Case study: Banking

INVESTMENT BROKER DUPES COMPLAINANT INTO INVESTING IN A PONZI SCHEME

Themes: Ponzi scheme; inadequate due diligence; investment broker.

This complaint relates to a bank's failure to identify that a complainant's payment request was to a fraudulent investment.

In September 2018, Miss B was introduced to a regulated investment broker from who a family member had previously taken investment advice. The investment broker advised Miss B to invest in a company which would, he said, provide excellent returns. Miss B wanted to take this opportunity but as her investment capital did not meet the minimum investment threshold, the investment broker advised Miss B to invest through her family member's company account. Miss B transferred £100,000 from her local bank to her family member's company account for the purpose of this onward investment.

Over the next few months, Miss B received approximately £20,000 in returns, but it later transpired that the company Miss B had invested in was a type of 'Ponzi scheme' where new investors covered the returns of the previous investors. In 2019, the investment company was the subject of creditors' voluntary winding up and compulsory liquidation. Unfortunately, Miss B did not get back the remaining £80,000 of her investment.

In October 2023, Miss B complained to her bank that they had not done enough to protect her from scams when she made the initial payment. Miss B stated that the delay in making her complaint was due to a lack of knowledge and that the bank had a duty to prevent or mitigate her financial loss. Miss B's bank rejected the complaint as they believed they had sufficient fraud protection measures in place and that Miss B had contributed to the loss by not performing adequate due diligence checks on the investment. Miss B referred the complaint to CIFO.

CIFO investigated and noted that Miss B's bank had a duty to operate in accordance with Miss B's instructions, but as the transaction was sufficiently unusual, the bank should have sought more information about the payment. However, Miss B's bank was not aware that the payment, initially made to Miss B's family member's company, was to be forwarded to another company for investment purposes. CIFO also performed a balance of probabilities test and concluded that, even if Miss B's bank had requested more information regarding the transaction, Miss B would have more than likely not continued to make the payment.

CIFO concluded that if Miss B's bank had asked follow-up questions regarding the unusual transaction, it was likely that Miss B would have explained that the payment was to a family member's company account for further investment into a company that her family member had introduced to her. Under the circumstances, Miss B's bank would have been justified in concluding that it should proceed to make the authorised payment. CIFO did not uphold the complaint.