DRN-5180618

The complaint

Mr H complains that Lloyds Bank PLC ('Lloyds') hasn't refunded the money he believes he lost to an authorised push payment ('APP') scam.

What happened

The circumstances of the complaint are well-known to both parties, so I don't intend to repeat these in detail here. However, I'll provide a brief summary of what's happened.

Mr H entered into several investment contracts with a firm called Buy 2 Let Cars Ltd ('B2LC'). Mr H made the following payments to B2LC:

1	30/07/2018	£70,000
2	25/03/2019	£140,000
3	22/05/2019	£13,000
4	23/05/2019	£15,000
5	22/05/2020	£20,000
6	26/05/2020	£25,000
7	27/05/2020	£25,000
8	21/09/2020	£126,000

Most of the payments funded Mr H's own investment contracts with B2LC. However, payments two and eight included investment funds on behalf of Mr H's wife – whom I'll refer to as 'Mrs H' – who entered into her own investment contracts with B2LC, which were separate from Mr H's own investment contracts.

Mr H was receiving returns from B2LC from August 2018 until January 2021. However, in February 2021, the returns stopped and shortly afterwards B2LC entered administration. Mr H now believes he has fallen victim to an APP scam.

Mr H reported the situation to Lloyds, but Lloyds didn't take any action. Lloyds considered B2LC to have been a failed investment by a genuine company and it didn't think there was sufficient evidence to show B2LC had intended to defraud Mr H at the time the payments were made. Lloyds said the situation was a civil dispute between Mr H and B2LC and not an APP scam. So, Lloyds declined to reimburse Mr H's loss.

Unhappy with Lloyds' response, Mr H referred his concerns to this service. Mr H has confirmed that he's only complaining about the payments he made to B2LC from 22 May 2020 onwards – so payments five to eight, totalling £196,000. Since Mr H's complaint was referred to this service, the Serious Fraud Office ('SFO') has charged two of B2LC's directors with fraud – and this decision was published on 19 January 2024.

Our Investigator upheld Mr H's complaint. They thought B2LC was, more likely than not, an APP scam at the time the payments were made and they recommended a refund of the payments made from 22 May 2020 onwards, less any returns Mr and Mrs H had received for those specific payments, plus interest.

Mr H accepted our Investigator's opinion, but Lloyds didn't agree. Lloyds said it wasn't appropriate to conclude B2LC was a scam as the charges against B2LC's directors haven't been proved in a court of law.

As an agreement couldn't be reached, the complaint has been passed to me to decide.

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 broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (in this case, the 2017 regulations) and the terms and conditions of the customer's account.

It's not in dispute here that Mr H made the payments and authorised Lloyds to send the funds to B2LC. So, under the Payment Services Regulations 2017, the starting position here is that Mr H is responsible for the payments (and the subsequent loss). However, where a payment has been made as the consequence of an APP scam, it may be fair and reasonable for the sending firm to reimburse their customer even though they authorised the payment.

Although Mr H made eight payments to B2LC, he's only complained about the final four payments. That's because, at the time of those payments, Lloyds was signed up to the Lending Standards Board Contingent Reimbursement Model ('CRM') Code. So, for clarity, my decision has only addressed those specific payments that Mr H has complained about.

The CRM Code required firms to reimburse customers who had been the victims of APP scams, in all but a limited number of circumstances. However, customers are only covered by the CRM Code where they have been the victim of an APP scam – as defined by the CRM Code.

Lloyds has argued that it's inappropriate for this service to make a reimbursement decision when the directors of B2LC haven't been found guilty of fraud. Lloyds thinks a reimbursement decision shouldn't be made until *after* the criminal proceedings have reached a conclusion, at which time it will be clear whether the CRM Code is a relevant consideration in Mr H's circumstances.

As the CRM Code doesn't require a criminal test to be met before a reimbursement decision is made, I don't consider it's appropriate to wait until after the court case to make a decision here. So, I've carefully considered the available evidence to decide if Mr H has, more likely than not, been the victim of an APP scam.

Under DS1(2)(a) of the CRM Code, an APP scam is defined as:

> *(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*"

The purpose of a payment forms part of the CRM Code definition of an APP scam. As such, the reason for the payments Mr H made is a relevant consideration when investigating whether the CRM Code applies in these circumstances or not. For me to say the CRM Code applies in this case, I need convincing evidence to demonstrate Mr H was dishonestly deceived about the very purpose of the payments he made.

Mr H believed that the funds he sent would be used by B2LC to buy vehicles – and these would be secured in his favour by way of a charge registered at Companies House. An FCA regulated company – Raedex Consortium Limited ('Raedex') – would lease the vehicles out to third parties. Mr H would then receive a monthly return on his investment, with a final, larger payment being paid at the end of the agreement.

I haven't seen any evidence to suggest Mr H didn't think this was a genuine investment opportunity. So, I've thought about whether B2LC was, more likely than not, fraudulent at the time the payments were made.

The evidence suggests that B2LC didn't intend to act in line with the purpose for the payments it agreed with Mr H. I've seen no evidence to suggest B2LC used Mr H's funds to purchase any vehicles or that any vehicles B2LC owned were secured by way of a charge registered at Companies House in Mr H's favour. That doesn't mean this didn't happen, but the additional evidence I've seen suggests it's more likely than not that this didn't happen.

The FCA supervisory notice to Raedex (the company that was meant to be leasing out the vehicles Mr H's funds were intended to be used to purchase) said Raedex – and the other companies involved – had entered into approximately 1,200 leases. So, there should have been approximately 1,200 vehicles secured by a charge at Companies House. However, only 69 vehicles (around 5% of the number of leases) had a charge registered at Companies House, suggesting that the majority of vehicles weren't secured in the way the customers – including Mr H – were told.

The FCA conducted a sample of the leaseholder list, checking 10% of the listed vehicles against the DVLA database, identifying discrepancies between the business model and the vehicle inventory, including:

- more second-hand vehicles than the business model would allow for;
- leased vehicles not appearing on the DVLA database; and
- leases being entered into significantly *before* the vehicles were actually put on the road.

The FCA considered that Raedex's valuation of the vehicles it owned had been significantly inflated – over twice the realistic worth of the vehicles, meaning Raedex's assets were significantly less than its liabilities.

At the time B2LC entered administration, it owned 596 vehicles, despite entering into 3,609 loan agreements. So, there was less than one vehicle owned for every six loan agreements.

I'm satisfied that the evidence shows B2LC wasn't carrying out the key aspects of its agreement with investors (including Mr H). I've seen nothing to indicate a charge was registered in Mr H's name for any of his agreements or that any vehicles were purchased with the funds he invested for himself and Mrs H. So, it seems more likely than not, that Mr H's funds weren't used for the intended purpose.

Whilst B2LC has, more likely than not, failed to act in line with the intended purpose, for this to be treated as an APP scam, Mr H needed to have made his payments as the result of dishonest deception. The SFO said the directors of B2LC have been accused of providing investors with false information and encouraging people to invest whilst knowing the investments weren't backed by the cars they'd been promised.

Taking the SFO's comments – along with the other evidence available – into consideration, I'm satisfied that Mr H was, more likely than not, enticed into investing as the result of dishonest deception. As a result, I think the payments Mr H made on or after 22 May 2020 were made as the result of an APP scam and as a result, the CRM Code is a relevant consideration here. So, I've thought about whether any of the exceptions to reimbursement has been established, which wouldn't entitle Lloyds to decline reimbursement under the CRM Code.

Mr H has explained that prior to making his first investment with B2LC in July 2018, he saw an advert for it in a national newspaper. After contacting B2LC for further information, he was invited to attend a seminar where the investment opportunity was explained to him. He was also able to meet the directors in person, along with existing investors.

Mr H was able to confirm that Raedex was an FCA regulated firm and B2LC was registered with Companies House. Mr H researched B2LC and its directors online and found no adverse information.

Mr H was expecting a return of approximately £4,620 for each vehicle he invested in. I don't think that's an unrealistic rate of return or that it was too good to be true.

After satisfying himself that B2LC was a good investment, Mr H made a payment in July 2018. He began receiving his monthly return payment the following month and this continued until January 2021.

Mr H subsequently made further investments with B2LC in March and May 2019 and also funded Mrs H's investment with B2LC. Both Mr and Mrs H began receiving monthly interest payments when they were supposed to, and these continued until January 2021.

So, at the time Mr H sent further funds to B2LC in May and September 2020, he had been receiving returns for approximately two years and there was no adverse information available at the time suggesting B2LC wasn't a genuine investment opportunity. Raedex continued to be authorised and regulated by the FCA and there was nothing to indicate Mr H was falling victim to a scam at the time the payments were made or that he wouldn't receive the expected returns from B2LC.

Based on Mr H's previous experience investing with B2LC (which appeared to have been successful over a two-year period), the sophistication of the scam (including the involvement of an FCA authorised firm) and lack of adverse information suggesting B2LC was anything other than a genuine investment opportunity, I'm persuaded Mr H had a reasonable basis for believing B2LC was legitimate.

Lloyds hasn't been able to confirm if it provided Mr H with any warnings about the relevant scam payments in May 2020. So, it can't argue that Mr H shouldn't be reimbursed under the CRM Code on the basis that he ignored an effective warning about those payments.

However, it says Mr H would've had to complete a high-value checklist for the final payment of £126,000 in September 2020. Lloyds hasn't been able to provide a copy of the document Mr H completed, but it has provided a sample. Having reviewed this, I'm not persuaded any of the information contained within that document would've resulted in Mr H discovering that B2LC wasn't a legitimate investment opportunity and so I can't say that Lloyds can refuse reimbursement under the principles of the CRM Code on the basis that Mr H ignored an effective warning about that payment.

As a result, I'm not satisfied that any of the reasons Lloyds can decline to reimburse Mr H under the CRM Code apply in these circumstances and Lloyds should now reimburse Mr H's outstanding loss.

Putting things right

Mr H made payments to B2LC on or after 22 May 2020, totalling £196,000. However, he and Mrs H have received some of those funds back as monthly returns on their investments. So, it would be fair and reasonable for Lloyds to deduct those returns, to calculate Mr H's outstanding loss.

Based on the evidence that was available to Lloyds when Mr H reported his B2LC payments, I don't think Lloyds reasonably could've known that he had been the victim of a scam. So, I don't think it was incorrect to initially treat the situation as a civil dispute.

However, once the SFO published the outcome of its investigation into B2LC, there was sufficient evidence available for Lloyds to conclude Mr H had, more likely than not, been the victim of an APP scam and it should've reimbursed him. Under the CRM Code, Lloyds should've done this within 15 days of the SFO publishing its outcome. So, in addition to refunding Mr H's outstanding loss, Lloyds should also pay 8% simple interest per year on the refund, from 15 days after the SFO published its outcome, until the date of settlement.

Claims made to the Financial Services Compensation Scheme

The Financial Services Compensation Scheme ('FSCS') is accepting customer claims submitted to it against Raedex. More information about FSCS's position on claims submitted to FSCS against Raedex can be found here: https://www.fscs.org.uk/making-a-claim/failed-firms/raedex/

The FSCS is also aware that we have issued recent decisions upholding complaints against banks related to the Raedex investment scheme. Whether the FSCS pays any compensation to anyone who submits a claim to it is a matter for FSCS to determine, and under their rules. It might be that Raedex has conducted activities that have contributed to the same loss Mr H is now complaining to us about in connection with the activities of Lloyds.

As I have determined that this complaint should be upheld Mr H should know that as they will be recovering compensation from Lloyds, they cannot claim again for the same loss by making a claim at FSCS (however, if the overall loss is greater than the amount they recover from Lloyds they may be able to recover that further compensation by making a claim to FSCS, but that will be a matter for the FSCS to consider and under their rules. Further, if Mr H has already made a claim at FSCS in connection with the payments he has complained to this service about, and in the event the FSCS pays compensation, Mr H is required to repay any further compensation he receives from their complaint against Lloyds, up to the amount received in compensation from FSCS.

FOS and FSCS operate independently, however in these circumstances, it is important that FSCS and FOS are working together and sharing information to ensure that fair compensation is awarded. More information about how FOS shares information with other public bodies can be found in our privacy notice here: https://www.financial-ombudsman.org.uk/privacy-policy/consumer-privacy-notice

Double recovery

In order to avoid the risk of double recovery Lloyds is entitled to take, if it wishes, an assignment of the rights to all future distributions under the administrative process *before* paying the award.

My final decision

For the reasons explained, I uphold this complaint and Lloyds Bank PLC should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 18 April 2025.

Liam Davies
Ombudsman