

The complaint

Ms L complains that Lloyds Bank PLC (“Lloyds”) won’t refund money she lost when she fell victim to a scam.

Ms L is being represented by a claims management company in this complaint.

What happened

The detailed background to this complaint is well known to both parties and has been previously set out by the investigator. So, I’ll provide a brief overview and focus on giving my reasons for my decision.

In August 2021, Ms L made three payments totalling just over £40,000 in connection with an investment opportunity she had heard about from a family friend. She entered into short-term commodities futures contract with a company “Q” which was based overseas, expecting to make a profit at the end of the term. Ms L first sent the funds from her Lloyds account to her e-money account with an electronic money institution in the UK. She then made transfers to Q’s accounts from there.

In 2022, Ms L received some dividend payments from Q. £12,000 of her initial investment was also returned to her later that year. However, the individual at Q she was dealing with kept delaying the repayment of the remaining investment.

In April 2024, Ms L complained to Lloyds about its failure to prevent her from falling victim to a scam. The matter was referred to our service when the timescale for Lloyds to respond to her complaint had passed.

This decision solely relates to Ms L’s complaint about Lloyds. Her complaint about the electronic money institution’s actions has been considered separately.

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.

Ms L’s linked complaint about the electronic money institution has also been considered by me. I apologise for the repetition in the decisions.

The first question I need to consider in any case where an allegation of scam has been made is to determine, so far as is reasonably possible, whether the complainant has in fact been scammed. This is important because the expectation on banks and other payment service providers to be on the look-out for and protect their customers against the risk of fraud and scams isn’t triggered where a scam hasn’t taken place.

I’ve carefully considered the information and the arguments put forward by Ms L’s representative. Having done so, I’ve not seen sufficient evidence to conclude that Ms L has lost money to a scam. I’ll explain why.

I can see that a petition to wind up Q was first made to the court in October 2022 and the firm has since gone into liquidation. But the fact that other creditors took legal action against Q isn't conclusive evidence that Q's purpose in procuring the funds from Ms L at the relevant time was fraudulent. There are no regulator warnings published about Q. I haven't seen any adverse information about it in the public domain either.

I understand that Ms L says the individual she was communicating with had told her that Q was regulated by the UK's financial services regulator, the Financial Conduct Authority ("FCA"). I've seen the contracts, as well as chat correspondence between Ms L and the individual. Neither refers to the FCA. Having done a backdated internet search, neither does Q's website.

That's not to say claims of such nature could not have been made. I accept there's a possibility that misrepresentations were made. But I must weigh up all the information that's currently available to me.

I note that Ms L received a quarter of her investment back when she requested a withdrawal. I find such action highly surprising if Q was intending to defraud its investors as is being claimed. With investment scams, victims are often enticed to invest even larger sums of money by being allowed to make small withdrawals. But that isn't what happened here. Ms L wasn't asked to invest more money when she asked to make a withdrawal.

I understand the point Ms L's representative is making about high returns being promised. But as far as I can tell, Ms L was aware that Q was registered in a country in Southeast Asia and her commodities futures trading contract was based in that country (the contract sets this out). What might be considered unusually high rates of return for European economies may not be the same in Southeast Asia.

On the point about claims of guaranteed returns, I can see that in response to an information request by the investigator Ms L said, "*We had agreed to use our funds to purchase agricultural products that we can sell after six months, with the intent of making a profit due to the expectation of selling at a higher price by purchasing them in advance. Unfortunately, the anticipated outcome did not materialise, and we did not make the projected gains*" (my emphasis). This response suggests that Ms L was aware that returns weren't guaranteed.

So, having weighed up the evidence currently available, I'm not persuaded that the purpose of obtaining Ms L's money itself was fraudulent such that it leads me to conclude that she was scammed by Q.

Even if further evidence comes to light in the future which lends itself to Q likely being a scam, I consider it unlikely that any intervention by Lloyds at the time of the payments would have positively impacted Ms L's decision-making. From what I've seen, she proactively contacted Q about making an investment after having heard about it through someone she and her family knew. This suggests that she had already been persuaded to some extent to invest in Q prior to making contact.

We haven't received Lloyds's submissions to date, so it's unclear whether it intervened during any of the disputed payments. I've considered the activity on her Lloyds account, and I'm inclined to agree with the investigator that the largest disputed payment was unusual for the account spending. If I were satisfied that Ms L's payment went to a scam, and therefore Lloyds ought to have made further enquiries before releasing the relevant transaction, I think Ms L would have explained that she was transferring funds to her e-money account. Had the ultimate destination of the payment come to light and questions asked about Q, I think she would have told Lloyds that it was regulated by the FCA (if that was her understanding at the

time). This would have given the bank some reassurance that Ms L had done her due diligence.

I wouldn't have expected the bank to have carried out checks on Q before releasing the payment. But it wouldn't be unreasonable to have expected it to have asked Ms L to independently verify that the information she'd been given by Q checked out. Given how she found out about the opportunity, the fact that other members of her family had invested, and she could have verified Q's regulatory status if she wanted to prior to being prompted by Lloyds, I'm not convinced that Ms L would have looked into things further following an intervention by the bank. Even if she had and discovered that the company her contract was with wasn't FCA regulated, not being regulated in the UK doesn't automatically mean a firm is operating a scam. So, I don't think an intervention would have made a difference.

I've also thought about recovery of funds. Ms L's funds went to an account in her own name. And we know she sent them on to Q's account. In the circumstances, recovery wouldn't have been possible.

I recognise that Ms L will be disappointed with this outcome. I acknowledge that a considerable sum of money is involved which she has been unable to recoup. But for the reasons I've explained above, I can't fairly hold Lloyds responsible for that.

My final decision

For the reasons given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 2 October 2024.

Gagandeep Singh
Ombudsman