

The complaint

Mrs B is unhappy that Lloyds Bank PLC won't refund her money that she lost from an alleged fraud.

What happened

As both parties are familiar with the circumstances of this complaint, I've summarised them briefly below.

In late 2023, Mrs B was looking for a new property to rent and found one she was interested in on a website. She contacted the individual advertising the property and they met in person. Mrs B was provided with a tenancy agreement—which she signed—and was asked to make an upfront payment of £862.

On 5 September 2023, Mrs B made a payment of £862 from her account held with Lloyds to the account details provided by the third-party for the accommodation.

After making the payment, Mrs B went to view the property but wasn't satisfied with the standard of it. She was told the property wasn't ready and would be in a better condition when she moved in. But when Mrs B went to visit the property again, she remained unhappy with its condition.

She no longer wished to rent the property as a result of this, so she asked the third-party for a refund of the money paid. The third-party refused.

Mrs B made a fraud claim through Lloyds as she wanted to be reimbursed the money she'd paid. But after considering the claim, Lloyds concluded that Mrs B hadn't been the victim of fraud. It found that the payment was likely made for a legitimate property and therefore Mrs B's dispute was with the third-party. As such, it didn't provide reimbursement.

Mrs B remained unhappy with Lloyds' decision, as she believed she had been defrauded and taken advantage of by the third-party. So, she brought her complaint to our service for an independent review.

An Investigator considered the evidence provided by both parties but concluded Lloyds hadn't made an error in the way it handled Mrs B's claim and subsequent complaint. They agreed with Lloyds' assessment that Mrs B wasn't likely the victim of a fraud and that this was civil dispute between her and the third-party.

Mrs B disagreed with the Investigator's assessment as she remained of the opinion she'd been defrauded.

As Mrs B disagreed with the Investigator's view, the matter has now been passed to me for a final 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.

There is no disagreement here that Mrs B authorised the payment in dispute. So, under the relevant legislation (The Payment Services Regulations 2017), she is presumed liable for the loss in the first instance.

However, when taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider to have been fair and reasonable, Lloyds should have been on the lookout for out of character or unusual payments and various risks of financial harm to its customers.

These considerations only apply in circumstances where the customer has been the victim of fraud, and not for civil disputes between the payer and payee: such as where goods and services paid for aren't to the standard expected.

Lloyds is also a signatory to the Lending Standards Board's Contingent Reimbursement Model (the CRM Code). Under the terms of that code, the starting position is that a customer who has fallen victim to an authorised push payment (APP) fraud should be reimbursed unless Lloyds can demonstrate one of the specific exclusions for reimbursement set out in the Code.

The CRM Code specifically excludes: [DS2(2b)] *"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"*.

Taking all the above into account, I must first make a finding on whether Mrs B has likely been victim to a fraud here before setting out if Lloyds ought to have done more.

Is it likely Mrs B fell victim to a fraud?

Firstly, I'd like to acknowledge Mrs B's strength of feeling on this point. She has paid the third-party a substantial sum of money for accommodation she believed to be of a certain standard. And it's clear she feels it wasn't to that standard.

While the third-party has refused to pay this money back, this doesn't necessarily mean Mrs B has been victim of a fraud. In order for me to be persuaded Mrs B has likely fallen victim to a fraud, I'd need to be satisfied the third-party intended from the outset to deceive her and likely not provide the services she'd been asked to pay for. Having considered the evidence from both parties, I'm not persuaded this was the case.

Mrs B is unable to recollect the exact chronology of events as she is impacted by memory loss caused by a medical condition. But having considered all of her testimony, I'm persuaded:

- she met with the third-party prior to moving into the property and signed a tenancy agreement. This is where she was instructed to make payment.
- I cannot be certain what the payment was for - as Mrs B hasn't made this clear and she hasn't provided any communications between her and the third-party. The tenancy agreement also doesn't specify what this payment was for, and no invoice or receipt was issued. But it's likely this was a deposit as it represents c. 4 weeks of rent, as stipulated on the agreement, and it is common practice to request a deposit as part of the property rental process.
- Mrs B visited the property, likely on 2 occasions after the deposit was paid. On the first occasion she wasn't satisfied with the general condition, but was told this would

be rectified in a few weeks' time as the property wasn't yet ready. But when she returned a few weeks later, she remained dissatisfied with the condition of the property and asked for a refund.

The above circumstances don't feature typical characteristics of fraud. The third-party had already been paid the deposit for the property, so there was no need to continue allowing Mrs B to visit. If their intention was to defraud Mrs B, they had already achieved this at the point they'd obtained her money and would have likely ceased all contact from this point.

Furthermore, it was Mrs B who terminated the agreement between them. She was, understandably, unhappy with the condition of the property and didn't want to live there. I have seen no persuasive evidence that the third-party never intended to provide the accommodation paid for or that they had made false representations regarding their status as the property owner/manager.

I've also gone further and looked at open and closed source research on the third-party and their business to see if this gives any indication they were operating fraudulently. Having done so, I've been unable to find any conclusive evidence that it was. The business is registered on Companies House and the bank statements associated with the third-party business show no evidence it was operating fraudulently. To the contrary, it appears the normal account expenditure would indicate the business was operating primarily for property management.

Mrs B has told our service that the third-party made a claim for housing benefit against her name when she agreed on moving into the property. And she says this proves they were set out with the intention to defraud: but I don't agree. Mrs B did, at a point, intend on moving into the property. So I can see why the third-party might have made this claim. Regardless, any intent by the third-party to defraud the benefits system would not be something I could consider here. But it doesn't persuade me the third-party set out with the intention to defraud Mrs B specifically.

Having considered all of the above, as Mrs B's complaint currently stands, the evidence indicates that it's more likely than not that this is a civil dispute between Mrs B and the third-party regarding the condition of the property she was due to rent, rather than an act intended to defraud her.

As it's more likely than not that Mrs B hasn't been a victim of fraud, it wouldn't be fair or reasonable to expect the bank to reimburse her loss under any of the considerations I've given above.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 26 February 2024.

Stephen Westlake
Ombudsman