DRN-5226253

The complaint

Mr W is unhappy that Lloyds Bank PLC ("Lloyds") will not refund the money he lost as the result of an authorised push payment (APP) scam.

Mr W has brought his complaint through a representative, for ease of reading I will refer solely to Mr W in this decision.

What happened

Mr W says in 2017, he was contacted out of the blue by a company that I will call B. B persuaded Mr W to invest £18,000 into a mini-bond.

Mr W says he never received any return on his investment and found out that B had gone into liquidation. Some years later he reported to Lloyds that he believed he had been the victim of a scam.

Lloyds rejected his refund claim saying it had made no error, the payment did not match fraud trends and was not deemed suspicious and B was a failed investment firm, rather than a scam.

Mr W brought his complaint to this service saying Lloyds should have intervened and if it had, this would have stopped him from sending funds to B.

Our investigator did not uphold Mr W's complaint. She said that there was insufficient evidence to show that B were a scam firm and even if Lloyds had intervened, she thought that Mr W would have sent the funds to B anyway.

Unhappy with this assessment, Mr W asked for an ombudsman's review. His representative outlined in detail why this investment was potentially a scam. They then said the transaction was unusual for Mr W and the bank should have intervened. They argued that had it done so effectively, it would have prevented the scam.

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.

Firstly, I should say that Mr W's representative has gone into great detail as to why they believe that Mr W should receive a refund of the transaction he made. I will not be individually addressing these. The reason for this is that I've focussed on what I think are the key issues here, which our rules allow me to do.

This approach simply reflects the informal nature of our service as a free alternative to the courts. And I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome in this case. So, if there's something I've not mentioned, it isn't because I've ignored it, and I must stress that I've considered everything that has been said, before reaching my decision.

The first question we typically look to resolve in cases such as these is whether the company involved, so here company B, was actually operating a scam.

Not every complaint referred to us as an investment scam is in fact a scam. Some cases simply involve high-risk investments that resulted in very disappointing returns or losses. Some investment companies may have promoted products, like the mini-bond that is the subject of this dispute, which were not regulated by the FCA—using sales methods that were arguably unethical and/or misleading. However, whilst customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

Banks and other Payment Services Providers have duties to protect customers against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering. But when simply executing authorised payments, they do not have to protect customers against the risk of bad bargains; risky or unwise investments; or give investment advice.

Company B was a legitimate private limited company, incorporated in September 2014. It traded for a number years, until it went into administration in 2019. Mr W's representative has provided detailed information that they say evidences the bond he purchased was likely part of a scam. But I don't think that there is sufficient evidence to say this at this time.

However, this does not mean I can't consider whether Lloyds ought to have identified Mr W's payment as being out of character and therefore intervened before processing it. And if so, I then need to decide had it done so, what would the most likely outcome have been.

This must be based on what was known publicly and by Mr W about the investment opportunity at the time.

There's no dispute that Mr W made and authorised the payment. Mr W knew why he was making the payment. At the stage he was making this payment, he believed he was investing in a property bond. I don't dispute Mr W didn't receive the return (or his capital) on the investment that he was expecting to receive, but I remain satisfied the transactions were authorised under the Payment Services Regulations.

It's also accepted that Lloyds has an obligation to follow Mr W's instructions. So in the first instance Mr W is presumed liable for his loss. But there are other factors that must be taken into account.

To reach my decision I have taken into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time. To note, as the payment pre-dates the Contingent Reimbursement Model (CRM) code its principles do not apply in this case. This means I think that Lloyds should have:

- been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.

- had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which financial institutions are generally more familiar with than the average customer.

- in some circumstances, irrespective of the payment channel used, taken additional steps or made additional checks before processing a payment, or in some cases declined to make a pay

In this case, I think Mr W's payment ought to have triggered further checks by Lloyds because its size was unusual compared to the payments that Mr W usually made. So it should have contacted Mr W to ask for some detail about the payment before processing it.

This means I need to decide if Lloyds's intervention would have made a difference to Mr W's decision to send the payment. On balance I don't think it would. I say this based on the questions Lloyds should have asked given the features of investment scams at the time – but taking into account that it had no duty to give investment advice.

Mr W's testimony about the sale of the bond is not particularly detailed. His representative says it was initiated from a cold call, which could be the sign of a scam, but the remaining features appeared to be a legitimate firm. I have seen no evidence there was urgency placed on Mr W to invest quickly indeed it seems as if there was week's delay between the application being completed and the funds being sent. The quoted rate over the term of the bond was 8.75%. I don't think that rate of return was so high or implausible that the rate of return on its own should have caused concern. If Lloyds had been concerned that Mr W lacked detail about his investment, he would most likely used the promotional material he had it at the time - to satisfy its questions.

There was not a requirement for companies issuing mini-bonds to raise money to be authorised by the FCA. So the fact company B was not regulated would not have caused Lloyds any particular concern.

And there is no record of any published regulatory warning about company B in 2017. So it seems at the time of the event, there would have been no public information that Lloyds ought to have been aware of and reacted to. Or indeed that Mr W would have come across had Lloyds suggested he first complete more checks.

It's also notable there were no warnings at that time about mini-bonds as a product. The FCA published more information about mini-bonds in May 2019 and highlighted some risks involved with investing in such instruments. But this information was published nearly two years after Mr W made his payment.

The FCA temporarily banned the mass marketing of speculative mini-bonds to UK retail consumers from January 2020, whilst it consulted on permanent rules. It made the temporary ban permanent the following year. So I don't think Lloyds could have been reasonably aware of this given that this information was published well after Mr W made his payment.

I note Mr W's representatives' comments that the investment in question had the hallmarks of an Unregulated Collective Investment Scheme ("UCIS"). While I think the mini-bond was likely to have shared a similar level of investment risk with that posed by UCIS investments, legally this appears to have been a different type of investment. So, I can't agree that Lloyds would have readily identified it as a UCIS.

I also note that Mr W's representative has explained that Lloyds should have issued Mr W a warning that B could potentially be a scammer and that scammers are targeting people in his age group. But I don't think that the evidence from the time would have merited such a warning or that it would be reasonable for every person in a particular age group to be warned by their bank whenever they make a large transaction when the funds appear to be going to a legitimate firm. They have also explained that, had this happened, Mr W would have sought independent financial advice and this would have dissuaded Mr W from investing. I don't think that Lloyds needed to provide such a warning and even had they suggested he seek financial advice, it seems unlikely that he would've done so. I say this because the documentation provided by Mr W from B, says that he should do this very thing, and he chose not to do so.

Overall, I don't think a proportionate level of questioning by Lloyds would have led it to conclude Mr W was at risk of being scammed and that it should not process the payment. And I don't think such an intervention would have stopped Mr W from investing.

I have then thought about whether Lloyds did what this service would expect it to do to recover the funds, once Mr W's made a claim. Given the length of time that had passed I'm satisfied that recovery from the receiving bank was a not a viable option, irrespective of how quickly Lloyds contacted it.

It follows for the reasons set out above, I cannot fairly hold Lloyds liable for Mr W's loss.

My final decision

Because of the reasons outlines above, I do not uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 5 September 2025.

Charlie Newton
Ombudsman