

The complaint

Mr E complains that Lloyds Bank PLC did not refund the £15,000 he says he lost to a scam.

What happened

Mr E says he was introduced to an investment opportunity with a company that I'll call 'P' for the purposes of this decision. P were offering investments via loan notes for a number of different building projects. Mr E agreed to take out an 18-month loan note for £15,000 which provided annual interest of 18%. He made the payment on 15 January 2020 from his Lloyds account. However, Mr E did not receive his returns and P eventually went into administration.

Mr E now feels he was the victim of an investment scam, due to the high guaranteed returns, and the company hired to be P's security trustee had been embroiled in various scandals so he felt this was indication of a scam.

A scam claim was raised with Lloyds who issued a final response letter in November 2023. In this, Lloyds explained they felt it was more likely this was a high-risk investment that failed and did not consider it to be a scam, so they did not agree to consider the claim under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code.

The complaint was referred to our service and our Investigator looked into it. They agreed that it was more likely this was a civil dispute and not a scam. In summary, they felt the documentation provided by Mr E showed the investment was a high risk and that all assets could be lost. And they acknowledged the comments about P's security trustee, but felt this did not indicate fraudulent activity on the part of P. Overall, they did not think there was enough evidence to show P had the intention to deceive investors from the outset.

Mr E's representative did not agree with the outcome. In summary, they felt the payment of £15,000 was unusual so Lloyds should have carried out checks on it. The investment was not regulated by the Financial Conduct Authority and was promoted by an unregulated agent, so they felt it was more likely a scam. They reiterated that the high rate of returns was unrealistic and that P's business model reflected a Ponzi scheme.

As an informal agreement could not be reached, the complaint has been referred 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.

Mr E's representatives have provided a detailed reply to the initial view to this complaint. In keeping with our role as an informal dispute resolution service and as our rules allow, I will focus here on the points I find to be material to the outcome of Mr E's complaint. This is not

meant to be a discourtesy to Mr E, and I want to assure him I have considered everything he has submitted carefully.

It isn't in dispute that Mr E authorised the payment of £15,000. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that he is liable for the transaction. But he says that he has been the victim of an authorised push payment (APP) scam.

As mentioned earlier, 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 this definition out 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.

The CRM Code is also explicit that it doesn't apply to private civil disputes. The wording in the code is as follows:

"This Code does not apply to:

b) private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier."

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

I've considered the transaction with the points above in mind. I'm satisfied the first point does not apply, as Mr E intended to pay P, and the evidence shows the funds went to the correct recipient. I've therefore considered the second point and whether P took Mr E's funds with the intention of defrauding him. Or whether they were a legitimate company who Mr E is dissatisfied with, as they did not produce the returns expected.

Mr E's representatives have said the high rate of fixed returns considering the age of the company were unrealistic and indicated a scam. As the conversations with the introducer were largely carried out over the phone, I do not know how the investment was presented to Mr E. And I have only been given limited evidence of what Mr E was provided about the investment.

The documentation I have seen shows the general plan for the project relating to a gas peaking plant already purchased by P. This set out the expected returns and the agreements already made with energy companies. At the end of all of this, it sets out that the opportunity is only available to certified high net worth individuals and self-certified sophisticated investors and that it may expose an individual to significant risk as well as risk of losing all assets invested. I therefore think that, while there were set returns expected, this was still a high-risk investment that had a percentage chance of failure and that Mr E could have seen this on the documentation provided.

I've taken on board the comments that Mr E was not a high net worth or sophisticated investor. But again, I think it was set out on the documentation provided that this is who the investment was intended for. And I have seen other documents from investors in P where they had to sign to self-certify themselves as such. I cannot know if Mr E was also required to do so, but I do think it's more likely it was set out on the documents provided to him.

Mr E's representatives have indicated that P operated like a Ponzi scheme, but apart from highlighting the high levels of expected returns they have provided no evidence to support this. They have said that at least 25% of the investor's funds go to paying the introducers, but again they have not provided any evidence to corroborate this.

As part of their submission, they highlighted that the company hired by P as the security trustee had been involved in various scandals. However, I do not think that P's decision to hire a specific company indicates that P set out to defraud investors and not invest their funds in a building project.

On balance, I have not seen enough for me to be satisfied P was operating as a scam. Based on what I've seen so far, I think it's more likely P was a genuine company with a legitimate project that unfortunately has not successfully yielded returns up to this point. So, having carefully reviewed everything, I currently think it's more likely Mr E made a high-risk investment to a legitimate company, that faced issues and has not been able to repay investors as expected. I therefore think it was reasonable that Lloyds treated Mr E's claim as a civil dispute and did not consider it under the CRM Code.

I also don't think that Lloyds could have done anything to recover these funds from the recipient account. Given that it was several years after the payment that Mr E first raised his concerns, and that P had gone into liquidation by that time, I think it very unlikely that any funds would have remained for recovery.

As I do not think the CRM Code applies, Mr E would not receive an automatic reimbursement if he was considered vulnerable under the code. I can see Mr E's representatives have said he had a gambling addiction and Lloyds should therefore have taken additional steps to protect him from financial harm. However, I cannot see that this was raised with Lloyds as an issue for them to be aware of. And I don't think they should reasonably have concluded he was vulnerable based on his account activity. So, I don't think Lloyds needed to take additional steps to protect Mr E when he decided to invest in P.

I'm really sorry to disappoint Mr E, as I know he's lost a significant amount of money. But having carefully reviewed everything, I'm not satisfied that I can fairly ask Lloyds to refund his loss based on the evidence that is available.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 24 December 2024.

Rebecca Norris
Ombudsman