

## **The complaint**

Mrs V is unhappy Lloyds Bank PLC (“Lloyds”) won’t refund money she sent to pay for a tax bill and now believes is a scam.

## **What happened**

Mrs V inherited a property in 2018 and started to rent it out. A family friend recommended an accountant (I will refer to as C) to help with any tax issues. Mrs V paid a monthly fee for this service. After selling the property in 2021, Mrs V asked the accountant to help calculate and pay any tax that would be due. Mrs V was told the cost would be approximately £8,000. On 16 November 2021 Mrs V transferred £8,000 to C. A few months later, Mrs V got a letter from HMRC to say that Capital Gains Tax of £1,768 was owed.

Mrs V says that the accountant hasn’t paid the Capital Gains Tax (CGT) nor refunded the difference. She says she tried to contact the accountant but did not receive a reply - so reported this to Lloyds as a scam.

Lloyds felt this was a civil dispute because:

- The payment was made to someone Mrs V had been paying for a genuine service for three years with no issues in that time.
- C is a genuine business and is registered on companies’ house.
- HMRC is conducting its own investigation
- It doesn’t meet the definition of a scam

Our investigator did not uphold the complaint. He agreed with Lloyds that the matter was a civil dispute, so the bank had no obligation to provide a refund.

Mrs V disagreed. She’d heard of others reporting similar problems with C.

I issued my provisional decision on 12 September 2023. Lloyds didn’t respond.

Mrs V responded still maintaining that C deliberately set out to defraud her with criminal intent, for the following reasons.

- C had all the information available to be able to calculate the CGT so would have known £1,768 was the amount due. However, he requested £8,000.
- When she reported this to Action Fraud, she was questioned for almost an hour on the phone before they decided that a fraud had been committed.
- the 'proposal to strike off' has been objected to by another, or other, victims trying to get their money back by taking C to court before he and his Company are struck off. This has been confirmed by Companies House and has nothing to do with failing to meet his company's legal obligation.

I invited Mrs V to provide me with further evidence to support her testimony. She provided her self-assessment tax return (90% complete) for the year 2020-2021 which showed no income tax was payable (where payments would have been due in January and July 2022).

### **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.

Mrs V says the proposals to strike off has been objected by another or other 'victims' trying to get their money back by taking C to court. This is further support - in my mind - that this is a civil dispute. Mrs V employed an accountant who was acting on her behalf in a professional capacity. Whether or not he's incorrectly calculated her CGT (intentionally or not) remains a civil matter and not something I can fairly or reasonably ask Lloyds to reimburse.

I am not saying (as Mrs V has suggested) that she is trying to scam Lloyds' out of the £8,000 she gave C. It is just simply - as set out above – this is a civil matter on which I can't decide, and the bank has no obligation to reimburse the money she paid to C.

I see no reason to change my decision, for completeness I've set this out below.

I'm not deciding a dispute between Mrs V and C – I don't have the power to look into a complaint about C. My role is limited to deciding the dispute between Mrs V and Lloyds.

Having looked at everything, I can see no basis on which I can fairly require Lloyds to refund the payment in dispute. I realise this will be disappointing news for Mrs V, and it isn't the outcome she'll be hoping for, but I'll explain my reasoning below.

As a starting point in law Mrs V is responsible for payments she has instructed Lloyds to make for her. Unfortunately, there's little protection available for payments, like this one, made by bank transfer.

The Lending Standards Board Contingent Reimbursement Model ("CRM") does provide some protection to victims of authorised push payment (APP) scams. But it excludes civil disputes.

"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."

So, the question I need to decide is whether C was acting fraudulently and deceived Mrs V into giving her money. Specifically, that means deciding whether the evidence shows it is more likely that C set out to defraud Mrs V with criminal intent.

Whilst I can quite understand why Mrs V feels that C has scammed her, there is a high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006). And there are a number of potential reasons (other than a scam) for the breakdown in a relationship between two parties and for a dispute to exist.

Mrs V has pointed to a number of other people who have related similar stories to her own.

But that doesn't prove C was acting fraudulently.

On balance, I think there is enough evidence to show C was operating legitimately. I've not seen enough compelling evidence to suggest it stopped being a legitimate business and began to take customer money without having any intention of providing the services that were paid for.

I can see that C is (still) a legitimate business that has been registered with and active on Companies House for many years being incorporated in 2011. The individual from C that Mrs V was dealing with is still listed as an officer and whilst I note there was a notice to strike off the company – that appears to have been suspended. A notice to strike off is usually evident when a company fails to meet its legal obligations, such as not filing annual accounts or confirmation statements. It might be that the business has run into financial difficulty. But that is not something for me to investigate or decide – nor do I need to know this in order to reach a decision on this case.

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 the beneficiary bank, regarding the beneficiary account, indicates that it is a genuine business that has been operating a business account for several years with no fraud concerns raised – it is this account that Mrs V paid into.

Overall, I accept and acknowledge that Mrs V may feel she has not have received the service she paid C for, for whatever reason – as I mentioned it could have run into financial difficulties or it could simply have been a very badly run business and with poor customer service. But I don't think the available evidence indicates that Mrs V has fallen victim to a scam.

Mrs V has my sympathies. But overall, I'm not satisfied that there has been a bank error in this case as I can't safely say that this situation meets the high legal threshold and burden of proof for fraud. This is not to say that there is no issue at all between Mrs V and the accountant. Clearly there is. But this type of dispute isn't something that the CRM Code covers.

Overall, the evidence doesn't support a finding that C was operating fraudulently. And that means that Lloyds aren't responsible for Mrs V's loss and the bank had no obligation or ability to try and recover her money. Neither can I fairly require it to apply the CRM Code.

In saying all of this, I don't underestimate the impact this whole matter has had on Mrs V – I am sorry she has lost out seemingly through no fault of her own. But it's simply the case that I don't think Lloyds was at fault here and I can't fairly tell it to pay her for the money she's lost.

**My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs V to accept or reject my decision before 23 November 2023.

Kathryn Milne  
**Ombudsman**