

The complaint

Mr and Mrs S complain about the advice they had received from Lloyds Bank PLC (“Lloyds”) before making payments to a sole trader.

What happened

Mr and Mrs S hold a joint account with Lloyds. They wanted to use the services of a sole trader to have their garden landscaped and to pay him using their account. Prior to using the sole trader’s services, in May 2021, Mr S contacted Lloyds to request advice on how best to pay him, while still remaining protected in the event the work did not happen. Mr and Mrs S needed to make two payments, one for £4,000 and another payment for £1,845. The payments were for costs of materials and partial payment for the work (for the rest to be paid upon completion).

Mr S says Lloyds told him that a BACS payment was the safest way to proceed. So, Mr and Mrs S proceeded on that basis.

Mr S says the sole trader didn’t complete the job and so contacted Lloyds to retrieve their money. They say Lloyds refused to help to return their money and to also accept responsibility for the advice they were initially given.

Lloyds responded to Mr S. They said that when Mr S contacted them to request advice, they told him it was possible his money could be recovered and that he was covered for fraud if he was to continue with the payment. They also said that there was a formal agreement between Mr and Mrs S and the sole trader, and so they are within their rights to log a civil dispute, and would not consider this to be a scam.

Lloyds also credited Mr and Mrs S’ account with £100 for the poor quality service they received when complaining to them.

Mr and Mrs S, unhappy with Lloyds’ response, referred their complaint to our service. Our investigator found that Lloyds needed to do more to put things right, due to being given the wrong advice. She said that while Lloyds had paid £100 for the service they gave, they needed to do more to acknowledge the incorrect information and the stress this has caused Mr and Mrs S. So, she said Lloyds must pay an additional £100 (£200 in total). She also said that, having looked at the agreement between Mr and Mrs S and the sole trader, there didn’t seem to be another option to make payment other than a BACS transfer. And on the information provided, she couldn’t be sure whether Mr and Mrs S would have continued with the payment or considered looking at other traders to start the work.

Mr and Mrs S disagreed with the investigator’s findings and feel Lloyds are liable to pay the full amount they had paid the sole trader. And so the complaint has been passed to me to decide on.

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 thought carefully about Lloyd's actions, I'm upholding this complaint. However, it isn't in line with how Mr and Mrs S would like me to. I do appreciate how disappointing this will be to the both of them, but I don't think I can fairly say Lloyds should reimburse Mr and Mrs S for the full amount of payments made. I'll explain why.

I'm sorry to hear what has happened to Mr and Mrs S, and I can understand why Mr S feels their money should be returned to them. But not all cases where individuals have lost sums of money are in fact fraudulent and/or a scam.

When considering what is fair and reasonable in this case, I've thought about the CRM Code which Lloyds has signed up to and was in force at the time Mr and Mrs S made these payments. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an Authorised Push-Payment (APP) scam. I've thought carefully about if the CRM Code applied in the circumstances of the payments Mr and Mrs S made and whether Lloyds ought to reimburse them under the provisions of the Code. But the Code is quite explicit in 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 Lloyds and our investigator felt the payments Mr and Mrs S made, formed part of a buyer/seller dispute and, as such, are not covered by the Code.

Mr S says both he and Mrs S entered into an agreement with the sole trader and this did not go as planned as some work wasn't carried out. But I can't safely say with certainty, with what I know and what the evidence shows, that the sole trader set out with intent to defraud them.

Mr S has been able to provide a schedule of works that were to be carried out by the sole trader. This schedule was provided by the sole trader and his name and contact details are recorded at the top. Mr S has also provided his own account of work that still needs completing or what he believes hasn't been completed to a satisfactory quality. Mr S has also been able to provide an invoice which is from before the work started, and it requested an amount payable of £4,000 (50% of the total budget) and for this to be paid via a BACS transfer to the sole trader. The invoice also says the remainder of the budget is to be paid upon completion of the project.

I have also seen other information provided to me. From what I have seen, the evidence persuades me to think this is a case of a dispute between two parties rather than a scam. This appears to be a case of a sole trader, potentially failing to honour an agreement, by not providing the work to the standard the customer expected.

That being the case, I'm satisfied the CRM Code doesn't apply in this instance. And I can't fairly ask Lloyds to refund the money Mr and Mrs S has lost, under the Code.

But I do think Lloyds needs to do more for the incorrect information they provided Mr S. I'll explain why.

Mr S contacted Lloyds before making the first payment to enquire whether he would be protected in the event the work did not happen. Lloyds told him it was possible his money could be recovered and that he was covered for fraud if he was to continue with the payment. During that call Mr S also said he didn't believe this to be a scam in the first place, even when Lloyds said he would be protected in that instance.

Lloyds has acknowledged it made a mistake here and Mr S was wrongly advised. Lloyds accepts the advice given was too vague and didn't give the customer a correct understanding of the risks of making a payment to someone. So, I've gone on to consider the impact their mistake had on Mr and Mrs S.

Lloyds also paid £100 to Mr and Mrs S and their final response to them suggests it is for the service they've provided and for the amount of time they spent waiting for a response to their complaint. However, considering the impact on Mr and Mrs S for the incorrect information, I think a further award for the wrong information given to Mr S should also be made.

Mr S relied on what Lloyds had told him and continued with the payments he was enquiring about. He says he only continued with payments as reassurances were given by Lloyds. I appreciate Mr S feels strongly about this, but I can't be sure what Mr S would have done, had he been given correct information from the outset. So I must consider what I think is likely to have happened, on the balance of probabilities.

The invoice Mr S provided us shows that the payment needed to be made via BACS and the sole traders' account details were given. There wasn't another option or payment method provided. And I don't think it is likely another payment method would have been accepted, considering it was to be made to a sole trader. I accept cash could have been accepted, but this payment method is unlikely to have satisfied Mr and Mrs S' requirement for a secure method of payment which could be retrieved if works hadn't been carried out.

I think it is more likely than not Mr and Mrs S would have continued with the payment, even if the correct information had been given. I say this because, having listened to the call, Mr S was keen to know the "best way" to pay the sole trader. This suggests to me, he was likely to pay him, but wanted to use a method which was likely to protect him the most. He says at times during the call, he has no reason to suggest this was a scam and acknowledges the sole trader has a "business head" on him. This suggests to me that the sole trader had built a rapport with him. Mr S also goes on to say "if I had suspicions, I just wouldn't go ahead and make payment...". Considering the sole trader likely didn't accept another method of payment, I think it's more likely than not Mr and Mrs S would have continued with the payment via BACS.

While I accept Lloyds made a mistake on this occasion and gave incorrect information to Mr S, I don't think it follows that as a result of the mistake, they are liable to pay £5,845 to Mr and Mrs S. Mr S has explained that he had a lot of stress caused by this set of circumstances. And I appreciate what he has said. It is a significant sum of money and I can see why he is attempting to retrieve it, if possible. But I can't fairly say Lloyds are to blame for the stress he is under. It is more likely than not, the stress is caused by the actions of the sole trader and him subsequently walking out of the job he was partly paid to complete.

Putting things right

Having considered the impact Lloyds' mistake has had on Mr and Mrs S, I think it is fair and reasonable for Lloyds to pay a total of £200 for the trouble and upset this has caused them.

Lloyds may deduct any compensation they have already paid them in relation to this matter from the above.

My final decision

My final decision is that I uphold this complaint and Lloyds Bank PLC should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 19 December 2022.

Ronesh Amin
Ombudsman