

The complaint

Mrs F and Mr S complain that Lloyds Bank PLC won't refund the money they lost when they were the victims of what they feel was a scam.

What happened

In January 2022, Mrs F and Mr S were looking to get some building work done at their property. They submitted an online enquiry on a builder's website, and the builder then visited the property and gave them a quote for the work. And as Mrs F and Mr S were happy with the quote, they agreed for the builder to do the work and made a number of payments to them from their Lloyds account – firstly as a deposit, and then regularly as the work proceeded.

Unfortunately, the building work wasn't completed and Mrs F and Mr S discovered a number of issues with the work that had been done. They then reported the payments they had made to Lloyds as a scam and asked it to refund the money they had lost.

Lloyds investigated but said it thought this was a civil dispute between Mrs F and Mr S and the builder, rather than a scam. So it didn't agree to refund the payments they had made. Mrs F and Mr S weren't satisfied with Lloyds' response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think the evidence suggested the circumstances here met the definition of a scam. So they didn't think Lloyds should have to refund the payments Mrs F and Mr S had made. Mrs F and Mr S disagreed with our investigator, so the complaint has been passed to me.

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 done so, I don't think it would be fair to require Lloyds to refund the money Mrs F and Mr S have lost here. I'll explain why below.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

Lloyds is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the code where they have been the victim of a scam – as defined in the code.

The CRM code defines a scam as where a customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person. Or where the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

The CRM code also says that it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way or the customer is otherwise dissatisfied with the supplier.

So in order to determine whether Lloyds should refund the money Mrs F and Mr S lost under the CRM code, I need to consider whether they have been the victims of a scam – or, in other words, whether they were deceived about the purpose of the payments to the point where they and the builder intended different purposes for the payments.

I've thought very carefully about this and I think it's a finely balanced matter in this case. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is likely to have happened, based on the evidence I do have.

Mrs F and Mr S have tried to separate the payments made to the builder for bi-fold doors, which were never delivered, from the payments made for the rest of the building work. But, while I appreciate that the bi-fold doors were never delivered, when assessing the likely intentions of the builder I think it's important to look at their actions as a whole.

The builder started at least some of the agreed work at Mrs F and Mr S's property. They appear to have been working there for a number of months and doing enough work that Mrs F and Mr S were happy, at least at the time, to make the agreed regular payments during those months. And a significant amount of work, and certainly more than just initial clearing or preparation work, appears to have been done – albeit to a standard Mrs F and Mr S are not happy with. But I'd usually expect a scammer to do as little work as possible in order to get the maximum possible profit in the shortest period of time. So more work appears to have been done here than I'd expect from someone who never intended to complete the work, which I think suggests the builder did intend to complete the work here.

From what I've seen of their communication, the builder continued communicating with Mrs F and Mr S for a number of months after the final payment they made. But I wouldn't expect a scammer who always intended to steal their victim's money to continue communicating with them for so long after they stopped receiving money. So I think this also suggests the builder here was attempting to operate as a legitimate business.

The banks the payments Mrs F and Mr S made were sent to have also told us they haven't received any other reports of fraud or scams and don't have any concerns about the accounts the payments were made to. But scammers usually target a number of people at once, in order to make as much money as possible before the scam is uncovered. So I'd expect to see other scam reports to the same accounts around the same time if the builder was operating a scam.

I've also seen evidence relating to the accounts the payments were made to, and while I can't share any details of this evidence, I think it shows they appear to have been run as I would expect a legitimate tradesperson's accounts to have been and don't suggest they were being used to operate a scam at the time.

Mrs F and Mr S have provided a number of reports detailing issues with the work done by the builder. So I accept that some of the agreed work was never done and at least some of what was done was done to a poor standard or not in line with industry or safety regulations. But this by itself does not mean that the builder intended to carry out a scam, as

tradespeople can fail to complete work or complete work to a poor standard for a variety of reasons.

I also appreciate that Mrs F and Mr S have said the builder lied to them about whether the work had been inspected by building control, and hid from them that they weren't adhering to the engineer's design and incorrect materials were being used. They've also said the builder has been connected to a number of different building companies in recent years. And I recognise that this suggests the builder wasn't acting as I would usually expect a professional tradesperson to do. But acting unprofessionally does not mean the builder intended to operate a scam. And I don't think any of these things mean the builder didn't intend to carry out or complete the work.

I must make a decision on what I think is most likely to have happened. And, based on the evidence I've seen, I think it's more likely the builder here intended to complete the agreed work, but that other factors ultimately meant the building work wasn't completed.

While Mrs F and Mr S have highlighted a number of issues with the work done at their property and the actions of the builder, I don't think I can safely say the circumstances here meet the high legal threshold and burden of proof for fraud or the specific definition of a scam I must apply here. I don't think the evidence I've seen suggests the builder deceived Mrs F and Mr S about the purposes of the payments. I think both Mrs F and Mr S and the builder's intentions for the payments were the same – to carry out the agreed work. So I don't think the circumstances here meet the definition of a scam from the CRM code.

And so I don't think the payments Mrs F and Mr S made to the builder are covered under the CRM code, or that Lloyds should be required to refund the money they lost.

I sympathise with the position Mrs F and Mr S have found themselves in. I appreciate that their property was left in an incomplete and unsafe condition, and they have had to pay another builder a significant amount in order to fix or complete the work done by the builder here. I'm also in no way saying they did anything wrong or that they don't have a legitimate grievance against the builder. But I can only look at Lloyds' responsibilities here and, for the reasons I've explained above, I don't think it would be fair to hold Lloyds responsible for the money they lost.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mr S to accept or reject my decision before 7 November 2024.

Alan Millward
Ombudsman