

## **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 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 E agreed to take out an 18-month loan note for £20,000 and made transfers from his Lloyds account for the amount 27 November 2017. However, Mr E did not receive returns and HS went into administration in December 2021.

Mr E 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 felt it was more likely this was a civil dispute rather than a scam, and they didn't agree to reimburse him. As a result, he referred the complaint to our service.

Our Investigator looked into the complaint and did not review it under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code, as it pre-dated the inception of the code. But they considered if Lloyd should reasonably have intervened in the payment to carry out further checks. The Investigator felt that even if Lloyds had intervened, they would not have had concerns about the investment as there was no indication HS was not a genuine company at the time. So, they did not recommend reimbursement.

Mr E's representatives disagreed with the findings. In summary, they felt the high level of set returns was indicative of a Ponzi or pyramid scheme and this could have been uncovered by Lloyds. They also said the investment was not regulated by the Financial Conduct Authority, amongst other things.

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.

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 in question. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that she is liable for the transaction. 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 payment that Mr E is complaining about was made prior to the CRM Code coming into force. So, in the circumstances of this complaint the CRM Code does not apply.

Because of this, Mr E is not automatically entitled to a refund. But the regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams.

Taking the above into consideration, I need to decide whether Lloyds acted fairly and reasonably in its dealings with Mr E, or whether it should have done more than it did.

While I can see the value of the payment was high, Mr E had made a number of high value payments in the months prior to the one complained about. Some of these were for over £60,000. So, it could be argued that although this was a high value payment, it was not so unusual when compared to his genuine account activity. However, some of these earlier payments have also been raised in separate scam claims. So, to be fair to Mr E, I will assess the payments as if Lloyds should have intervened. What's left to decide is if an intervention would have likely prevented Mr E from making the payment to HS.

Based on the evidence available to me, it appears Mr E was intending for the funds to be invested in 'loan notes' relating to building projects. He then expected to receive returns on the maturity of the investment of around 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.

I've also seen evidence that large scale building projects were completed by HS. So, given that HS appeared to be a legitimate company involved in legitimate building projects I see no reason why Mr E would not have thought this was a legitimate investment at the time he made the payment. And so, if Lloyds had challenged him about what he was making the payment for, I do not think it likely that Lloyds would have identified any concerns that Mr E could be the victim of a scam. Similarly, while I think Lloyds could have highlighted the risk of investing with a firm not regulated by the FCA, I don't think this would be enough to indicate Mr E may be the victim of a scam.

Mr E's representatives have pointed out the high level of set returns and have said this indicates it could be a Ponzi scheme. However, I can also see the documentation clearly sets out this is a high-risk investment in which all assets could be lost, so I think it would have been clear that while set returns were expected there was still a percentage chance of failure due to the nature of the investment. And for the reasons set out above, I think any questioning from Lloyds would have likely assured them that HS appeared to be a genuine company providing a genuine investment. I therefore don't think it is reasonable to say that Lloyds could have prevented Mr E's loss here. It follows that I won't be asking Lloyds to refund that loss to him.

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 HS had gone into liquidation by that time, I think it very unlikely that any funds would have remained for recovery.

Mr E's representatives have said he was particularly vulnerable to the scam they feel HS

was perpetrating. However, as I have determined the payment cannot be considered under the CRM Code, Lloyds was not required to automatically reimburse Mr E if he was found to be vulnerable as set out in the Code. And while outside of the Code, we would expect a bank to make reasonable adjustments and treat vulnerable customers fairly, I've seen no indication that Lloyds was aware of Mr E's vulnerabilities to be able to make reasonable adjustments as and where needed.

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