

The complaint

Mr M complains that Lloyds Bank PLC didn't protect him from an investment scam.

Mr M is being supported in making his complaint by a representative. But for ease, I'll only refer to Mr M in this decision.

What happened

Mr M has said that after conducting his own research into investment opportunities, a 'broker' (who I'll refer to here as 'P') introduced him to an investment with a company (which I'll refer to here as 'H') in relation to forex trading. The investment offered a refund of the capital in 12 months, paying interest at 5% a month.

In July 2016 and February 2017 Mr M made payments of £15,000 and £5,000 respectively as part of the investment in 'H'. Those payments haven't been disputed.

Between August 2016 and August 2018 Mr M received 25 monthly returns on the initial £20,000 investment totalling £24,250.

Mr M's wife (Mrs M) was also investing in 'H' (under the direction of Mr M). And on 31 August 2018 she transferred £23,000 towards the investment from her account with another bank (which I'll refer to here as Bank H). Mrs M has raised a complaint about Bank H which has been considered by the Financial Ombudsman.

Mr M made the following faster payment as part of the investment in 'H'.

Date	Amount
31/8/2018	£7,000

He's said this payment was made as part of Mrs M's investment, and that the total overall loss (taking account of the £23,000 paid via Bank H) is therefore £30,000. 'P' facilitated the transfer of the funds Mr M was investing in 'H' on his wife's behalf via a payment processor (which I'll refer to here as 'MA').

Between September 2018 and May 2019 nine monthly returns on the investment were received into Mr M's Lloyds' bank account totalling £9,500. And between October 2018 and March 2019 Mrs M received six monthly returns on the investment into her account with Bank H totalling £9,000. So, Mr M has said that out of the total investment of £30,000, the remaining loss is £11,500.

'H' and 'P' went into liquidation in June 2019 and March 2020 respectively.

On 22 November 2023 Mr M made a complaint to Lloyds. In short, he said Lloyds hadn't done enough to protect him from financial harm. He said Lloyds should've asked to see the investment terms - at which point Mr M said Lloyds would've seen the rate of return was unrealistic. Mr M therefore held Lloyds responsible for the loss. He wanted Lloyds to refund the loss together with 8% interest and £1,000 for the distress and inconvenience caused.

In short, Lloyds said it didn't consider the payment to represent fraud and wouldn't reimburse the funds. It said both 'H' and 'P' were genuine companies. It considered this to be a civil dispute.

Mr M referred his complaint to the Financial Ombudsman.

One of our Investigators considered the complaint but didn't uphold it. In summary, he said it was likely Mr M had been the victim of a scam, and that Lloyds should've asked questions about the £7,000 payment. But given Mr M had made previous payments towards the investment and received substantial returns; and because there was no negative information about 'H' or 'P' at the time – our Investigator didn't think any questioning by Lloyds would've given it or Mr M any obvious cause for concern.

Our Investigator also found there was no reasonable prospect of Lloyds recovering the lost funds or any grounds to award Mr M compensation for distress and inconvenience.

Mr M didn't agree. In short, he said he had a '*strong and established*' relationship with Lloyds and would've heeded the warnings it had a '*duty*' to provide to him before processing the £7,000 payment.

Mr M accepted that he'd received returns from his investment with 'H' at the time of making the £7,000 payment. But he thinks Lloyds could've provided a '*valuable second opinion*' on the legitimacy of the investment and the risks involved – that he would've taken notice of.

Mr M said he wouldn't have understood the true significance of 'H' not being regulated – *unless* this had been pointed out to him by Lloyds, which he said might've made him '*aware of the potential dangers*' despite the investment seemingly doing well.

The case has now 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.

Having done so, I've decided not to uphold this complaint. I know this is not the answer Mr M was hoping for, and so this will come as a disappointment. I'm really sorry to hear about the situation he's found himself in, and I can understand why he'd want to do all he can to recover the money he lost. But I need to decide whether Lloyds can fairly and reasonably be held responsible.

But first, I would like to say at the outset that I have considered this case on its own merits and have summarised it in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. It's simply because my findings focus on what I consider to be the central issues in the specific circumstances of this complaint – that being whether Lloyds could've prevented the loss.

I want to also address the issue of financial loss. It's apparent that Mrs M's £30,000 investment in 'H' in August 2018 was funded, in part, by the disputed £7,000 payment Mr M made from *his* Lloyds account. As our Investigator identified during his investigation, when looking at Mr M's case in isolation, the £9,500 in returns received into his Lloyds' account after the £7,000 payment was made calls into question whether he himself has in fact suffered a financial loss.

I can appreciate the argument Mr M has made in terms of there being an overall loss (£11,500) when looking at the £7,000 payment as part of the £30,000 investment in 'H'. However, as I'll go on to explain, regardless of whether any loss could be attributed to Mr M, I don't find that Lloyds can be held responsible. And so, I've proceeded with my decision on that basis.

Following a court hearing in July 2020, it's now accepted that Mr M has likely been the victim of a scam. But I accept the transaction he made towards Mrs M's investment was an authorised payment. So, Mr M is presumed liable for the loss in the first instance.

However, I consider that as a matter of good industry practice at the time (and now) that a bank, such as Lloyds, ought to have taken steps to intervene prior to processing a payment

instruction where it had grounds to suspect a payment might be connected to a fraud or a scam. Any such intervention should've been in proportion to the level of risk perceived.

The question then arises whether Lloyds ought reasonably to have held such suspicions or concerns in relation to Mr M's payment — and if so, what might've been expected from a proportionate intervention.

So, taking all of this into account, I need to decide if Lloyds acted fairly and reasonably in its dealings with Mr M when he made the £7,000 payment. Specifically, whether it should've done more than it did before processing the payment — and if it had, would that have made a difference. I also need to decide if Lloyds could've reasonably recovered the lost funds.

Arguably, there was justification here for an intervention by Lloyds prior to processing Mr M's payment instruction on 31 August 2018. Whilst Mr M had made payments as part of the investment in 'H' previously, this was more than 18 months before the £7,000 payment was made; and this payment was made to new payee (MA). Further, the £7,000 payment is considerably larger than other payments made from Mr M's account in the previous 12 months.

But for me to find it fair and reasonable that Lloyds should refund Mr M requires more than a finding that Lloyds ought to have intervened.

I would need to find not only that Lloyds failed to intervene where it ought reasonably to have done so — but crucially, I'd need to find that but for this failure any subsequent loss would've been avoided.

That latter element concerns causation. A proportionate intervention will not always result in the prevention of a payment. And if I find it more likely than not that such a proportionate intervention by Lloyds wouldn't have revealed the £7,000 payment was part of a fraud or scam, then I couldn't fairly hold it liable for not having prevented it from being made.

In thinking about this, I've considered what a proportionate intervention by Lloyds at the relevant time would've constituted, and then what I think the result of such an intervention would most likely have been.

To reiterate, Lloyds' primary obligation was to carry out Mr M's instruction without delay. It wasn't to concern itself with the wisdom or risks of his payment decision.

In particular, Lloyds didn't have any specific obligation to step in when it received a payment instruction to protect its customers from potentially risky investments. The investment in 'H' wasn't an investment Lloyds was recommending or even endorsing, and so, I don't think it would've been reasonable for Lloyds to have asked to see all the paperwork relating to the investment before processing the payment, as Mr M has suggested.

Lloyds' role here was to make the payment that Mr M had told it to make. Mr M (and Mrs M) had already decided on that investment. And I find that Lloyds couldn't have considered the suitability or unsuitability of a third-party investment product without itself assessing Mr M's circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request from Mr M (which there wasn't here) would've gone far beyond the scope of what I could reasonably expect of Lloyds in any proportionate response to a correctly authorised payment instruction from its customers.

That said, I think it would've been proportionate here for Lloyds, as a matter of good industry practice, to have taken steps to establish more information about this payment.

What matters here is what those steps might be expected to have uncovered at the time. While there may now be significant concerns about the operation of 'H' and 'P', and the legitimacy of the investment, I must consider what Lloyds could reasonably have established during a proportionate enquiry to Mr M about his payment back in August 2018. I cannot apply the benefit of hindsight to this finding.

Both 'H' and 'P' were genuine companies and there was no negative information about 'H' in the public domain until *after* it went into liquidation (June 2019). Having carefully reviewed all the material Mr M has provided about 'H', it appears that allegations that 'H' was operating as a scam *only* came to light during the liquidation process which included a court hearing in 2020. As such, this correspondence or information couldn't have been accessed by either Lloyds or Mr M at the time the August 2018 payment was made.

I think it's also likely Mr M would've told Lloyds that he had documents from 'H' confirming the terms of the investment, including client and loan agreements, which at the time all appeared entirely genuine.

In summary, I've considered everything submitted and the arguments made, but while there may now be concerns about the legitimacy of 'H' and 'P', everything I've seen indicates that these concerns only began to surface in the public domain *after* the £7,000 payment was made by Mr M.

I've thought next about how Mr M found out about the investment. Mr M has said that he was looking for investment opportunities and has referred to 'P' as being the initial 'broker' who introduced him to the investment in 'H'. As I understand it, 'P' is unregulated and facilitated the payments to 'H'.

Mr M has also confirmed that the £7,000 payment was part of Mrs M's investment, and Mrs M has said that it was Mr M's apparent success from the investment that prompted her to invest.

Had Lloyds asked Mr M who'd advised him about the investment, then the involvement of 'P' would've likely come to light at the time. But this type of unregulated investment could be entered into without obtaining regulated financial advice – as seems to have been the case here.

So, the regulatory status of the investment and how Mr M was introduced to it weren't something that would necessarily have indicated 'H' was fraudulent (or that the investment was a scam) at the time Mr M asked Lloyds to make the payment.

Mr M's main concern is that Lloyds should've warned him about unregulated forex investments, and the fact he was already investing in 'H', and receiving returns, wasn't a mitigating factor here.

Firstly, 'H' makes it very clear in its documentation that it is unregulated and clearly outlines the risks involved. It states that:

'Before you decide to deal with ['H'] ... you should be aware of all of the associated risks and carefully consider your objectives, financial situation, needs and level of experience. ... ['H'] recommends that you seek advice from a separate financial advisor. By trading, you could sustain a total loss of your deposited funds and therefore, you should not speculate with capital that you cannot afford to lose'.

So, it appears that Mr M (and Mrs M) had been made fully aware of the risks involved, And, I believe, had a responsibility to carry out any necessary checks before deciding to invest, regardless or not of whether Mr M was prompted to do so by Lloyds during a proportionate intervention about his £7,000 payment.

Secondly, I believe Mr M's previous investment in 'H' and substantial returns (more than initially invested) *is* of significance here. It's not that this diminishes Lloyds' responsibility to protect Mr M at the point the £7,000 payment was made – rather it's that this would've, in my opinion, alleviated any concerns either Lloyds or Mr M might've had about the legitimacy of 'H'.

Mr M has also put much weight on Lloyds' apparent failure to identify the promised returns were unrealistic. But he'd received returns - in line with the investment terms and totalling more than he'd invested - from the point of his first payment in July 2016.

And Mr M was still receiving returns a week before the 31 August 2018 payment. So, I think any concerns Lloyds *might* have raised about the promised rate of return would have been allayed by the fact Mr M could demonstrate the returns were being paid as promised.

Given all this, I don't think, on balance, that any advice or warning from Lloyds about the investment with 'H' would have likely resonated with Mr M or given him any cause for concern.

All things considered; I don't think it would have been readily apparent in August 2018 that 'H' might be fraudulent rather than a higher risk investment. I simply don't think Lloyds could readily have uncovered information – especially through proportionate enquiry in response to a payment - that would have led to significant doubts about the legitimacy of 'H' or 'P' at that point in time. Neither do I think Mr M (or Mrs M) could have uncovered such information at the time – they weren't at fault here.

To recap, I can only reasonably expect any intervention or enquiries made by Lloyds to have been proportionate to the perceived level of risk of 'H' being fraudulent. I don't think that a proportionate enquiry in August 2018 would have led to either Lloyds or Mr M considering 'H' or 'P' being anything other than legitimate. With that in mind, and all considered, I'm not persuaded that Lloyds was at fault for carrying out the relevant payment instruction, or for not preventing Mr M from making his payment.

In terms of trying to recover the lost funds; I'd expect Lloyds to attempt this at the point it's alerted to the loss. But more than five years had passed by the time Mr M contacted Lloyds. Furthermore, both 'H' and 'P' had gone into liquidation by this point and recovery from 'MA' wasn't possible as it was acting as a payment processor for 'P'.

Therefore, I can't say Lloyds had any reasonable prospect of recovering the funds in 2023 given the passing of time; and because 'H' and 'P' had gone into liquidation more than three years before.

I have a great deal of sympathy for Mr M. But it would only be fair for me to direct Lloyds to refund any loss if I thought it was responsible – and I'm not persuaded that this was the case. And so, I'm not going to tell it to do anything further.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision **before 21 March 2025**.

Anna Jackson
Ombudsman