

The complaint

Mrs Z complains that Lloyds Bank Plc won't refund the money she lost when she sent a payment to an investment that she now believes to have been fraudulent.

A representative who I will call "T" complained on behalf of Mrs Z.

What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But in summary and based on everything sent by both parties, I understand it to be as follows.

In 2018, Mrs Z was contacted about an investment opportunity. She was told that the investment would generate 10% annual fixed rate returns, for a period of two years. Interested in the investment, Mrs Z made a payment of £60,000 on 7 June 2018.

The investment firm, who I will refer to as "G", went into liquidation and Mrs Z hasn't received the expected returns.

T complained to Lloyds on Mrs Z's behalf in 2023 and were of the view that G was not operating legitimately. They believe the investment was essentially being operated as a 'Ponzi' scheme - whereby returns were being fraudulently paid out of money received from other investors.

Lloyds looked into what had happened and said that prior to making the payment, and to protect herself, Mrs Z could have sought independent advice or let them know she felt pressured into making the payment.

In relation to the payment itself, Lloyds said the receiving account was held by the intended beneficiary and therefore they didn't consider the payment to be fraudulent. They said the account Mrs Z paid was to an investment owned by a genuine company, and the payment was made to an account with a Financial Conduct Authority (FCA) regulated firm which banked with them. Because of this, the payment was fully automated and no warnings were presented to suggest that Mrs Z shouldn't have been making the payment. Lloyds therefore considered it a failed investment.

In terms of getting Mrs Z's money back, Lloyds explained that when a payment is fraudulent, they usually contact the receiving bank to ask them to protect any funds that remain in the account. But in Mrs Z's cases, the beneficiary company had since gone into liquidation. They also explained that the payment was made before the Contingent Reimbursement Model (CRM) code came into practice, meaning it didn't apply.

Unhappy with Lloyds' response, T brought Mrs Z's complaint to our service.

Our investigator looked into everything and said given the time that had passed, he couldn't be sure what happened when the payment was made. However, he explained that the payment was made to a genuine company who held an account with Lloyds. This meant the

payment wouldn't have caused any concern, and even if Lloyds had questioned Mrs Z he thought her answers wouldn't have suggested she was being scammed and that she would have continued to make the payment.

In relation to recovery, our investigator said that no attempt had been made due to the time that had passed. Overall, while not convinced the payment was made as part of a scam, the investigator didn't think that Lloyds could reasonably have foreseen or prevented Mrs Z's loss at the time.

Mrs Z disagreed and T provided substantial submissions setting out their position. But in summary, they maintained the payment was unusual due to its high value and as it was being made to a new payee and sent via an international payment facilitator (which meant the funds could have been sent anywhere). They also expressed a number of concerns about the investment and G and reiterated that Lloyds should have asked Mrs Z detailed questions before making the payment. Had they done so, they believe Mrs Z wouldn't have gone ahead with the payment and her losses would've been prevented.

T also submitted an expert report to support their position.

Our investigator responded and remained of the same view. Mrs Z still disagreed and so the complaint has been passed to me for review.

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.

I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this, and it simply reflects the informal nature of our service as a free alternative to the courts.

I sent a provisional decision on 17 March setting out my thoughts on the case. It said:

"For the avoidance of doubt, in doing so, I have carefully reviewed everything submitted by T and Mrs Z, including the expert report.

T have explained that this expert report was originally prepared for a different client of theirs. Because of this, large parts of the report are not applicable to Mrs Z's complaint (for instance, the payment in the other case was apparently made by cheque rather than bank transfer).

However, the report does summarise some of the key considerations that apply to complaints about Authorised Push Payment fraud. While I won't repeat the content of the report here, I have considered it fully in reaching my findings.

To explain further, when deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Where the evidence is incomplete or missing, I am required to make my findings based on

the balance of probabilities. In other words, what I consider is most likely to have happened given the information available to me.

As a starting point in this case, Mrs Z doesn't dispute that the payment was made in line with her instruction to Lloyds to make it.

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

And, as the Supreme Court has recently reiterated in Philipp v Barclays Bank UK PLC, subject to some limited exceptions, banks have a contractual duty to make payments in compliance with the customer's instructions.

In summary, where a bank receives an authorised payment instruction (as Lloyds did here), then their primary obligation is to carry out that instruction without delay.

That means in the first instance Mrs Z is presumed liable for the payment. Lloyds would not ordinarily have any responsibility for a loss incurred through the payment – provided they carried out the instructions correctly. And here, there is nothing that leads me to believe they didn't do so.

I'm sorry if Mrs Z lost money but this doesn't automatically entitle her to a refund from Lloyds. It would only be fair for me to tell Lloyds to reimburse Mrs Z if I thought it reasonably ought to have prevented the payment or it unreasonably hindered recovery of the funds.

Prevention

Banks have various and long-standing obligations to be on alert for fraud and scams and to act in their customers' best interests. So, a first consideration in determining Lloyd's obligations here would normally be: should they ought reasonably to have held any suspicions or concerns in relation to the payment, and if so, what might have been expected from a proportionate intervention.

In this case, I'm satisfied Mrs Z authorised the relevant payment, and as explained above, Lloyds would generally be expected to process payments a customer authorises it to make. That said, as a matter of good industry practice, Lloyds should have taken proactive steps to identify and help prevent transactions – particularly sufficiently unusual, uncharacteristic or suspicious transactions – that could involve fraud or be the result of a scam. However, there are many payments made by customers each day and it's not realistic or reasonable to expect a bank to stop and check every payment instruction. There's a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments.

In this case, having considered the circumstances of the payment Mrs Z made, I agree it was unusual compared to her usual account activity, and it was being made to a new payee. But for me to find it reasonable that Lloyds should refund the payment requires more than me finding that they should have intervened. This is because legitimate payments can also be large and made to new payees, which doesn't always mean the money is being lost to fraud or a scam.

For me to ask Lloyds to refund the payment, I would need to be satisfied that not only did they fail to intervene, but that had they intervened, the loss would have been avoided.

So I have thought about whether appropriate intervention or further questioning would likely have made a difference. Ultimately, I don't think an appropriate intervention by Lloyds would have made a difference or prevented the payment from being made here.

The investment wasn't one that Lloyds were recommending or endorsing. Their role was to make the payment that Mrs Z asked them to make, as she had already made the decision to invest, based on what she had been told. And while there may now be concerns around G, I must consider what Lloyds could have established, had they spoken to Mrs Z about her payment in 2018. Ultimately, I don't think I can fairly say Lloyds would have been able to give Mrs Z any information that would have led her to doubt what she already knew about the investment, even if she had carried out further reasonable research at the time.

So, even if Mrs Z had been questioned in more detail by Lloyds, I don't think it would've highlighted anything that would've caused her any concern or led her to believe she was at risk.

On the face of it, I don't think the payment would have appeared fraudulent at the time to anyone. I will explain why in more detail below.

Mrs Z hasn't provided details about who it was that first advised her to invest. But T have explained that the adviser was an unregulated agent and Lloyds should have been aware that the investment had been inappropriately promoted to Mrs Z, given the intended investment was a high-risk overseas property development scheme offering investors returns of upward of 10%. T said the FCA has previously confirmed that high returns such as those promised to Mrs Z are the hallmark of a scam/ fraud. They also referred to the regulator's guidance on UCIS (Unregulated Collective Investment Schemes).

In relation to the rate of return, I agree it was high. I don't doubt that this was something that attracted Mrs Z to the investment. But even though it was high, I don't think it was so high that it should have been considered too good to be true, either by Mrs Z or Lloyds.

To explain, the rate of return will vary depending on the perceived risk. Riskier investments offer a higher yield to compensate the investor for taking on the risk of it failing. So a higher rate of return would be expected for a legitimate, albeit risky investment. But it is important to note that investment risk is not the same thing as something being at risk of fraud or a scam.

Because of this, I don't consider the rate of return offered by G would have suggested the investment was fraudulent, but more it was reflecting a legitimate investment risk.

Neither do I believe the location of the underlying company indicates that G wasn't legitimate as it was based in one of the largest economies. This isn't something that would give any cause for any particular concern. I also don't find the nature of the investment would have raised any concern either.

The FCA website provides an explanation of what a collective investment scheme is (a UCIS being an unregulated version of this). It says that a collective investment scheme (CIS) - sometimes known as a 'pooled investment' - is a fund that usually has several people contribute to it. The fund manager of a CIS will invest investors' money into one or more types of asset, such as stocks, bonds or property.

While I think this investment was likely to share a similar level of risk with that posed by UCIS investments, I can't agree that Lloyds would have readily identified it as a UCIS, and as explained, investment risk isn't the same as the risk of fraud or a scam.

Because of this I am satisfied that the status of the adviser and the investment weren't

something that would necessarily have indicated the company was fraudulent (or that the investment was a scam) at the time Mrs Z asked Lloyds to make the payment.

This type of investment could also be entered into without obtaining regulated financial advice and might be made available to clients of an unregulated adviser.

In addition to the above, I have also noted the reference made by T that G was a pyramid or Ponzi scheme. However, having carefully reviewed the information provided, it doesn't appear that these allegations (or the information on which those allegations were based) was in the public domain or readily accessible at the time Mrs Z made the payment. This means the correspondence or documentation couldn't have been accessed by either Lloyds or Mrs Z at the time the payment was made.

All considered, I don't think it would've been readily apparent in June 2018 that the company might be fraudulent rather than simply a higher risk investment. I don't think Lloyds could have uncovered information that would have led to significant doubts at that point in time. Neither do I think that Mrs Z could have uncovered such information at the time – she was not at fault here.

To summarise on all of the above, I can only reasonably expect any intervention or enquiries made by Lloyds to have been proportionate to the perceived level of risk of the company being fraudulent. I don't think that an intervention or enquiry in June 2018 would have made either Lloyds or Mrs Z question the legitimacy of the company.

So having considered everything in detail, I'm not persuaded that Lloyds were at fault for carrying out the relevant payment instruction, or for not preventing Mrs Z from making the payment.

Recovery

I've also looked at whether Lloyds took the correct steps once Mrs Z contacted them to dispute the payment.

Given the time that had passed between the payment and Mrs Z making Lloyds aware, there was little prospect of recovery. Particularly as the firm had entered the process of liquidation several years prior to the disputed payment being reported. And so, I think it was reasonable that Lloyds didn't contact the receiving bank in the circumstances.

If Mrs Z is yet to register with the liquidator, that is something she may wish to do.

Having carefully considered everything overall, I don't find that Lloyds could have reasonably prevented the losses Mrs Z has incurred. In saying this, I don't underestimate the impact on Mrs Z as she has lost such a significant amount of money. However, it is simply the case that I don't consider I can fairly and reasonably hold Lloyds liable for that loss."

In response to my provisional decision, T let me know they were no longer representing Mrs Z. And I didn't receive a reply from either Mrs Z or Lloyds.

Because of this, my decision remains the same and will not change from what has been said above.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs Z to accept or reject my decision before 5 May 2025.

Danielle Padden
Ombudsman