

## The complaint

A company (K) complains that Cater Allen Limited (trading as Cater Allen Bank) didn't protect them from an investment scam.

K's complaint has been referred to us by their Director, Ms L, who is being supported in making her complaint by a representative. But for ease, I'll only refer to K in this decision.

## What happened

K says they were introduced by a broker ('E') to an investment with a company (which I'll refer to here as 'H') in relation to Forex trading. K says both 'E', and 'H's investment scheme, were unregulated.

K says 'H' promised a refund of the capital within 12 months, plus paying 5% interest per month.

K made the following payments as part of the investment with 'H' from their Cater Allen business account:

Date	Amount
12/4/2016	£50,000
11/10/2016	£20,000
13/10/2017	£20,000

K received a receipt from 'H' for each payment and confirmation that the funds had been invested. K says that 'H' fell behind making payments in 2017 – and by 2018 had stopped making payments altogether.

'H' went into liquidation in June 2019. A court hearing on 31 July 2020 found it likely 'H' had been operating as a Ponzi scheme.

On 14 September 2023 K made a complaint to Cater Allen. In short, K said they'd been the victims of three investment scams, with payments having been made between April 2016 and October 2017. One of those investments involved 'H' (the three payments listed above).

K said Cater Allen hadn't done enough to protect them and held them responsible for their loss. K wanted Cater Allen to refund all the lost funds together with 8% interest and £1,000 for the distress and inconvenience caused.

Cater Allen didn't consider K's complaint as it thought it had been made too late. K referred their complaint to the Financial Ombudsman. Cater Allen didn't give us consent to consider the complaint, maintaining its position that K should've raised a complaint sooner. K didn't agree and the matter was ultimately referred to an Ombudsman to decide.

An Ombudsman issued a decision on 19 June 2024. Essentially, she said that the Financial Ombudsman could *only* consider the merits of the complaint in connection to 'H'; and *only* in relation to the £20,000 payment made on 13 October 2017. All other elements of K's complaint, including payments relating to the other investment scams and not listed above, were found to be out of time.

One of our Investigators considered the part of the complaint our Ombudsman decided we could consider but didn't uphold it. In summary, she didn't think the £20,000 payment made

on 13 October 2017 would've appeared suspicious or out of character given K's previous account activity. But even if Cater Allen had intervened, she thought this was unlikely to have made a difference.

Our Investigator also didn't think there was any reasonable prospect of Cater Allen having been able to recover the lost funds at the point it was notified of them being lost to a scam.

K didn't agree. They said previous account activity was also linked to investment scams – and Cater Allen made no attempt to intervene in any of those payments. K maintained Cater Allen had failed to protect them.

K said Cater Allen should've asked questions about the £20,000 payment; and been concerned enough to have applied the banking protocol.

I've been asked to review everything afresh and reach a final decision.

I should at this point reiterate that an Ombudsman has already decided that K's complaint about payments in relation to the two other investments they made payments towards was made too late. The Financial Ombudsman doesn't therefore have the power to consider it.

As I've explained above, only the £20,000 payment towards the investment with 'H' made on 13 October 2017 falls within the Financial Ombudsman's jurisdiction. My review therefore *only* focuses on that payment.

### **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.

Having done so, I've decided not to uphold this complaint. I know this is not the answer K was hoping for and so this will come as a disappointment. I'm really sorry to hear about the situation they've found themselves in, and I can understand why they'd want to do all they can to recover the money they lost. But I need to decide whether Cater Allen can fairly and reasonably be held responsible for K's loss. Overall, I've decided that it can't be. I'll explain why.

I would also like to say at the outset that I have considered this case on its own merits and have summarised it in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. It's simply because my findings focus on what I consider to be the central issues in this complaint – that being whether Cater Allen could've prevented K's loss.

I accept the £20,000 transaction K made was an authorised payment. So, K is presumed liable for the loss in the first instance.

However, I consider that as a matter of good industry practice at the time (and now) that a bank, such as Cater Allen, ought to have taken steps to intervene prior to processing a payment instruction where it had grounds to suspect a payment might be connected to a fraud or a scam. Any such intervention should've been in proportion to the level of risk perceived.

The question then arises whether Cater Allen ought reasonably to have held such suspicions or concerns in relation to K's £20,000 payment — and if so, what might've been expected from a proportionate intervention.

So, taking all of this into account, I need to decide if Cater Allen acted fairly and reasonably in its dealings with K when they made the £20,000 payment on 13 October 2017.

Specifically, whether it should've done more than it did before processing the payment – and if it had, would that have made a difference. I also need to decide if Cater Allen could've reasonably recovered the lost funds.

Looking first at whether the £20,000 payment should've flagged with Cater Allen as suspicious; I agree with our Investigator that it wouldn't likely have triggered Cater Allen's fraud prevention systems. I say that because, by the time this payment was made, K had made two previous payments to 'H' for the same and higher amounts. 'H' would also have been recognised by Cater Allen as an existing payee.

Furthermore, 'K' made four other investment related payments prior to the 13 October 2017 £20,000 payment to 'H'. Those payments were all made within the preceding 12 months and ranged from £986.97 to £100,000.

K has argued that their previous account activity isn't of relevance given those payments were also linked to investment scams and should, in their opinion, have been stopped by Cater Allen. I can appreciate the point K is making, but I'm afraid I can't agree.

I can't comment on whether Cater Allen should've intervened in those previous investment related payments (for the reasons I've already explained). But the fact remains those payments were processed successfully, and K hadn't raised any concerns to Cater Allen about the legitimacy of those payments at the time the £20,000 payment on 13 October 2017 was made.

This then created a pattern of payments which made the £20,000 to 'H' made on 13 October 2017 appear to be in line with K's normal account activity. Therefore, in my opinion, I don't think there was any reasonable basis for Cater Allen to have had sufficient reason to suspect K was at risk of financial harm, thereby prompting them to question K about that payment before processing it.

For completeness, I've thought about whether *any* proportionate interaction by Cater Allen before processing the £20,000 payment would've likely made a difference. And I don't think it would've.

Cater Allen's primary obligation was to carry out K's instruction without delay. It wasn't to concern itself with the wisdom or risks of their payment decision.

In particular, Cater Allen didn't have any specific obligation to step in when it received a payment instruction to protect its customers from potentially risky investments. The investment in 'H' wasn't an investment Cater Allen was recommending or even endorsing.

Cater Allen's role here was to make the payment that K had told it to make. K already decided on that investment – and had made two previous payments towards it more than a year before. And I find that Cater Allen couldn't have considered the suitability or unsuitability of a third-party investment product without itself assessing K's circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request from K (which there was not here) would've gone far beyond the scope of what I could reasonably expect of Cater Allen in any proportionate response to a correctly authorised payment instruction from its customers.

While there may now be significant concerns about the operation of 'H', and the legitimacy of the investment, I must consider what Cater Allen could reasonably have established during a proportionate enquiry to K about this payment back in October 2017. I cannot apply the benefit of hindsight to this finding.

'H' was a genuine company and there was no negative information about 'H' in the public domain until *after* it went into liquidation (June 2019). Having carefully reviewed all the material K has provided about 'H', it appears that allegations that 'H' was operating as a scam *only* came to light during the liquidation process which included a court hearing in 2020. As such, this correspondence or information couldn't have been accessed by either Cater Allen or K at the time the £20,000 payment was made.

And even if Cater Allen had discovered that 'H' and 'E' were unregulated, this type of unregulated investment could be entered into without obtaining regulated financial advice. And might be made available to clients of an unregulated adviser (as K says they were).

So, the status of 'E' and the investment weren't something that would necessarily have indicated 'H' was fraudulent (or that the investment was a scam) at the time K asked Cater Allen to make the payment.

In summary, I've considered everything submitted and the arguments made, but while there may now be concerns about the legitimacy of 'H', everything I've seen indicates that these concerns only began to surface in the public domain after the relevant payment was made by K.

All things considered; I don't think it would've been readily apparent in October 2017 that 'H' might be fraudulent rather than a higher risk investment. I simply don't think Cater Allen could readily have uncovered information – especially through proportionate enquiry in response to a payment - that would've led to significant doubts about the legitimacy of 'H' at that point in time. Neither do I think K could've uncovered such information at the time – they were not at fault here.

To recap, I can only reasonably expect any intervention or enquiries made by Cater Allen to have been proportionate to the perceived level of risk of 'H' being fraudulent. And I don't think, in the circumstances of this complaint, that the £20,000 payment would've been of concern to Cater Allen.

I also don't think that *any* proportionate enquiry in October 2017 would've led to either Cater Allen or K considering 'H' being anything other than legitimate. With that in mind, and all things considered, I'm not persuaded that Cater Allen was at fault for carrying out the relevant payment instruction, or for not preventing K from making the payment.

In terms of trying to recover the lost funds; I'd expect Cater Allen to attempt this at the point it's alerted to the loss. But more than five years had passed by the time K contacted Cater Allen. Furthermore, 'H' had gone into liquidation by this point.

Therefore, I can't say Cater Allen had any reasonable prospect of recovering the funds in 2023 given the passing of time; and because 'H' had gone into liquidation more than four years before.

I have a great deal of sympathy for K and the loss they've suffered. But it would only be fair for me to direct Cater Allen to refund their loss if I thought it was responsible – and I'm not persuaded that this was the case. And so, I'm not going to tell it to do anything further.

## **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask K to accept or reject my decision **before 5 November 2024**.

Anna Jackson  
**Ombudsman**