

The complaint

Mr and Mrs A complain that Lloyds Bank Plc (“Lloyds”) won’t refund the money they say they lost to a scam.

As it was Mrs A who made the payments now in question here, in the main, I will refer to her throughout this decision even though the payments were made from Mr and Mrs A’s joint account.

What happened

I issued a provisional decision in September 2023 to explain why I thought Mr and Mrs A’s complaint shouldn’t be upheld. And I said I’d consider anything else anyone wanted to give me before proceeding with my final decision.

This is an extract from my provisional decision:

“In August 2021, Mr and Mrs A decided to build an extension on their home. Mrs A says she received a recommendation for a builder from her cousin. Mrs A’s cousin said the builder in question had completed an extension on their neighbour’s house and they were very happy with the quality of the work completed. Mrs A’s cousin also sent her pictures of the extension. Mrs A then approached the builder and asked if he would attend her property and provide her with a quote.

During the builders visit to Mr and Mrs A’s property, a hand-written note was drawn up as to the work that needed to be completed and the builder provided Mr and Mrs A with a quote in order to complete the works.

Mr and Mrs A decided to employ the builder and the following payments were made to him between August and December 2021:

Date	Activity	Amount
30/08/2021	Bank transfer	£10,000
02/09/2021	Bank transfer	£10,000
04/10/2021	Bank transfer	£19,000
10/11/2021	Bank transfer	£10,000
13/11/2021		£2,000
30/11/2021	Bank transfer	£10,000
17/12/2021	Bank transfer	£2,000
20/12/2021	Bank transfer	£3,000
	Total	£66,000

The builder told Mr and Mrs A that the majority of the above payments were needed for building supplies and for paying his workmen. But Mrs A says that the builder and his teams attendance at her property was sporadic from the outset and he and his workmen often

failed to show when they said they would. At one point, Mrs A says the builder told her that he had used some of the money she had paid him to pay for his mother's healthcare abroad. Despite this, between September and December 2021, foundations were laid and some walls and a partial roof were erected. Whilst acknowledging this and the fact that materials had been purchased, Mrs A says the amount of labour/materials didn't equate to the amount she had paid.

A Building Control Surveyor came to inspect the work that had been carried out on the

property on 15 December 2021. They pointed out that the work carried out to date was sub-standard and wasn't compliant with the relevant building regulations. They said the builder would need to carry out extensive remedial action before the work could be completed to a satisfactory standard. However, by the end of December 2021, all contact with the builder had ceased and Mrs A was forced to engage another builder to complete the job at a cost of a further £55,000.

Mr and Mrs A then reported what had happened to Lloyds, Trading Standards and the police. The police directed Mr and Mrs A to Trading Standards but ultimately, they weren't able to locate the builder or take any further action.

Lloyds said Mr and Mrs A weren't eligible for a refund under the relevant regulations as it didn't think they had been the victim of a scam. It said it thought this was more likely a private civil dispute between Mr and Mrs A and their builder. To support this, Lloyds said the builder and his workmen had attended the property and completed some of the work – just not to the correct standards. Lloyds said that this indicated that this was a dispute as to the quality of the work completed.

Unhappy with Lloyds' response, Mr and Mrs A brought their complaint to this service and one of our investigators looked into things. Our investigator recommended the complaint be upheld. In summary, she thought that what had happened to Mr and Mrs A was most likely a scam and she said Lloyds should refund Mr and Mrs A in full under the Contingent Reimbursement Model ("CRM") Code.

Lloyds disagreed and maintained this was in fact a private civil dispute. It stressed that it wasn't possible to conclude with any certainty that the builder had, from the start, intended to defraud Mr and Mrs A.

As the case could not be resolved informally, it's been passed to me for a decision.

What I've provisionally 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 and having thought very carefully about Lloyds' actions, I'm not intending to uphold Mr and Mrs A's complaint. I do appreciate how disappointing this will be for them. And, whilst I'm sorry to hear of what's happened to Mr and Mrs A and their home, I don't think I can fairly hold Lloyds liable for their loss. This is because not all cases where individuals have lost sums of money are in fact fraudulent and/or a scam. So, whilst I can quite understand why Mr and Mrs A feel that they have been scammed, there is a high legal threshold or burden of proof for fraud 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.

When considering what is fair and reasonable in this case, I've thought about the CRM Code which Lloyds has signed up to and which was in force at the time Mrs A made these payments.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam. So, I've thought about whether the CRM code applies in the circumstances Mr and Mrs A have set out and whether Lloyds ought to reimburse them under the provisions of the Code. But the Code is quite explicit that it doesn't apply to all push payments. It says:

"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."

Lloyds is of the opinion that Mr and Mrs A's circumstances fall into this definition of a private civil dispute and I agree that this is most likely the case here.

I'm not persuaded that I can safely say with any certainty, based on what I know and what the evidence shows, that Mr and Mrs A's builder set out with an intent to defraud them from the outset. It seems more likely to me that this is a dispute about a builder failing to complete the work agreed, to the agreed standard. And this amounts to a private civil dispute rather than a scam. I will explain in more detail below:

Mrs A has provided numerous photographs which show the building work in progress – including foundations being laid, walls and a partial roof being built. I understand Mr and Mrs A are of the opinion that the value of the work completed does not reflect what they paid, and they feel the quality of that work was inadequate and unsafe. Whilst this would clearly be unacceptable to Mr and Mrs A, this doesn't mean that their circumstances now meet the high legal threshold for this to be a scam where I would need to be satisfied that it was the builder's intention to deceive from the start.

In addition to the above, the building inspector report also documents a visit to the site whilst the work was on going. The report suggests that foundations appear to have been laid and damp course proofing and lintels were in place. So, whilst I also acknowledge Mr and Mrs A's arguments that the work was done poorly or incorrectly and that this is confirmed by the building report, that isn't, in and of itself, evidence of this being a scam. In fact, the fact that significant work was completed, albeit poorly, suggests the opposite. There would've been no obvious benefit to the builder in turning up on site over a number of months and completing any such work. There would also have been no benefit to him in spending money on any labour and materials - it seems more likely that he would've "taken the money and run". And so, the fact that substantial materials were purchased, and significant work carried out suggests to me that this wasn't a scam.

Furthermore, the payments made here, took place between August and December 2021 (around four months in total). Whilst there may have been delays and occasions when the builder wasn't on site, there was presumably enough work done during this time to reassure Mr and Mrs A that the work would eventually be completed as they continued to make further payments.

Most importantly, however, Mr and Mrs A were recommended this builder by their neighbours' cousin who had recently had an extension built by him and who was very happy with the overall outcome. Mr and Mrs A were able to view photographs of this extension too.

This doesn't support that the builder was operating a scam, as this suggests that the person in question, was, and had been running a legitimate building company and had previously successfully completed jobs to a recommendable standard. This rather suggests that something seems to have gone wrong here during the building process and that this is a private civil dispute between Mr and Mrs A and their builder.

Finally, 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, regarding the beneficiary account, indicates that the builder's account was legitimate and the bank hasn't said it has any concerns about how the account was being operated prior to Mr and Mrs A making their payments.

Overall, I must make my decision based 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 was attempting to operate as a legitimate business at the time and that other factors ultimately meant the building work wasn't completed to the standard expected. I haven't seen anything that persuaded me that the builder set out from the beginning with the intent to defraud Mr and Mrs A, or that Mr and Mrs A have been the victims of a scam here.

I've also thought about whether Lloyds should've done anything else to protect Mr and Mrs A. I haven't been provided with any evidence that shows me Lloyds provided Mr and Mrs A with a scam warning when the payments were made here but I'm not going to go into detail on this because, given that I'm supportive of Lloyds' decision to conclude this is a private civil dispute, there isn't any basis upon which any further intervention ought reasonably to have caused concern with the payment/s. So, I can't fairly criticise Lloyds for not having done more in these circumstances.

I know this will be a huge disappointment to Mr and Mrs A – especially as my conclusions differ from the Investigator's. This is not a decision I've made lightly. I appreciate how Mr and Mrs A feel about this case, and that their property was left unfinished and they've had to pay for another builder to finish the work. I sympathise with the position Mr and Mrs A have found themselves in, and I'm in no way saying they did anything wrong or that they don't have a legitimate grievance against the builder. But, for the reasons I've explained above, I don't think their circumstances meet the high legal bar for this to be a scam and because of this, I don't think it would be fair to hold Lloyds responsible for the money they lost.

Overall, I'm not currently minded to say the payments Mr and Mrs A made to the builder are covered under the CRM code, or that Lloyds should be required to refund the money they lost."

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'm minded to reach the same overall conclusions as I reached in my provisional decision. I'll explain why:

Lloyds responded to my provisional decision to say it agreed with my findings and had nothing further to add.

Mr and Mrs A responded to say that they did not agree. They reiterated that they had been the victim of a scam and Lloyds had done nothing to protect them. Specifically, they said

Lloyds hadn't checked the third-party account where their funds were paid to. They said the fact that the builder was now untraceable proved that he had done something wrong and that they had evidence to show he had also scammed others.

Finally, Mr and Mrs A enquired if Lloyds had spoken to any of the other potential victims about what had happened to them and if it had contacted the builders bank to check the payments going into his account.

I'll now address each point in turn.

Firstly, when a payment is made via bank transfer, these payments are generally instantaneous. It is not possible for the sending bank to check how the receiving account is operating before making the payment at their customers request - and there is no obligation for it to do so either. However, as I said in my provisional decision, in this particular case, our investigator did contact the receiving bank and it had no concerns about how the account was being operated.

I understand that the builder can longer be located and other people have said he has left their jobs unfinished to. But this does not mean that Mr and Mrs A's circumstances meet the high legal threshold for fraud or that the builder set out to defraud them from the outset. As I said in my provisional decision, it's not possible to say with any certainty what happened here and there are a number of possible reasons and/or scenarios as to why work may be left unfinished, other than a scam.

Finally, I have to stress that Lloyds is not conducting an investigation into the actions of Mr and Mrs A's builder and so there would no requirement for it to speak to anyone else who had potentially been affected. If Mr and Mrs A think an investigation into the builder's actions are required, then the case needs to be reverted to Action Fraud, Trading Standards, or the police. This is not the role of their bank.

For the reasons set out above, I'm still of the opinion that this complaint should not be upheld and I won't be asking Lloyds to take any further action.

My final decision

My final decision is that I do not uphold this complaint against Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mrs A to accept or reject my decision before 26 October 2023.

Emly Hanley Hayes
Ombudsman