DRN-5180630

The complaint

H, a limited company, represented in this complaint by its director, Mr H, complains that Cater Allen Limited won't refund the money lost when Mr H fell victim to a scam.

What happened

Mr H saw an advert about an opportunity to invest in a company which leased cars – Buy2Let/Raedex Consortium Ltd - I'll refer to these companies as B and R. He was told his investment would be used to buy a vehicle which would then be leased out. Mr H was told he'd receive regular returns on his investment, and then an exit payment (the remainder of the invested capital plus interest) when the vehicle was returned by the lessee. Mr H made an initial investment – via H's account – in 2016, and appears to have successfully completed that investment cycle, apparently receiving the returns he had been promised. Mr H decided to invest again, and, in July and August 2020, he made two payments for £14,000 each from H's Cater Allen account to fund the investment.

Mr H received the expected monthly returns until January 2021, but the payments then stopped. Mr H became concerned and so contacted Cater Allen to report the payments he had made to B in 2020 as a scam and to ask it to refund the money he had lost.

Cater Allen investigated but said Mr H had lost H's money due to a failed investment, rather than as a result of a scam, so it declined to refund the money lost. Mr H wasn't satisfied with Cater Allen's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They said the evidence showed there was a clear discrepancy between the payment purposes Mr H and B had in mind, so they felt this met the definition of a scam as per the Lending Standards Boards' Contingent Reimbursement Model Code (the Code). They also said they were satisfied Mr H had a reasonable basis for believing the investment was legitimate. So, they recommended Cater Allen refund H's losses from the 2020 payments in full, plus interest.

Cater Allen disagreed, it has said it believes any decision regarding the outcome of Mr H's complaint should be paused as it does not feel we can fairly and reasonably define H's actual loss at this stage and so risk H being over-reimbursed.

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 and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

Cater Allen is a signatory of the Lending Standards Boards Contingent Reimbursement Model Code (the Code). This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the Code where they have been the victim of a scam – as defined in the Code.

Is it appropriate to determine Mr H's complaint now?

The Serious Fraud Office (SFO) had been carrying out an investigation into the car leasing company and several connected companies. But that investigation concluded on 19 January 2024 when the SFO published the outcome of the investigation, which included the charging of R's former company directors with fraud, on its website.

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations and/or related court cases. But that isn't necessarily so in every case, as it will often be possible to reach conclusions on the main issues on the basis of evidence already available. And I'm conscious that any criminal proceedings that may ultimately take place have a higher standard of proof (beyond reasonable doubt) than I'm required to apply.

The Lending Standards Board has said that the CRM Code doesn't require proof beyond reasonable doubt that a scam has taken place before a reimbursement decision can be reached. Nor does it require a firm to prove the intent of the third party before a decision can be reached. So, in order to determine Mr H's complaint I have to ask myself whether I can be satisfied, on the balance of probabilities, that the available evidence indicates that it's more likely than not that Mr H was the victim of a scam rather than a failed investment.

I'm required to determine complaints quickly and with minimum formality. In view of this, I don't think it would be appropriate to wait to decide Mr H's complaint unless there is a reasonable basis to suggest that the outcome of the related court case may have a material impact on my decision over and above the evidence that is already available.

I'm aware that any subsequent court action regarding R's actions has the potential to lead to H being compensated twice for the same loss, i.e. by Cater Allen and by the courts. But I don't know how likely it is that any funds will be recovered as part of those proceedings.

Similarly, I'm aware that there is an ongoing administration process – including liquidation. This might result in some recoveries; but given this would initially be for secured creditors, I think it's unlikely that victims of this scheme (as unsecured creditors) would get anything substantive. That said, in order to avoid the risk of double recovery Cater Allen is entitled to take, if it wishes, an assignment of the rights to all future distributions under the administrative process before paying the award.

I'm also aware that the Financial Services Compensation Scheme (FSCS) is accepting customer claims submitted to it against Raedex Consortium Ltd. 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 Consortium Ltd has conducted activities that have contributed to the same loss Mr H is now complaining to us about in connection with the activities of Cater Allen.

As I'm minded to uphold this complaint for the reasons given below, Mr H should

know that as he will be recovering compensation from Cater Allen, he cannot claim again for the same loss by making a claim at FSCS (however, if the overall loss is greater than the amount recovered from Cater Allen, he 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 this matter, and in the event the FSCS pays compensation, Mr H is required to repay any further compensation he receives from his complaint against Cater Allen, up to the amount received in compensation from FSCS.

FOS and FSCS operate independently, however in these circumstances, it's 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.financialombudsman.org.uk/privacy-policy/consumer-privacy-notice

Whilst the FSCS may be taking on these cases against R as a failed unregulated investment, it doesn't automatically follow that this was not a scam. This is not something that the FSCS would make a finding on before considering those claims.

Cater Allen has suggested that the FSCS route should be explored before relying on a voluntary reimbursement scheme. I should explain that we do sometimes dismiss complaints as better suited to another scheme where appropriate – for example, if the FSCS has agreed to take on claims. However, that is usually only in situations where the complaints brought to us are against the same business the FSCS has opened claims about. That isn't the case here. The complaints we are considering are against signatories of the CRM Code, for nonpayment of a claim, whereas the claims the FSCS have opened are against Raedex, an entirely different entity.

The FSCS is the fund of last resort, and so it should be the final place a person goes to for redress. Therefore, we would not necessarily expect customers to go to the FSCS before going to their bank. Furthermore, our service has an obligation to investigate complaints which are brought to us.

As Cater Allen can ask Mr H to undertake to transfer to it any rights there may be to recovery elsewhere, I'm not persuaded that these are reasonable barriers to it reimbursing Mr H in line with the CRM Code's provisions.

So, in summary, the SFO has reached an outcome on its investigation, and I don't think it's fair or necessary to wait until the outcome of the related court case (which is scheduled to commence in almost two years). Nor do I consider it's necessary to wait for the administration process to complete or wait for a claim with FSCS to be made. So, I don't think it would be fair to wait for other investigations to complete before making a decision on whether to reimburse H.

Has Mr H been the victim of a scam, as defined in the Code?

The Code defines an APP scam as a payment made "to another person for what they believed were legitimate purposes, but which were in fact fraudulent."

So, I need to consider whether the purpose Mr H intended for the payments he made was legitimate, whether the purposes he and B had in mind for the payments were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of B.

I'm satisfied Mr H made the payments that are the subject of this complaint with the intention of investing with B. He thought his funds would be used to buy a vehicle which would then be leased out – by R, a company related to B and which was regulated by the Financial Conduct Authority (FCA) – and that he would receive regular returns on his investment. Nothing I've seen suggests to me that Mr H didn't think this arrangement was a legitimate investment.

But I think the evidence I've seen does suggest that B didn't intend to act in line with the purpose for the payments it had agreed with Mr H. From what we know of how B operated, investors were told the vehicles they funded would be secured in their favour by way of a charge registered at Companies House. But the FCA's supervisory notice to R said that, while the various companies involved had around 1,200 customers and had entered around 1,200 leases, they had only registered 69 vehicles at Companies House – suggesting that the vast majority of the vehicles funded weren't secured in the way B's investors were told they would be.

The FCA also checked a sample of the vehicles the companies held against the DVLA database, and found many more discrepancies:

- more of these vehicles were second-hand than the stated business model suggested or would support,
- a number of leases started significantly before the vehicles were put on the road, and
- some vehicles were not found on the database at all.

The FCA also said it considered the companies' valuation of the vehicles it held was unrealistic and that the group's liabilities significantly exceeded its assets.

A report by the administrators of R also said that the total number of known loan agreements was 3,609, relating to 834 investors, but that the number of vehicles held by the group at the appointment of the administrators was 596 – or less than one car for every six loan agreements.

I think the evidence shows the company was not carrying out key aspects of its agreement with investors on a large scale. There's also no evidence to show that any charge was specifically registered in Mr H's (or HM's) favour over any vehicle following his investment. So, a significant aspect of what he would have agreed with B does not appear to have been carried out.

The SFO has also made it clear that the former company directors are accused of providing those who invested with false information and encouraging people to invest whilst knowing that investments were not backed up by the cars they had been promised.

With all this in mind, I'm satisfied that the purpose that B intended for the payments Mr H made in 2020 wasn't aligned with the purpose Mr H intended for those payments. And that the discrepancy in the alignment of the payment purposes between Mr H and B was the result of dishonest deception on the part of B. It follows that I consider the circumstances here do meet the definition of a scam as set out in the Code.

Is H entitled to a refund under the Code?

As previously noted, Cater Allen is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one I'm satisfied Mr H

fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the Code, a firm may choose not to reimburse a customer if it can establish that the customer made the payment without a reasonable basis for believing that:

- the payee was the person the customer was expecting to pay;
- the payment was for genuine goods or services; and/or
- the person or business with whom they transacted was legitimate

There are further exceptions within the Code, but these don't apply here.

And, from what I've seen, the information available at the time of Mr H's payment would not have indicated to him that B was acting illegitimately. R, which carried out the leasing activity on B's behalf, was an FCA regulated company. The company literature that appears to have been available at the time appeared professional, as did the documents Mr H received. B had been operating for several years at the time Mr H invested in 2020, and Mr H had previously invested successfully in the scheme. So, I don't think there was anything about the 2020 investment that should have caused Mr H significant concern. I therefore consider that Mr H did have a reasonable basis for believing the 2020 investment was legitimate.

With this in mind, I don't think Cater Allen has established that any of the exceptions to reimbursement under the Code apply here, and so it should refund the money Mr H lost from those payments in full.

Redress

Cater Allen has noted that there can be huge differences in the overall loss or gain to customers depending on whether the whole period of the investment is reviewed, or just the period where the CRM code applied. But, in this case, I'm satisfied that Mr H's previous investment cycle was completed prior to the 2020 investment being made. I've not seen anything to show that there was any crossover between the two investments. I therefore consider it is fair to consider the 2020 investment in isolation.

So, the starting position is that Cater Allen should refund H's losses from the 2020 investment in full. But as H received monthly interest payments back from R, I think it would be fair for these payments to be deducted from the amount Cater Allen has to refund. Cater Allen has questioned whether H or Mr H may have received returns via other accounts. But Mr H hasn't made us aware of any further returns – and while I don't have a means of accessing all of the accounts held by Mr H or by H, I've seen no evidence to suggest that any further returns were received. So, on that basis, I believe the loss to be £24,524.32 – representing the payments to B of £28,000 minus the returns received of £3,475.32.

Cater Allen has also made reference to the absence of a forensic accounting review. But I don't consider this necessary to determine that Mr H has been the victim of a scam or to be satisfied that he has accurately reported H's losses.

I've also thought about whether Cater Allen could have taken any steps to protect Mr H from this scam. But I don't consider that any reasonable action I would've expected Cater Allen to take would have prevented Mr H making these payments, or enabled it to recover any of H's funds once he told it of the scam. I say this as I don't think any of the information I would've reasonably expected it to have uncovered at the time of the payments would've brought the scam to light. I also don't think it was unreasonable for Cater Allen to initially decline Mr H's

claim, as it wasn't wholly clear from the evidence available at the time that this was a scam. Cater Allen also could not have recovered Mr H's funds at the time the scam was reported given that B had already entered liquidation by that stage.

But I do think Cater Allen should have responded to Mr H's claim and refunded H's losses under the Code within 15 days of the SFO publishing the outcome of its investigation. And so I think Cater Allen should now pay 8% interest on the refund, from 15 days after the SFO published its outcome on 19 January 2024, until the date of settlement.

Putting things right

To resolve this complaint RBS should now:

- Refund £24,524.32 to H; and

- Pay 8% interest on that refund, from 15 days after 19 January 2024 until the date of settlement

In order to avoid the risk of double recovery Cater Allen 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

I uphold this complaint. Cater Allen Limited should now put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 13 February 2025.

Sophie Mitchell
Ombudsman