

The complaint

Mr B complains that Lloyds Bank PLC won't refund money he lost, which he believes was as the result of a scam.

What happened

The background to this complaint is well-known to both parties, so I won't repeat it all in detail here. But in summary and based on the submissions of both parties, I understand it to be as follows;

Around September 2019, Mr B was looking to have a summerhouse built. He's said that he looked at different companies, but came across an advert on social media for a builder that interested him. The advert has since been removed, but Mr B has said there were pictures of summerhouses and Mr B told Lloyds he checked the viability of the advert, by looking at other social media platforms, and was able to see photo's that covered several years.

Mr B contacted the builder and arranged for them to come to his house to provide a quote. Following the visit and having received a quote and exchanged messages with the builder, Mr B decided to go ahead and agreed a price of £4,000, with the work scheduled to start in early October. The builder asked Mr B for a deposit of £2,000, explaining this was for materials and that he needed the deposit, as once the materials had been ordered, he'd be unable to return them if Mr B later decided he didn't want the work carried out. Mr B went ahead and, on 25 September 2019, made a payment for £2,000, via bank transfer, to the account details the builder provided – which was an account also held with Lloyds.

Mr B has said that the builder did not turn up to carry out the work on the date agreed. He exchanged further messages with him and a rescheduled start date was agreed for one week later. Mr B became concerned that the builder again didn't turn up to start the work the following week and has said that he began to make excuses for the delays.

Mr B continued to exchange messages with the builder and says that he has received numerous promises for the money to be returned, but he has never got it back. Mr B believes that there is no reason to believe the builder had any intention of returning the money. Mr B has said he also discovered, through social media, that there have been others who have paid for work to be carried out, but that hasn't been completed.

Mr B raised the matter with Lloyds in October 2019 and also instructed a solicitor, who contacted Lloyds on Mr B's behalf. In summary, Mr B believed that he had been scammed and that he should be refunded under the Contingent Reimbursement Model (CRM) Code.

Lloyds looked into the concerns that Mr B had raised. It considered its obligations under the (CRM) Code, of which it is a signatory and sent its final response on 24 October 2019, not upholding Mr B's complaint. It deemed the matter to be a buyer/seller dispute between Mr B and the builder, it said this as Mr B had still been in contact with the builder, and the builder had agreed to refund him. It added that as the beneficiary account was also held by it, it had checked but could see no funds remained.

Mr B then brought his complaint to our service. One of our investigators looked into things. Our investigator didn't uphold Mr B's complaint, as she considered this was a dispute between Mr B and the builder who he had made the payment to. In summary, she said that although the works may not have been carried out, she could see that the builder had agreed to repay Mr B, albeit these payments didn't amount to the amount agreed and have since stopped. She considered that it would be unusual for a scammer to continue to remain in contact with a victim, or offer to pay any money back.

Our investigator added that she had also considered that Lloyds had investigated the account to which the payment for £2000 was made, as it was also held with Lloyds. But it didn't find anything concerning about how the account had been operated. While she didn't doubt the agreement Mr B entered into with the builder hadn't gone to plan, she agreed with Lloyds that the case should be treated as a civil matter.

Mr B didn't agree with our investigators view. In summary, he said he believes this is a scam. He said this because, others had also lost money. Mr B has said that although he did receive some payments back from the builder, these were small payments that were only made after he had reported the matter to the police – and he feels these payments, which stopped, were only made for the builder's self-interest. Overall, Mr B does not consider there is any evidence to suggest that the builder legitimately intended to carry out the work and maintains that he believes Lloyds should refund him under the CRM code.

As agreement couldn't be reached the complaint has now been passed to me for a 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.

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.

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

Having thought very carefully about Lloyds actions, I'm not intending to uphold Mr B's complaint. I do appreciate how disappointing this will be for him, but I don't think I can fairly say Lloyds should reimburse him. I'll explain why.

I'm sorry to hear of what's happened to Mr B, and I can understand entirely why he feels so strongly that his money should be returned to him. It's understandable for such a significant sum why Mr B feels he has been the victim of a scam. But not all cases where individuals have lost significant sums are in fact fraudulent and/or a scam.

When considering what is fair and reasonable in this case, I've also thought about the Lending Standards Board's voluntary Contingent Reimbursement Model, which Lloyds has signed up to and was in force at the time Mr B made these payments.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam. I've thought about if the CRM code applies in the circumstances of the payment Mr B made and, in particular, whether Lloyds ought to reimburse him under the provisions of the Code. But the Code is quite explicit that it doesn't apply to all push payments. It says:

"DS2(2) This code does not apply to:

(b) private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier"

Subsections (a) and (c) have been omitted as they are not relevant to this complaint.

Both the bank and our investigator felt the payments Mr B made formed part of a buyer/seller dispute and, as such, are not covered by the Code. Mr B strongly disagrees. He feels the builder has scammed him.

It's clear the agreement Mr B entered into with the builder did not go as planned and the work has not been carried out. And I can understand entirely why he feels so strongly about what has happened. But I can't safely say with any certainty, with what I know, that the builder set out with an intent to defraud him.

I say this because there appears to be a number of factors, in the circumstances of this case, that don't carry the typical hallmarks of these particular types of scam or of a trader setting out with an intent to defraud;

- The builder was still contactable after Mr B had made the payment. This is not typically the case with fraudsters, who more often than not are not able to be contacted after they have taken a victim's money.
- Mr B and the builder continued to exchange messages after the payment had been made and an agreement was reached for the money to be repaid. I do understand that Mr B has not received all of his money back, and the repayments didn't continue – but I'm not persuaded that it's usual behaviour for a scammer to agree to refund money they have defrauded their victims of.
- Whilst I am unable to share details about a third party and the nature of their relationship with their bank. The evidence I've seen from Lloyds, regarding the beneficiary account, indicates that the builder had previously successfully carried out similar activities for other customers, without any concerns being raised. Which I'm persuaded is supported by the evidence Mr B saw when he carried out his own research before engaging with the builder. Where he's said the social media pages/advert he saw for the builder, contained photos of work / good reviews.
- Lloyds has confirmed that the beneficiary account is a legitimate account which had been longstanding before the payment was made. And it had no concerns about how the account was being operated prior to Mr B making his payment.
- I'm also mindful that the builder has given Mr B his genuine contact details (address / telephone number) when he provided a quote. This again is not usual behaviour for somebody who is setting out with an intent to defraud, more typically with scams such as these, the scammers provide false details, so as they cannot be traced after defrauding their victims.

- I understand that Mr B raised the matter with Trading Standards, but I'm not aware of any ongoing investigations by Trading Standards, or any other authority, which would lead me to safely conclude there was an intent to defraud.

I do understand that Mr B has communicated with others, who have also said they didn't get the service they paid for/expected. However, this in and of itself, isn't enough for me to safely say there was an intent for the builder to defraud Mr B. After taking everything into careful consideration, so the testimony and evidence provided by both parties, on balance, I can't safely say this meets the high legal threshold and burden of proof for fraud. Rather, this appears to be a case of a builder, failing to honour their agreement by not providing the work that their customer expected.

This being the case I'm satisfied the CRM Code doesn't apply. And I can't fairly ask Lloyds to refund the money Mr B has lost, as I don't think Lloyds treated Mr B unfairly when it said the payment he made was not covered by the CRM Code. And I don't think there was anything else Lloyds could have done to prevent his loss.

I realise that my decision will be disappointing for Mr B and I don't underestimate the impact this matter has had on him. But overall, for the reasons I've explained I can't fairly or reasonably ask Lloyds to refund the money Mr B has lost.

My final decision

For the reasons set out above, my final decision is that I don't uphold Mr B's complaint against Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 February 2022.

Stephen Wise
Ombudsman