

The complaint

Mr and Mrs M complain that Lloyds Bank PLC didn't protect them from an investment scam.

Mr and Mrs M are being supported in making their complaint by a representative. But for ease, I'll refer to Mr and Mrs M in this decision.

What happened

In 2014 Mr and Mrs M were introduced to an investment in a company (which I'll refer to here as 'D'). On 24 July 2014 Mr and Mrs M paid £50,000 towards the investment (by way of two cheques for £25,000 each). Their next payment was made for £40,000 by cheque on 24 March 2016.

The payments weren't made directly to 'D' – instead they were made to a company which I'll refer to here as ('B') before being transferred to 'D' for the purposes of the investment.

Between July 2015 and October 2017 Mr and Mrs M received ten credits from 'D' into their Lloyds account totalling £66,000.

In May 2021 Mr and Mrs M said they were notified that insolvency proceedings had been opened over the assets of 'D'.

In November 2023 Mr and Mrs M made a complaint to Lloyds. They said it hadn't taken appropriate action to protect them when they made the payments towards the investment. And if it had done, it would've been clear they were the victims of 'a scam' and their loss would've been prevented. Mr and Mrs M wanted the lost funds returned to them, plus 8% interest, as well as compensation.

Lloyds said it didn't consider the payments to represent fraud and would not reimburse the funds. It said Mr and Mrs M had received returns on their investment; and 'D' was a genuine company currently in liquidation. So, it concluded that Mr and Mrs M had been the victims of a failed investment.

Mr and Mrs M referred their complaint to the Financial Ombudsman.

One of our Investigators considered the complaint but didn't uphold it. In summary, she thought any intervention by Lloyds in the payments was unlikely to have prevented Mr and Mrs M's loss. She said there were no concerns about the legitimacy of 'D' at that time; and by the time of the second payment – Mr and Mrs M had received the promised returns.

Mr and Mrs M didn't agree. In short, they said Lloyds should've been aware of the prevalence of investment scams and spoken to them about the payments. And if it had, it would've found out that:

- 'D' was an overseas unregulated investment.
- The investment had been promoted by an unregulated agent.

- They were not high net worth individuals, nor were they sophisticated investors – and so the investment was not appropriate for them.
- That the promised returns were too good to be true – this being a hallmark of a scam.

Mr and Mrs M said they would've acted on any warnings Lloyds had given them about investigating in 'D'. They also referred to an 'expert report' which concluded that 'D' was operating as a Ponzi scheme and must therefore be classified as an investment scam.

Mr and Mrs M were also concerned that our Investigator hadn't been procedurally fair in her consideration of their complaint and had made her findings in an '*irrational manner*'. In particular, that she'd not taken account of other Ombudsman final decisions which they said supported their complaint.

I've been asked to review everything afresh and reach 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 and Mrs M were hoping for and so this will come as a disappointment. I'm really sorry to hear about the situation they've found themselves in, and I can understand why they'd want to do all they can to recover the money they lost. But I need to decide whether Lloyds can fairly and reasonably be held responsible for Mr and Mrs M's loss. Overall, I've decided that it can't be. I'll explain why.

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.

I want to also assure Mr and Mrs M that I've fully considered all the information provided – including the expert report Mr and Mrs M think is a key piece of supporting evidence that 'D' was operating as a scam.

I've not referred specifically to every submission within this decision; but that isn't because I've not addressed it or because I've ignored the point. It's simply because my findings focus on what I consider to be the central issues in this complaint – that being whether Lloyds could've prevented Mr and Mrs M's loss.

I accept the transactions Mr and Mrs M made were authorised payments. So, Mr and Mrs M are presumed liable for the loss in the first instance.

However, I consider that as a matter of good industry practice at the time 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 have 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 and Mrs M's payments — and if so, what might have 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 and Mrs M when they made the payments, specifically whether it should've

done more than it did before processing the payments – and if it had, would that have made a difference. I also need to decide if Lloyds could've reasonably recovered the lost funds.

Was this a scam?

Whether Mr and Mrs M were the victims of a scam, or a failed investment, is a difficult point to resolve conclusively – particularly given the passing of time here.

I appreciate that Mr and Mrs M have provided a substantial amount of information which they say proves 'D' was operating as a scam. And they have specifically referred to an expert report which they believe to be pivotal in supporting this. But for the purpose of this decision, I don't need to make a finding on that point. Instead, I'm focusing on whether action by Lloyds could've prevented Mr and Mrs M's loss based on the information available at the time they made the payments.

Should Lloyds have intervened before processing the payments?

Mr and Mrs M made three payments towards the investment – the first two (totalling £50,000) on 24 July 2014. Having looked back over Mr and Mrs M's Lloyds' statements for the 12 months prior to these payments – I do think they stand out as unusual when compared with Mr and Mrs M's normal account activity. The second payment of £40,000 on 24 March 2016 also stands out to me as unusual.

And so arguably, the payments Mr and Mrs M made towards the investment should've been flagged by Lloyds and prompted it to find out more about the nature of the payments Mr and Mrs M were making. But to have a basis on which to direct Lloyds to refund Mr and Mrs M's loss, I'd need to be satisfied that such intervention by Lloyds would've likely prevented it.

Would intervention by Lloyds have made a difference and prevented Mr and Mrs M's loss?

Having given this point very careful thought, I'm not persuaded that any reasonable level of intervention by Lloyds would've likely made a difference. I'll explain why.

While there may now be significant concerns about the operation of 'D' and legitimacy of the investment, I must consider what Lloyds could reasonably have established from Mr and Mrs M if it had intervened in the 2014 and 2016 payments. I cannot apply the benefit of hindsight to this finding.

Firstly, it wasn't Lloyds' role to provide investment advice to Mr and Mrs M. That would've included advice about the nature and regulation of the investment, or the specific risks to Mr and Mrs M associated with it. And I'm also mindful that the prevalence of investment scams was far less in 2014 and 2016 than it is now.

But even if Mr and Mrs M had been prompted by warnings given by Lloyds to carry out checks, I'm not persuaded this would've given them any obvious cause for concern.

Mr and Mrs M have told us they had no reason to question the legitimacy of the investment at the time of the first payments in 2014. The investment was for a 5-year term, and it wasn't until May 2021 that they started to have any concerns. And by the time of the second payment in 2016, they were receiving returns on the investment from 'D' in line with expectations – and continued to do so until October 2017.

Both 'D' and 'B' were genuine companies and there was no information in the public domain at the time the payments were made indicating 'D' was a scam. Mr and Mrs M have also

alleged 'D' was running a Ponzi scheme, the nature of which means it often takes some time for what is going on to become apparent.

I think it's also likely Mr and Mrs M would've told Lloyds that they had documents from 'D' confirming the terms of the investment, which appeared entirely genuine.

All things considered, I don't think it would've been apparent to Lloyds or to Mr and Mrs M in July 2014 and March 2016 that 'D' might be fraudulent rather than simply a higher risk investment. I say that because I'm not persuaded that Lloyds or Mr and Mrs M could readily have uncovered information – during a proportionate interaction about the payments - that would've led to significant doubts about the legitimacy of 'D' at that time.

All this suggests to me that it's more likely than not Mr and Mrs M would've proceeded with the transactions – even if Lloyds had alerted them to the risks involved and the checks they should make. I think it would've taken something more credible, like regulatory warnings about the legitimacy of 'D', or anything else in the public domain suggesting 'D' (or 'B') weren't genuine to have concerned Lloyds or made Mr and Mrs M pause and think more about their decision to invest.

In summary, I've considered everything submitted and the arguments made, but while there may now be concerns about the legitimacy of 'D', everything I've seen indicates that those concerns *only* began to surface in the public domain *after* the relevant payments were made by Mr and Mrs M. With that in mind, I'm not persuaded that Lloyds was at fault for carrying out the relevant payment instructions, or for not preventing Mr and Mrs M from making their payments.

Recovery of funds

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 seven years had passed by the time Mr and Mrs M contacted Lloyds. Furthermore, the funds paid to 'B' were transferred onto 'D'; and as I understand it, 'D' was declared bankrupt in 2020 and Mr and Mrs M have told us they registered their interest with the liquidator in May 2021.

Therefore, I can't say Lloyds had any reasonable prospect of recovering the funds in 2023 given the passing of time; and because 'D' was declared bankrupt around three years earlier.

I have a great deal of sympathy for Mr and Mrs M and the loss they've suffered. But it would only be fair for me to direct Lloyds to refund their 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 Lloyds 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 and Mrs M to accept or reject my decision **before 6 June 2024**.

Anna Jackson
Ombudsman