

The complaint

Mr and Mrs S complain that Lloyds Bank PLC ('Lloyds') won't refund the money they paid to a tradesman for work that wasn't completed.

What happened

The payment in this case was made from a joint account held by Mr and Mrs S but as Mr S was more involved, I'll mainly refer to him in this decision.

Mr S says that in September 2019 he emailed a number of contractors, including a company I'll refer to as T in this decision, to get quotes for building an extension. He then met a director of T in T's showroom when the specifications were altered. Mr S says that before deciding to engage T, he completed numerous checks. He compared the quotes of various contractors, obtained details of former clients and called them, researched social media posts and reviews of T, checked T on Companies House and checked T's credentials with a trade association. Mr S says they also took comfort from the fact T had a high street presence.

The total cost of work exceeded £80,000 and T asked Mr S to pay £20,000 in advance for materials. Mr S says other contractors had said they would require a payment in advance for the same reason, so he thought this was standard practice. On 2 December a director of T chased him for the payment, which Mr S then made. Work was due to start later that week, but Mr S didn't hear anything from T. He emailed the director on 9 December 2019 and received an out of office response to emails and calls went unanswered. Later that day Mr S found that T's website had been taken down and all social media profiles removed. He called Lloyds to report that he'd been scammed.

Work was never started and on 3 January 2020 T entered voluntary liquidation.

Lloyds hasn't agreed to consider Mr and Mrs S's complaint under the Lending Standards Board Contingent Reimbursement Model (CRM Code) as it says that this is a civil dispute between Mr and Mrs S and T. Mr S provided Lloyds with evidence from the insolvency service giving the reasons why both of the directors of T had been disqualified from being directors. Lloyds maintained its stance and so Mr and Mrs S referred their complaint to this service.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld in full and that interest should be added to the award. She said this because she was satisfied Mr and Mrs S were the victims of a scam as T had no intention of building an extension when the payment was made. And under the CRM Code the investigator was satisfied that none of the permitted exceptions to reimbursement applied as Mr S reasonably believed he was paying a legitimate company and wasn't provided with an effective warning.

Mr and Mrs S accepted the investigator's view, but Lloyds did not. In summary, it maintained that Mr and Mrs S have a civil dispute with T. Lloyds went on to say that for the CRM Code to apply there needs to be a clear intention to defraud by taking money with no intention of completing the work, and this wasn't the case. T had been trading successfully for around six years and its directors were trying to trade to keep the business alive. Lloyds referred to the fact Mr and Mrs S have remedies as creditors. In respect of the warning it provided,

Lloyds noted it was ineffective under the CRM Code as no warning it could have provided would have covered the circumstances of this case.

When I reviewed this complaint, I contacted Lloyds to explain why I thought Mr and Mrs S should receive a full refund plus interest, but Lloyds did not agree so I'm issuing this 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.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). The CRM Code applies in certain circumstances when a customer makes a payment for what they believed were legitimate purposes, but which were in fact fraudulent.

But the CRM Code is quite explicit that it doesn't apply to all push payments. It says:

"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".

So I need to decide if Mr and Mrs S are the victims of a scam. It's clear that they did not receive the service they paid for and that no work was ever completed. But, in order to conclude that they have been the victims of a scam, I need to be satisfied that a director of T deliberately deceived Mr and Mrs S into making a payment for financial gain. In other words, I need to believe that it's more likely than not that the director of T acted fraudulently.

To help me decide the intention of the director of T when he asked Mr S to pay £20,000 on 2 December 2019, I've reviewed the evidence that is available. The most compelling evidence is from the insolvency service. In the interests of confidentiality and given that this decision will be published, I can't go into detail about this evidence. But both parties to this complaint have seen the evidence so are fully aware of it. In brief though, the evidence shows that before Mr S was asked to make the initial payment of £20,000 the director he was dealing with had full knowledge that T was in severe financial difficulty and had made a significant loss in October 2019. T's accountant had also advised the directors it needed to review liquidity. But between a date in November and 6 December 2019 T took substantial deposits. The director of T who communicated with Mr S took a large deposit the day after he told his accountant T was unable to pay its debts.

In the circumstances, I'm satisfied that when Mr S paid the £20,000 payment, it's more likely than not that the director of T who asked him to make it knew that the work Mr S had paid for wouldn't be completed. I understand Lloyds' point that T had traded legitimately for some time before Mr S made the payment but think the evidence demonstrates that there came a point towards the end of November 2019 when its directors actively sought deposits for work they knew wouldn't be done.

Lloyds also holds T's account. It has provided me with very limited information that indicates that after Mr S made the £20,000 payment some of the funds might have been used to buy materials. From the information I've been given though, it's impossible to see whether the payments related to previous invoices or whether they related to Mr S's extension. It's also clear that a large proportion of the funds weren't used for this purpose and that no funds remained by the time Mr S reported the scam on 9 December 2019.

T also stopped responding to Mr S once the payment had been made and removed social media presence and their website. These are actions commonly taken by scammers.

Overall, I consider that Mr and Mrs S are the victims of a scam. So I need to go on and consider the other provisions of the CRM Code to decide whether Lloyds should refund

them. The CRM Code requires victims of APP scams like this one to be reimbursed in all but a limited number of circumstances. Lloyds has accepted that it didn't provide Mr S with an effective warning during the payment journey but has indicated that Mr S didn't have a reasonable basis for believing he was paying a genuine contractor. I disagree and will explain why.

I set out above the steps Mr S took before deciding to enter into a contract with T. As Lloyds has pointed out, T was a well-established company at the time, so he was able to see this and view online reviews. These satisfied him that T was a genuine company. I consider the fact that T had two shops would also have been reassuring to Mr S. Mr S spoke to two former customers of T, both of whom were very satisfied with T. I note that Lloyds has referred to the fact Mr S didn't view the work, but I can understand why people would not invite strangers into their home to view completed work. Overall, I'm satisfied Mr S took reasonable steps to ensure T was a genuine company and so I don't think Lloyds has established that it can deny reimbursement in this case.

I have seen evidence that confirms that the liquidators didn't expect there would be sufficient funds to pay any unsecured creditors so I think it's very unlikely Mr and Mrs S will recover any funds. If they do, they should return to Lloyds the amount recovered so that they are not compensated twice for the same loss.

In the circumstances, I'm satisfied that Lloyds should refund the amount Mr and Mrs S lost in this scam together with interest. I can see that the funds were transferred into Mr and Mrs S's account from another account so to put them in the position they'd have been in were it not for the scam Lloyds should pay interest at the rate that applied to the account the funds were transferred from.

My final decision

I uphold this complaint and require Lloyds Bank PLC to:

- Pay Mr and Mrs S £20,000;
- Pay interest on the above amount at the originating account rate from the date Lloyds rejected the claim to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 21 December 2022.

Jay Hadfield
Ombudsman