DRN-5167348

The complaint

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

What happened

Mr A says that he was persuaded to make an investment with a company I'll refer to as H in my decision. H was a private rental development company which offered loan notes to investors to raise money for its projects. It was the parent company of a group of companies. Mr A says that sale and rent of H's assets would later generate company income which would be used to pay investors income and capital. In November 2019 Mr A transferred £50,000 to H from two different Lloyds accounts.

H has gone into administration. Mr A believes the investment wasn't genuine and that he is the victim of a scam. He complained to Lloyds in October 2023 and said it failed in its duty of care to protect him. He cited the 'Quincecare Duty' and said Lloyds had reasonable grounds for suspecting Mr A's funds were being misappropriated and should have stopped the payments.

Lloyds didn't agree to reimburse Mr A. It said H offered a high risk investment that had failed and had subsequently been placed into administration. Lloyds noted that Mr A had received returns into both accounts the payments were made from and there was insufficient evidence to consider his claim under the Contingent Reimbursement Model Code ('CRM Code').

Mr A wasn'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. She 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 she couldn't ask Lloyds to consider Mr A's complaint under the CRM Code.

Mr A didn't agree with the investigator's findings, so his complaint has been passed to me to decide. The main point made was that H and its subsidiaries were operating a very sophisticated scam. Mr A's response was lengthy, so I have summarised what I consider to be his main points, although I have carefully considered everything he has said. Mr A referred to points made to this service in other cases brought by his representative (but not in Mr A's) as follows:

- The Investment Memorandum provided by H included incorrect, misleading and vague information to induce people to invest.
- H has used a number of techniques to conceal what was really happening to investor funds. For example, the accounting period was changed four times in the ten years H was active. And, in this period, only seven sets of accounts were filed, and small company accounts were filed which contradicts information provided in the Investment Memorandum.
- High commissions of up to 35% were paid to introducers which is indicative of misappropriation of investor funds and is a hallmark of a Ponzi scheme. The payment

of such commissions also makes the promised rate of return near impossible to meet. And these commissions weren't disclosed to investors.

- Two separate firms of independent auditors resigned. One resigned prior to accounts being filed as they were not provided with sufficient information to complete their audit, and the other after issuing an adverse opinion.
- There was a deliberate movement of assets to ensure debts weren't paid.

Mr A also raised the following points:

- By August 2009 the director who was the face of H was declared bankrupt following a petition for bankruptcy filed against him. His new venture in H followed the demise of other companies he was a director of leaving money owed to creditors. This director was declared bankrupt for the second time in 2023. Information was also provided in relation to other directors of subsidiaries of H.
- High commissions paid to introducers weren't disclosed to investors.
- H raised £123 million from investors but only spent £38 million on property acquisitions. Mrs A says the remaining funds weren't used for their intended purpose.
- H engaged in fraudulent financial activities, such as registering illegitimate charges against properties. In doing so, H has breached a duty under the Land Registration Act 2002 and committed a criminal offence.
- Company accounts were inflated.
- At least six companies relating to H took out bounce back loans. One such loan was deposited into the personal account of a director of H.
- Numerous companies connected to H failed to file accounts for many years with the aim of obscuring their true financial position. And accounts that were filed showed fanciful figures.
- Projects which were said to be profitable in fact incurred losses.
- H said it failed because of the pandemic but evidence shows H had defaulted on loan payments before it, and the collapse was more likely related to regulatory changes including the FCA's mini bond ban.
- At least 48 companies were transferred out of the H group prior to liquidation in a deliberate attempt to shelter assets from creditors.
- Directors of H haven't cooperated with insolvency practitioners of H and subsidiary companies because they are hiding information which would show they were operating a Ponzi scheme.
- The structure and methods used by H closely mirrored other known scams and directors of H have links with others who have operated such schemes.
- Ponzi schemes often engage in genuine activity early on to build credibility.

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.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam, except in limited circumstances. But the CRM Code only applies if the definition of APP scam, as set out in it, is met.

I have considered whether Mr A's claim falls within the scope of the CRM Code, which defines an APP scam as:

...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.

It is for Mr A to demonstrate that he is the victim of an APP scam.

To decide whether Mr A is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Mr A thought this purpose was legitimate.
- The purpose the recipient (H) had in mind at the time of the payments, and whether this broadly aligned with what Mr A understood to have been the purpose of the payments.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

Mr A thought he was investing in a property development company. I haven't seen anything to suggest that he didn't consider this to be a legitimate purpose.

In reaching an answer on what purpose H had in mind, I've considered the wider circumstances surrounding H and any linked businesses. The key information to this case is:

- H completed three different development projects. H also worked on other developments which it then sold to developers when it experienced financial difficulties. The completion of three development projects is strongly indicative of a legitimate business carrying out the activities I would expect of it. Mr A's own figures show that substantial funds were used for the intended purpose.

  I appreciate that Mr A believes H completed these developments to draw in investors. But no persuasive evidence has been put forward to make me believe this is the more likely scenario.

- Points raised by Mr A are largely based on assumptions and indicate poor business and financial management but don't go far enough to bring his claim within the scope of the CRM Code. Whilst H may have, for example, misrepresented certain information, failed to cooperate with administrators, not filed accounts and paid high commissions to introducers, there is currently no evidence to say this was done with the intention of scamming investors. A lot of adverse inferences have been drawn.

- I've not seen anything from the administrators of the company to suggest the company was operating a scam or that the transactions carried out by the company

and connected companies were done with any intention other than putting investors' funds towards development projects. Whilst transactions have been investigated, there is currently no evidence that funds weren't used for the intended purpose.

- I also haven't been provided with evidence following an investigation by any other external organisation which concludes that H intended to use Mr A's funds for a different purpose.

Having carefully considered all the evidence provided to me, I'm not persuaded there is sufficient evidence to conclude that the purpose H had in mind when it took payments from Mr A was different to Mr A's. So, I consider Lloyds acted fairly in not considering Mr A's complaint under the CRM Code.

If material new evidence comes to light at a later date Mr A can ask Lloyds to reconsider his fraud claim.

Mr A referred to the Quincecare Duty (and to a 2022 case that post dates the payment Mr A made) and said Lloyds should not have facilitated a payment when it had reasonable grounds to believe the payment was an attempt to misappropriate funds. He said Lloyds should have known there was an attempt to misappropriate funds here because unregulated brokers who were paid high rates of commission were involved with H. These introducers said the investment couldn't fail. There were also a large number of companies involved in the H group, some of which were used to pay 'loans' to directors.

I don't agree that at the time Mr A made his payment, Lloyds should have refused to process it. I need to consider what was known about H at the time rather than information that has come to light later. At the time Mr A invested, H was a legitimate company, other investors were receiving returns, and Mr A 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. Points raised by Mr A, including the commission paid to introducers, have come to light after Mr A's transactions were made and after a detailed analysis of how H operated. So I'm not satisfied that in November 2019 Lloyds had reasonable grounds to believe the payments were an attempt to misappropriate funds.

I'm really sorry to disappoint Mr A, as I know he has lost a significant amount of money. But I'm not satisfied that I can fairly ask Lloyds to refund him based on the evidence that is currently available.

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 A to accept or reject my decision before 8 January 2025.

Jay Hadfield
Ombudsman