Mrs T complain that Lloyds Bank PLC ('Lloyds') won't reimburse the money they lost when they say they fell victim to a scam.

What happened

Mr and Mrs T say that they were introduced to an investment opportunity with a company I'll refer to as H in this decision. H was a private rental development company which offered loan notes to investors to raise money for its projects. Mrs and Mrs T made a payment to H of £20,000 from their joint account on 19 September 2018. They understood that they would receive returns twice a year for the duration of the loan and the return of their capital at the end of the loan period.

Mr and Mrs T didn't receive the returns they expected, and H went into administration in January 2022. Mr and Mrs T believe the investment wasn't genuine and that they are the victims of a sophisticated scam. They complained to Lloyds in September 2023 and said it failed in its duty of care to protect them.

Lloyds didn't agree to reimburse Mr and Mrs T. It said the payment pre dates the CRM Code and there isn't enough evidence of a scam. Lloyds also said that if it had spoken to Mr and Mrs T at the time the payment was made, it wouldn't have had any concerns

Mr and Mrs T weren't happy 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. 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 and Mrs T's complaint under the CRM Code.

Mr and Mrs T didn't agree with the investigator's findings and asked for a review by an ombudsman, so their complaint has been passed to me to decide. They asked me to review the following points:

- The investigator applied the wrong threshold test for intervention by Lloyds when considering the application of the PAS Code (PAS 17271:2017) which has been in place since 2017. The threshold test is identification of a risk of harm rather than identifying an actual fraudulent transaction. Mr and Mrs T made a high value payment that was out of character so Lloyds should have recognised a scam risk.
- The investigator failed to give adequate weight to the information provided to demonstrate that H was operating a Ponzi scheme. Too much weight was given to indicators H was running a legitimate business and too little weight to the implausibility of the returns offered (which Mr and Mrs T set out in detail based on information H provided in prospectuses) and the required cashflow to generate those returns. H would not see a return from a site until it was sold or refinanced but had to pay commission, interest, and bonuses in the short term. Mr and Mrs T said the logical explanation was that H was using new investor funds to make payments to other investors.
- Administrators for H haven't offered any conclusions on the inter group transactions

that are being investigated and certainly haven't concluded there was nothing irregular going on.

- H hasn't filed accounts since 2018. The logical inference is that auditors were unable to sign off H's accounts.
- Mr and Mrs T said the purpose of the genuine business conducted by H was to give the project legitimacy and encourage investment.
- Given the high rates of return offered and the commission paid to introducers, H would have to generate huge returns which make the rates offered implausible. The logical conclusion is that investor funds were used to make payments to other investors.
- Lloyds should reimburse Mr and Mrs T based on their vulnerability. They were inexperienced investors and their ability to protect themselves was limited.
- The loss of their funds has had a huge impact on them financially and emotionally.

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.

I'm very sorry to hear of the huge impact the loss of their funds has had on Mr and Mrs T's finances and health. I appreciate that they also sent funds from another account, so the loss is significantly greater than the amount I am considering here.

Whilst I have considered all points raised by Mr and Mrs T, I will not comment specifically on each one.

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.

This payment was made prior to the introduction of the Contingent Reimbursement Model Code ('CRM Code') on 28 May 2019. The CRM Code can't be applied retrospectively, so it doesn't apply to this transaction.

At the time the transaction was 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.

I haven't been provided with Mr and Mrs T's bank statements but consider it likely the £20,000 transaction was unusual and out of character, so Lloyds should have intervened and asked Mr or Mrs T some questions about it. It was to a new payee and the value was high.

I can't uphold Mr and Mrs T's complaint solely on the basis that Lloyds ought reasonably to have intervened and there is no evidence that it did. I need to go on to consider causation – whether suitable intervention would have made a difference to Mr and Mrs T's decision making or Lloyds could have reasonably prevented the loss. In deciding this, I need to consider the information that was available at the time the payment was made.

I'm not persuaded that if Lloyds asked Mr or Mrs T the kind of questions I'd have expected it to, it would have had any concerns, or that the payment would not have been made. H was a legitimate company that at the time the payment was made was paying returns to other investors. Detailed documentation was provided via the introducer and there was nothing in the public domain at the time to suggest Lloyds should have been concerned that Mr and Mrs T might be falling victim to a scam. Many of the concerns Mr and Mrs T have raised have come to light after the payment left their account. For example, the amount paid to introducers would not have been known to Mr and Mrs T when the payment was made. And it wasn't for Lloyds to analyse in detail the documentation provided to Mr and Mrs T or to provide investment advice.

Mr and Mrs T have said that Lloyds should have considered the delay in H providing accounts. A detailed analysis of H's filing history goes beyond what I would expect of a prudent bank.

I also don't consider Lloyds should reimburse Mr and Mrs T simply because they were inexperienced investors.

I'm really sorry to disappoint Mr and Mrs T, as I know they have lost a significant amount of money. But I'm not satisfied that I can fairly ask Lloyds to refund them.

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 Mrs T and Mr T to accept or reject my decision before 26 December 2024.

Jay Hadfield
Ombudsman