

The complaint

Mr N complains that Lloyds Bank PLC ('Lloyds') won't refund him the money he lost when he fell victim to a scam and with the service he received.

What happened

Mr N wanted to have his loft converted and looked on a site that helps customers find local professionals. He got a few quotes and particularly liked what he was told by someone I'll refer to in this decision as J. Mr N saw photos of J's work. J provided Mr N with a quote for £11,000 and asked him to pay half this amount upfront. Mr N made this payment in branch on 30 August 2022. Mr N decided he wanted to have additional work completed for which J asked him to pay an additional £4,650 – which Mr N paid on 5 November 2022.

J gave Mr N a variety of reasons as to why there was a delay in starting work including mourning the death of the queen and a broken ankle. Mr N contacted J regularly for updates and then in December 2022 he raised a scam claim with Lloyds.

Lloyds said Mr N had a civil dispute and that when the payments were made it followed the correct processes and had no reason to intervene further. Mr N was unhappy with Lloyds' response and brought a complaint to this service.

While this service was investigating Mr N's complaint, he let the investigator know that J was convicted of fraud and given a custodial sentence. The investigator contacted the police to confirm the details and establish whether the court made an order in respect of Mr N's losses.

Our investigation so far

The investigator recommended that Mr N's complaint be upheld in full. He said that Mr N was the victim of a scam and should be reimbursed, and that interest should be added to the award. In addition, the investigator recommended that Lloyds pay Mr N £750 compensation. He noted that Mr N made Lloyds aware of his ill health and poor living conditions when he reported the scam and that had Lloyds found in his favour Mr N could have avoided a lot of additional stress and inconvenience. Lloyds should also have done more to raise safeguarding concerns for Mr N.

Lloyds initially refunded 50% of the two payments plus interest. It later agreed to pay the full amount recommended by the investigator, including the award of £750.

Mr N didn't accept the compensation offered and said that Lloyds hadn't shown any compassion. He also said Lloyds should have advised him to pay by credit card. Mr N believes that in addition to paying his claim in full Lloyds should pay him £1,200 compensation and £800. The £800 is to cover the cost of removing and then reinstalling Mr N's boiler (as J advised him to move it while work was completed but, when this didn't happen, the boiler had to be reinstalled in its original position).

The complaint has been passed to me to consider.

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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – in other words on what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

I'm sorry to hear that Mr N has lost money in these circumstances and of the impact of this on him.

The starting point for my considerations is that, under the Payment Services Regulations 2017 and the terms of his account, Mr N is liable for transactions he has carried out himself. But Lloyds is a signatory of the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code) and also has a longstanding obligation to be on the lookout for unusual and out of character transactions which might indicate their customer is at risk of financial harm from fraud.

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). 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, the CRM Code isn't a general protection for consumers. Instead, it only applies in very specific circumstances – where the customer has been the victim of an APP scam as defined in the code. The definition refers to certain transfers of funds, including where:

"The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent."

So, to be satisfied Mr N the victim of an APP scam as defined in the CRM Code, I'd need to be satisfied, based on evidence, that J deliberately tricked him into making payments for a service/services he had no intention of providing at the time Mr N made the payments. It can be very difficult to establish the intention of a builder at the time payment was made making rogue trader disputes particularly difficult. The fact that ultimately services weren't provided doesn't, in and of itself, demonstrate the fraudulent intention required to bring a claim under the CRM Code. In some circumstances, a builder can honestly take funds with the intention of completing work, but things change afterwards for a variety of reasons, including, for example, financial hardship.

When Mr N reported what had happened to Lloyds in December 2022 Lloyds notified the bank that received Mr N's funds of a scam claim. This bank notified Lloyds that it considered no scam had occurred and that J and Mr N were involved in a civil dispute. I'm limited as to how much information I can share with Mr N because it relates to a third-party account and is confidential, but the receiving bank provided reasoning for its decision. Again, whilst I can't share those reasons, I consider they were plausible. At the same time, there was no other evidence of criminal intent. So, when Lloyds issued its final response in January 2023 advising Mr N that it considered he had a civil dispute, I don't consider Lloyds acted unreasonably or unfairly. At that time, the kind of evidence required to demonstrate criminal intent was lacking. Lloyds went on to say that if J was prosecuted Mr N should contact it and Lloyds would review the case.

The fact that the police were investigating J (or that he may have other convictions) wasn't enough to demonstrate that he acted fraudulently in his dealings with Mr N.

I don't think it was clear that Mr N was the victim of a scam until he contacted the investigator and told him of J's conviction at the end of June 2023, well after Lloyds had completed its investigation. The investigator then needed to confirm the details and check whether the court made an order in respect of Mr N's losses. The police confirmed these

details in October 2023 and at this point the investigator issued his view. So, I don't consider there was enough evidence of an APP scam (as set out in the CRM Code) until this point.

I agree with the investigator's findings that Lloyds should reimburse Mr N's remaining loss of £5,075 plus interest and note that Lloyds has agreed with the investigator's recommendation, so I won't comment any further.

Based on what I've said above I need to consider compensation based on how Lloyds treated Mr N given that he and others discussed his vulnerabilities with Lloyds when he notified it of a claim and during Lloyds' investigation.

I agree with the investigator that Lloyds could have gone further to support Mr N and to try to gather further information from third parties like the police and Trading Standards to progress its investigation. Lloyds could also have referred Mr N to other organisations which might have been able to offer support at a difficult time for him. Lloyds has already agreed to pay £750 compensation. I can't reasonably ask it to do anything more.

I also don't consider Lloyds acted unreasonably in allowing the transactions to be made. As they were faster payments Lloyds was required to use the unique identifiers Mr N provided – the sort code and account number – and to follow his payment instructions. Mr N told Lloyds' branch staff that he was paying a builder and one-off large transactions for building work aren't unusual.

I also don't consider that Lloyds is responsible for the cost of moving and then replacing Mr N's boiler. Such an expense isn't covered by the CRM Code, which only provides for the reimbursement of the funds paid to a scammer. Consequential losses like this aren't provided for and remain Mr N's responsibility. I appreciate this means he has a financial loss, but I can't reasonably ask Lloyds to reimburse him for something it has no liability for.

My final decision

I require Lloyds Bank PLC to:

- Reimburse Mr N's remaining loss; and
- Pay interest on the above amount at the rate of 8% simple per year from the date Lloyds made its decision not to reimburse to the date of settlement.
- Pay compensation of £750.

If Lloyds Bank PLC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr N how much it has taken off. It should also give Mr N a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 12 February 2024.

Jay Hadfield
Ombudsman