

The complaint

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

What happened

Mr S says he was introduced to a property development opportunity with a company I'll call H in this decision by someone he had met some years ago. This individual now worked for a different company. Mr S was provided with promotional material and believed H was a reputable company which offered a low risk investment. Mr S contacted someone he knew well and who formerly employed the introducer to get a form of reference and had virtual meetings with the introducer to enquire about the proposition and also had a face to face meeting with an associate of the introducer.

In August 2018 Mr S made a £220,000 payment to H in branch. He understood that he was providing a loan to H and that in return he would receive a 20% return after 12 months. Mr S received a return of £64,000 in August 2019 and two payments of £21,000 in April 2020. As his initial investment was for a year, it would appear that he decided to reinvest.

Mr S says he became concerned when payments weren't received and there was a lack of correspondence from H. He later learned that H appointed administrators in January 2022 and was distressed to discover the liquidator's report indicated there was no likelihood of investors like himself being repaid. Mr S says that H operated a scam.

Mr S instructed a professional representative who wrote a letter of complaint to Lloyds in September 2023.

Lloyds didn't agree to reimburse Mr S' loss. It said Mr S should contact the administrators of H as it had run into financial difficulties and failed. Lloyds said there was no evidence of fraud.

Mr S was unhappy with Lloyds' response and brought a complaint to this service. He said that he was an inexperienced investor who had fallen victim to a sophisticated scam. In saying this, Mr S referred to the fact he wasn't introduced to H by a regulated broker. He also noted that media reports have set out the high rates of commission paid to introducers, which means that given the high interest rates offered, H would need to double its capital to repay the principal alone. Mr S referred to Lloyds' duty of care and said it should have completed additional checks and asked to see correspondence from H and taken into account H's delay in filing accounts.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. She said there was no evidence of a scam but that, even if there was, Lloyds wouldn't be liable for Mr S' loss. This was because she felt that proportionate questioning by Lloyds wouldn't have resulted in the payment not being made. Some of the reasons given were that H was a legitimate company, Mr S had signed a contract, was introduced by a third party he knew, and there was no adverse information about H available at the time the payment was made.

Mr S didn't agree with the investigator's findings, so his complaint has been passed to me to decide. He set out the background to his investment and the impact of the loss.

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.

The payment Mr S made to H pre-dated the inception of the CRM Code. At the time, 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.

Mr S made the £220,000 payment to H in branch. I've not been provided with Mr S' bank statements but consider it very likely the transaction was unusual and out of character. The payment was also made in branch, so Lloyds ought to have asked Mr S questions to understand the purpose of the payment and how Mr S found out about the opportunity, amongst other things. Lloyds hasn't provided any information about the intervention that took place in branch, but it would appear it was satisfied with the responses provided, as the payment was processed.

Even if I were to conclude that Lloyds' intervention didn't go far enough, I can't fairly require Lloyds to reimburse Mr S solely on this basis. 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 in August 2018. 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.

H was a legitimate registered company, other investors were receiving returns, and Mr S was given legitimate looking literature and a contract. And there was nothing in the public domain at the time to suggest there were any issues with H. I'm also mindful that Mr S was introduced to the investment opportunity by someone he had links with in the past and had had meetings with introducers to discuss it.

The concerns Mr S has raised with this service about H have come to light after this transaction was made and after a detailed analysis of how H operated. So I'm not satisfied that if Lloyds asked Mr S further questions about the investment at the time he made the payment it would have raised any concerns or that the payment wouldn't have been made.

Mr S' representative said that Lloyds should have looked at the documentation provided to him and considered H's delay in filing accounts. Whilst Lloyds may have checked that Mr S had documents that looked legitimate, I certainly wouldn't have expected it to read and analyse the full detail or to check that accounts had been filed. Such steps go beyond what I would expect of a bank in fulfilling its obligations to a customer.

I've also noted that Mr S initially received returns. In May 2019 he received £64,000 and in April 2020 Mr S received two payments of £21,000. So there was no indication that anything was amiss until some time after Mr S made the payment I am considering.

Overall, whilst I'm sorry to hear about Mr S' loss and the impact this has had on him, I can't reasonably ask Lloyds to reimburse him.

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 S to accept or reject my decision before 16 December 2024.

Jay Hadfield
Ombudsman