

The complaint

Mrs E complains that Lloyds Bank PLC won't refund the money she lost when she was the victim of what she feels was a scam.

What happened

In early 2022, Mrs E was looking to get some building work done at her property and was recommended a builder by someone doing some other work for her. Mrs E met with the builder to discuss the work to be done, the builder provided a quote and Mrs E agreed for the work to go ahead. It was agreed the work would start the following week, and Mrs E would pay an initial amount upfront and then additional payments as the work progressed.

The builder started the work as agreed, and Mrs E made the payments as the work progressed. She also made a number of extra payments for other work it was agreed the builder would do. But the builder then stopped working at the property as frequently and Mrs E became concerned at the quality of some of the work that had been done. And ultimately the builder stopped responding to Mrs E and the work wasn't completed. Mrs E then reported the payments she had made to the builder to Lloyds as a scam and asked it to refund the money she had lost.

Lloyds investigated but said it felt this was a civil dispute between Mrs E and the builder, rather than a scam. And so it didn't agree to refund the payments she had made. Mrs E wasn't satisfied with Lloyds' response, so referred a complaint to our service.

One of our investigators looked at the complaint. They said they felt this was a civil dispute between Mrs E and the builder, as they didn't think the builder had set out from the beginning with the intention to scam Mrs E. So they didn't think Lloyds should have to refund the payments Mrs E had made. Mrs E 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 E has lost. 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 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 E lost under the CRM code, I need to consider whether she has been the victim of a scam – or, in other words, whether the builder set out from the beginning with the intent to defraud her.

The builder started the work at Mrs E's property as agreed, and appears to have worked there for a number of weeks and done a significant amount of work. Mrs E made payments for various stages of the work being completed, and the messages between her and the builder I've seen show she was happy with the work being done and happy for the builder to do extra work more than a month after the work started. 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 the builder here appears to have done more work than I'd expect from a scammer who never intended to complete the work.

The builder was also frequently communicating with Mrs E about the work being done and offering choices for which materials to be used. And the builder continued communicating with her, even after she had raised concerns and for some time after the last payment she made. And I wouldn't necessarily expect a scammer to have communicated so frequently or for so long after payments had stopped.

The bank the payments were sent to has also told us that it hasn't received any other scam reports against the account. 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 account around the same time if the builder was operating a scam. And from what I've seen of the activity on the account the money was sent to, it appears to have been run as I would expect a legitimate account to have been.

Mrs E has mentioned that the builder brought their children to the property and photographed them with the equipment, and that they posted negative comments about other people involved in work at the property on social media. But while this may suggest the builder was acting unprofessionally, I don't think it necessarily suggests they intended to scam her.

Mrs E has also mentioned that the builder used headed paper for a different business he wasn't connected to mislead her into agreeing for him to do the work. But while this may be misleading, I don't think it fits the definition of a scam from the CRM code. And while Mrs E has also mentioned that some of the work the builder did was of a poor standard and had to be corrected or completed by other builders, this is also not the same as them setting out with the intention of scamming her. Agreements of many kinds will sometimes not be kept, but this does not mean that one party didn't intend to keep the agreement when it was made.

I appreciate how Mrs E feels about this case, and that the work at her property was left unfinished and she has had to pay for another builder to finish the work. But 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 was attempting to operate as a legitimate business at the time and that other factors ultimately meant the building work wasn't completed. I don't think the builder set out from the beginning with the intent to defraud Mrs E, or that she has been the victim of a scam here.

So I don't think the payments Mrs E made to the builder are covered under the CRM code, or that Lloyds should be required to refund the money she lost.

I sympathise with the position Mrs E has found herself in, and I'm in no way saying she did anything wrong or that she doesn't have a legitimate grievance against the builder. I also understand she has said she will find it difficult to pursue the builder directly. But I can only look at Lloyds' responsibilities and can't hold them responsible simply because Mrs E has no clear alternative. So, for the reasons I've explained above, I don't think it would be fair to hold Lloyds responsible for the money she 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 E to accept or reject my decision before 3 November 2023.

Alan Millward
Ombudsman