

## **The complaint**

Mrs K complains that Lloyds Bank PLC won't refund money she paid for replacement windows which she didn't receive from the merchant.

## **What happened**

In early 2021, Mrs K was seeking replacement windows. She sought personal recommendations and was pointed to a company (which I'll refer to as W) that offered to fit bespoke windows.

She obtained a quote and was happy with the initial contact she had with W. She decided to proceed and paid the initial 25% deposit – an amount of £4,750. Mrs K made this payment by Faster Payments bank transfer from her Lloyds account.

W visited her property and measured up, and everything seemed to be progressing as expected. Mrs K was told she'd need to pay the next instalment of 25% when the manufacturing of her windows was about to begin.

Subsequently, W emailed with an invoice for this second instalment, and Mrs K made the payment accordingly on 4 October 2021, again in the sum of £4,750.

The next contact Mrs K received was an email from W in January 2022, saying it was entering administration. Her windows were not delivered or installed. Mrs K along with other customers in the same position began to think W may have been fraudulent in nature.

Mrs K reported what had happened to Lloyds. Initially it accepted her view that she'd been the victim of a scam. Lloyds attempted to recover her money from the beneficiary account. However, nothing remained to be retrieved.

However, Lloyds has since explained to Mrs K that it believes she has a civil dispute with W. In other words, it doesn't consider she was the victim of an Authorised Push Payment scam (APP scam). Because Mrs K had paid W by bank transfer, the protections that would apply against breach of contract or misrepresentation if she'd paid by card weren't available. And because this hadn't been established as an APP scam, the CRM Code (which can offer protection against APP scams) simply didn't apply. Lloyds couldn't help and didn't consider it was liable to refund Mrs K.

Mrs K pointed out that some years earlier, Lloyds had closed her credit card account due to a lack of use. She'd clearly not been able to use that card to make payment instead of bank transfer. She disputed that W had been operating legitimately.

Mrs K referred the matter to our service, but one of our Investigators didn't uphold her complaint. They sympathised with the situation Mrs K now found herself in but agreed with Lloyds that the matter was a civil dispute rather than an APP scam, so the bank had no obligation to provide Mrs K with a refund. It had been entitled to close her credit card account through lack of use.

Mrs K disagreed. She thought there was evidence to suggest that W hadn't been operating legitimately when she'd paid it. She had lost a significant sum to W and needed her bank to cover the loss she'd suffered.

As no agreement could be reached, the case was 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.

I'm sorry to hear about the situation Mrs K is in. She has paid a considerable sum and received nothing in return.

It seems hard to argue other than that W has breached its contract with Mrs K and she has a claim against that business as a creditor. But I'm not deciding a dispute between Mrs K and W – I don't have any power to look into a complaint about W. My role is limited to deciding the dispute between Mrs K and her bank.

Of course, Lloyds didn't contract with Mrs K for the window installation work she wanted done, and I can't hold the bank responsible for any breach of contract or other failings on W's part. As a starting point in law, Mrs K is responsible for payments she's instructed Lloyds to make for her. Unfortunately, there's little protection available for bank transfer payments, as these were.

The Lending Standards Board Contingent Reimbursement Model Code (the CRM Code) does provide some protection to victims of APP scams. But it excludes private civil disputes.

Simply put, in order to find Lloyds was somehow liable to Mrs K under the CRM Code, I'd need to find that the evidence was strong enough to show this had been a deliberate criminal scam from the outset rather than it being a private civil dispute between Mrs K and W.

The question therefore, is whether the evidence demonstrates that W was most likely acting fraudulently when Mrs K made one or both of these payments - deliberately setting out to deceive Mrs K into making these payments whilst never having intended to supply or fit the windows as agreed. That also requires that I can exclude, on the balance of probabilities, the alternative possibility that this is simply a matter of W breaching its legitimate contract with Mrs K.

Put another way, that means deciding whether the available evidence shows it is most likely that W set out to defraud Mrs K with criminal intent. That is a high bar to meet.

It's important to note that it isn't for Lloyds to investigate W, neither does it need to prove that W wasn't operating fraudulently. It is for Mrs K to provide evidence to support those allegations. While Mrs K has provided evidence showing that the work was not completed, this could be consistent with W having been a failed business, as much as with W never having intended to complete the work when the payments were made.

The evidence I have seen suggests W had been trading for at least five years, apparently legitimately. This is reflected in the personal recommendations Mrs K says prompted her to use the company – that would seem unlikely if W had been consistently failing to fulfil its agreements. W appears to have failed a few months after Mrs K made her second payment. After entering administration I understand that some concerns about potential fraud were

referred to the Police and to the Insolvency Service, but I am not aware that either has decided to pursue the investigation.

All considered I simply can't safely conclude that W took Mrs K's money without ever having the intention of carrying out any of the work. The evidence available to me simply isn't enough to support such a finding.

I realise how frustrating and disappointing this answer will be. Mrs K has lost a lot of money as a result of W's failure to complete the agreed work. But I can't exclude the possibility that W entered the agreement in good faith, intending to fulfil the work (as it appears to have done previously for other customers) and then was unable fulfil the agreement due to the unanticipated failure of the business or some other reason. The evidence doesn't allow me to conclude it's more likely than these alternative possibilities that W intended to steal Mrs K's money from the outset and never had any intent of fulfilling the arrangement in full or in part.

I appreciate Mrs K's point that she might have paid using her Lloyds credit card had it not been closed by Lloyds some years prior. But I note that W's invoices state clearly that they request payment by bank transfer. There seems to me a good chance that Mrs K would therefore have chosen that payment method even had her closed credit card account still been available to her. Even if not, and if Mrs K had insisted on paying W by card payment, that could have been effected by use of her account's debit card – and that would have afforded the possibility of recourse under the chargeback scheme. All taken into account, I don't find I can fairly hold Lloyds to blame for Mrs K's choice to pay by Faster Payments bank transfer.

That means that I can't fairly hold Lloyds responsible for the loss suffered here by Mrs K. The bank did what it could to try to recover her funds, although none remained. In saying that I don't underestimate the impact this whole matter has had on Mrs K – I am sorry she has lost out through no fault of her own. But it's simply the case that I can't fairly tell Lloyds to pay her the money she's lost, because I don't think Lloyds has treated her unfairly or was otherwise at fault here.

### **My final decision**

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 24 November 2023.

Stephen Dickie  
**Ombudsman**