

The complaint

Mr and Mrs P complain that Lloyds Bank PLC won't refund them the money they lost to what they believe was a scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail. But in summary, I understand it to be as follows.

In 2018, Mr and Mrs P invested in a company that specialised in trading against the performance of sports teams (that I'll refer to as "B"). The investment was made through a single bank transfer on 13 August 2018 for £20,000, from their Lloyds account.

Mr and Mrs P received returns on their investment, as expected, for over a year after making the payment. But they became concerned that they may have been the victims of a scam when B went into administration and the returns stopped. As well as this, B became the subject of a police investigation.

Mr and Mrs P reported what had happened to Lloyds in 2022. Lloyds looked into their complaint, but didn't uphold it. In summary, it didn't consider Mr and Mrs P had been the victim of a scam — this had been a failed investment. In any event, Lloyds said it didn't have any reason to intervene during the payment process and there hadn't been a bank error. Lloyds did recognise there had been a delay in responding to Mr and Mrs P's complaint and paid £60 compensation in recognition of this.

Unhappy with Lloyds' response Mr and Mrs P brought their complaint to this service. One of our Investigator's looked into things, but didn't think that their complaint should be upheld. In summary, our Investigator's view was that there should have been a more detailed discussion in relation to the purpose of the payments, but he didn't think this would have made a difference. Based on the evidence that was available at the time, he didn't think the payment Mr and Mrs P were making would have given Lloyds any cause for concern.

Mr and Mrs P didn't agree with our Investigator's view. In summary, they maintained that Lloyds ought to have intervened more than it did and Lloyds hadn't been thorough at the time the payment was made.

As no agreement could 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.

I'm 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. This simply reflects the informal nature of our service as a free alternative to the courts.

I'm mindful that there is a dispute between the parties in this case as to whether this is a scam. I've thought about this. But, in the circumstances of this case, my findings would not differ, even if I considered this was a scam. So I'm satisfied that to reach a fair and reasonable outcome on this case; it isn't necessary for me to make a finding as to whether I think this is a scam. I'll explain why.

I'm sorry to hear of what's happened to Mr and Mrs P, and I can understand entirely why they feel so strongly that this money should be returned to them. But having thought very carefully about Lloyds' actions, I think it did act fairly and reasonably in allowing the payment to leave their account.

In 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 have been good industry practice at the time.

In broad terms, the starting position in law is that Mr and Mrs P are responsible for transactions they've carried out themselves. Mr and Mrs P don't dispute that at the time, they authorised the payment, albeit with the belief the payment was towards a legitimate investment. But that isn't the end of things, Lloyds along with other payment services providers, should be monitoring accounts and be on the lookout for unusual transactions or other signs of fraud.

I consider it to be appropriate for a customer's previous account activity, among other factors, to be taken into account when deciding whether a payment instruction does, or does not, present a sufficiently heightened risk that it would justify an intervention before processing the transaction. Here, Lloyds did intervene and had a conversation before allowing the payment to be progressed. But when considering the usual activity on Mr and Mrs P's account in the months leading up to this payment, I don't think the intervention went far enough. I'm persuaded that a payment of £20,000 to a new payee wasn't typical of how the account ran and warranted a more probing intervention.

However, it doesn't automatically follow that, because Lloyds ought to have intervened more than it did, that it is liable for Mr and Mrs P's loss. I also need to consider whether any further intervention would, more likely than not, have made a difference. In the individual circumstances of this case, I don't think it would have made a difference. I'll explain why.

In such circumstances, whilst Lloyds had no duty to protect Mr and Mrs P from a bad deal or give investment advice, it could have asked some further questions to ascertain whether Mr and Mrs P were likely to be at risk of financial harm from fraud. I've thought carefully about the sorts of questions Lloyds could've asked, bearing in mind the features of investment scams at that time.

However, even if Lloyds had asked further questions about the nature of the payment Mr and Mrs P were making, I'm not persuaded it would likely have given Lloyds cause for concern. While there are now significant concerns about the legitimacy of B, these first began to surface in the period surrounding B's administration, some years after Mr and Mrs P's payment was made.

I cannot rely on the benefit of hindsight – I must consider what Lloyds could reasonably have established in the course of a proportionate enquiry to Mr and Mrs P about their payment back in August 2018.

And with that in mind, I don't think it would've been apparent in 2018 that B may have been fraudulent, rather than simply a risky investment. I'm not persuaded sufficient information was readily and publicly available at the time which would have caused Lloyds (or Mr and Mrs P) specific concerns about this.

Mr and Mrs P have provided copies of investment literature I understand they received at the time. This appears professional and not obviously anything other than legitimate. It gave an explanation of the risks involved and recommended investors should seek advice prior to making an investment decision. I'm also mindful here that the investment had been recommended to Mr and Mrs P through a broker, who they've said they trusted and who had given them advice previously, that proved successful. On the face of it, I don't think there was enough here for Lloyds to have reasonably suspected B was anything other than it seemed.

It is possible of course that the investment might have represented a greater degree of risk than was suitable for Mr and Mrs P to take. But Lloyds didn't have any obligation to step in to protect its customers from potentially risky investments. Taking steps to assess suitability without an explicit request from Mr and Mrs P (which there was not) would have gone far beyond the scope of what I could reasonably expect of it in any proportionate response to what, on the face of it, were seemingly legitimate payment requests from its customer.

In short, while I've carefully reviewed all of Mr and Mrs P's submissions, I don't find that significant concerns would (or could) have been readily uncovered by either Lloyds or Mr and Mrs P at the relevant time. I can only reasonably expect any enquiries by Lloyds to have been proportionate to the perceived level of risk. All considered, I don't think it likely that Lloyds could have prevented this payment from being made, or otherwise caused Mr and Mrs P not to proceed.

Lloyds acknowledged that it could have reviewed Mr and Mrs P's complaint in a timelier manner. In recognition of this it paid £60 compensation. I think this is fair and I don't intend to ask Lloyds to increase this.

Unfortunately, given the time that has elapsed since the payment was originally made, I don't think there was any prospect of Lloyds being able to recover any of the money Mr and Mrs P had paid. I'm satisfied that recovery from the beneficiary bank was not a viable option.

It's very unfortunate Mr and Mrs P have lost this money in this way, and I understand the whole experience has been deeply upsetting and I do have a great deal of sympathy for them. But in the circumstances, having carefully considered everything Mr and Mrs P and Lloyds have submitted, I don't find Lloyds could have reasonably prevented Mr and Mrs P's loss here. Neither do I find it materially at fault otherwise.

My final decision

For the reasons given above, my final decision is that I do not uphold Mr and Mrs P's complaint about Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 10 April 2024.

Stephen Wise
Ombudsman

