DRN-5314421

The complaint

Mr H complains that Lloyds Bank PLC ("Lloyds") won't refund the money he and his wife lost when they fell victim to an investment scam.

The payments that left Mr H's account funded supposed investments in both his and his wife's name. However, as the account is in Mr H's sole name, I'll only refer to him throughout this decision.

What happened

Mr H was looking for an investment opportunity when he read about a company I will refer to as "B" in a newspaper.

Interested, Mr H reached out to B for more information and ultimately decided to invest. Mr H was told that for every £14,000 he invested, a car would be bought on his behalf and leased out by a connected company - "Raedex". He would receive monthly returns and a final gross payment at the end of the term. The vehicle itself would act as security for the investment.

In June and July 2020, Mr H paid for two investments from his Lloyds account - totalling £28,000.

Mr H received returns on the first investment totalling £1,871.52. So, his total outstanding loss in relation to this investment amounts to £12,128.48.

Returns were also paid in regard to the second investment, but these returns were paid into Mr H's wife's account held with a third-party bank. These returns amounted to £1,604.16. So, Mr H's loss in relation to this investment amounts to £12,395.84.

No further payments were received.

In June 2023, Mr H complained to Lloyds through his representative. They said Lloyds failed to protect Mr H at the time he made the payments to B and he should be reimbursed under the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code).

Lloyds didn't agree to reimburse Mr H's loss. It said he had paid a legitimate company that had ultimately gone into administration. Because of this, Lloyds concluded Mr H's circumstances amounted to a failed investment rather than a scam.

Unhappy with Lloyds' response, Mr H brought a complaint to this service.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld in full.

They said that the CRM Code required Lloyds to provide an outcome within 15 days of the completion of the Serious Fraud Office Investigation on 19 January 2024 but it had not done so.

The investigator went on to explain why they felt Mr H's complaint was covered by the CRM Code - and recommended Lloyds reimburse him in full. On top of this, the investigator said that Lloyds should add interest at the rate of 8% simple per year from 15 days after 19 January 2024 to the date of settlement.

Finally, the investigator said it would be fair for Lloyds to ask Mr H to sign an indemnity confirming he would return any funds that may later be recovered in the administration process.

Mr H accepted the investigators findings. But Lloyds said it wasn't in a position to respond.

As an agreement could not be reached, the case has been passed to me for a final decision.

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.

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 an authorised push payment (APP) scam, as set out in it, is met. I will discuss this later in my decision.

Is the CRM Code definition of an APP scam met?

Firstly, I have considered whether Mr H'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.

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

- The purpose of the payments and whether Mr H thought this purpose was legitimate.
- The purpose the recipient (B) had in mind at the time of the payments, and whether this broadly aligned with what Mr H 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.

From the evidence I have seen I'm satisfied Mr H intended to invest in B. He understood that B would use the funds he paid to buy cars that would be leased, and he would receive returns on his investment. I haven't seen anything to suggest that Mr H didn't consider this to be a legitimate purpose.

I've then gone on to consider the purpose B had in mind at the time it took the payments.

After careful consideration, I'm not satisfied B intended to act in line with the purpose agreed with Mr H. I will explain why in more detail below:

In its first supervisory notice in respect of Raedex in February 2021 the FCA noted said it had entered into approximately 1,200 vehicle leases in the period between January 2018 to January 2021, but only 69 charges had been registered.

In the same notice, the FCA said it had conducted a sampling of Raedex's leaseholder list against the DVLA database and identified various discrepancies between its business model and vehicle inventory. The FCA report referred to the fact that 55 cars appeared to be second hand (although its business model relied to a large extent on securing heavy discounts on new vehicles), to vehicles that couldn't be found, and to leases entered into at a date significantly before the vehicle was put on the road. The FCA also concluded that the group's liabilities significantly exceeded its assets, and its business model was fundamentally unsustainable.

I have also seen evidence from an SFO news release dated 19 January 2024 which confirms that two directors of B have been charged in relation to the car lease scheme. The news release noted that directors were accused of providing those who signed up with false information, encouraging people to pay in with false information whilst knowing that investments weren't backed up by the cars they had been promised.

The SFO also noted that the investment was backed by a tangible asset – a car. In Mr H's case the "Vehicle Funding Forms" he and his wife were provided with when he made his payments didn't specify a particular vehicle but did refer to the number of units being funded. Mr H's welcome letter also detailed that his payment would be used to fund the purchase of a vehicle. The evidence I have referred to above shows this aspect of the investment wasn't being performed.

A report by the administrators of one of the connected companies said that the total number of loan agreements relating to 834 investors was 3,609. But the number of vehicles held by the company at the time it went into administration was 596, equating to less than one car for every six loan agreements.

Overall, I'm satisfied B didn't provide the investment it offered to Mr and Mrs H and didn't follow its business model. The purpose B intended when it took Mr Hs funds wasn't aligned with his. Given the information provided by the SFO in respect of what the directors of B are accused of, I'm persuaded that the purposes each party had in mind for the payments weren't aligned as a result of dishonest deception. This means that I'm satisfied the CRM Code definition of an APP scam has been met.

Should Mr H be reimbursed under the CRM Code?

Lloyds is a signatory to the CRM Code which requires firms to reimburse victims of APP scams like this one unless it can establish that it can rely on one of the listed exceptions set out in it. Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that:

- The customer made payments without having 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.
- The customer ignored an effective warning by failing to take appropriate steps in response to that warning.

There are further exceptions outlined in the CRM Code that do not apply to this case.

It is for Lloyds to establish that an exception to reimbursement applies. Here, Lloyds hasn't considered Mr H's complaint under The Code and didn't respond to any points made by the investigator in respect of its application. So, it hasn't demonstrated that any of the listed exceptions can fairly be applied.

For the sake of completeness, I'll briefly cover why I'm not persuaded any of the listed exceptions can be fairly applied.

Mr H says he first heard about B when it appears to have been well established. At this point others had received returns on their investments, and he ultimately did too. He had been provided with a Vehicle Funding Forms that looked legitimate, the rate of return didn't appear to be too good to be true and Mr H had checked Trust Pilot reviews. So, I don't think there was anything that ought reasonably to have caused him concern at the time of making the payments.

Lloyds hasn't provided any warnings so hasn't demonstrated that Mr H ignored any effective scam warnings.

I've also thought about whether there is any other reason why Lloyds should reimburse Mr H. But even if I conclude that Lloyds ought reasonably to have intervened and asked Mr H probing questions about the nature of the payments and provided scam advice, I don't consider the scam would have been uncovered and his loss prevented. I say this because I don't think there was enough information available at the time that would have led Lloyds to be concerned that Mr H was at risk of financial harm.

Lloyds' response to our investigator's opinion

In response to our investigators view, Lloyds said they're waiting for an update from UK Finance before providing a response. However, based on all the evidence that I've seen, I'm satisfied I can reach a decision that Mr H's payments are covered by the CRM Code for the reasons explained above. I'm not persuaded I need to wait for an update from UK Finance, in this case, in order to each my decision.

Claims made to the FSCS

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 Lloyds.

As I have determined that this complaint should be upheld Mr H should know that as he will be recovering compensation from Lloyds, he 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 B, and in the event the FSCS pays compensation, Mr H is required to repay any further compensation they receive 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"

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.

Putting things right

Lloyds should now refund Mr H his total outstanding loss - minus any returns received.

Interest

I'm not persuaded Lloyds acted unreasonably in not upholding Mr H's claim when it was first reported in June 2023. At the conclusion of the SFO investigation though I consider Lloyds should have assessed all the available evidence and made a decision within 15 business days of 19 January 2024. So, Lloyds should pay interest at the rate of 8% simple from 15 business days after the SFO published its outcome on 19 January 2024 on the above refund.

My final decision

I uphold this complaint about Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 26 April 2025.

Emly Hanley Hayes
Ombudsman