

The complaint

Mr B complains that Lloyds Bank PLC ('Lloyds') won't refund him after he bought an item that wasn't as described.

What happened

Mr B says that he saw an advert for a gold bracelet on a classified advertisement site. He contacted the seller who told Mr B that he worked for a jeweller and was selling off old stock. The seller brought the bracelet to Mr B's house in a bag from the jewellery shop the seller claimed to work for. Mr B inspected it and couldn't see anything wrong, so he made a faster payment of £1,140 to the seller in February 2023. When Mr B later took the bracelet to a jeweller, he was told it was fake. He is unable to get hold of the seller, who has set up another profile selling similar items. The police are involved, and Mr B says the seller is known to them.

Mr B reported what had happened to Lloyds. Lloyds said Mr B had a buyer/seller dispute as Mr B received the item he bought, but it wasn't as described.

Mr B was unhappy with Lloyds' response and brought a complaint to this service.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. He said that Mr B had a civil dispute with the seller that isn't covered by the CRM Code and that the transaction wasn't unusual, so Lloyds was right to follow Mr B's payment instructions.

Mr B didn't agree with the investigator's findings and asked for a final decision, so his complaint has been passed to me to consider. In summary, he said he was lied to and deceived and that he has provided evidence that the seller was known to the police. Mr B also referred to text messages in which he asked the seller if the item was genuine and hallmarked and stated that he believed he was buying genuine gold.

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 what happened to Mr B. He has lost money and doesn't seem to have been treated fairly by the seller. I can understand why Mr B feels so strongly that his losses should be refunded to him. But that doesn't mean Lloyds is responsible for the money Mr B lost or that it now needs to refund him.

A bank has a primary obligation to carry out the payment instructions its customers give it. As a starting point, a customer is therefore assumed liable for a payment they have instructed to be made.

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 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”.

So, the CRM Code isn't a general protection for consumers and doesn't cover situations where a customer has paid for goods that don't meet their expectations. This amounts to potential breach of contract, which is a civil issue. Instead, the CRM Code only applies in very specific circumstances – where the customer has been the victim of an APP scam, in circumstances akin to criminal fraud. So I think I need to consider not simply whether the seller made any misleading claims but whether Mr B was induced to make payments for a bracelet by means of criminal deception. It is the intent to defraud the customer from the outset that is relevant. While I'm sorry to disappoint Mr B, I'm not persuaded I can say that is most likely what happened here and will explain why.

Mr B received a bracelet that he had inspected before he made payment. Scammers don't usually allow someone the opportunity to view an item before deciding whether to buy. The bracelet wasn't as described but that doesn't mean that the high bar required for criminal fraud has been met.

I have also seen confidential information from the bank Mr B's funds were paid to. Information about third party accounts can't be shared and there's little I can comment on. But at the time the payments were made there were no concerns about the account or its operation. If the seller was involved in classified advert scams this is unlikely to be the case.

Mr B has provided evidence that shows that the person the police thought was involved based on CCTV footage provided by Mr B is known to police. I haven't seen any further evidence to suggest the police have charged anyone and I do not have the power to compel the seller to testify. Instead, I'm restricted to considering what I think is more likely than not (and not just as likely) based on the evidence available to me.

Overall, whilst I can understand why Mr B feels strongly about this case, I'm not satisfied that Lloyds has done anything wrong. Banks can't get involved in private civil disputes between buyers and sellers.

I also don't think the payment Mr B made was sufficiently out of character or unusual that Lloyds ought to have had concerns when Mr B submitted the payment instruction. The payment was unremarkable when compared to the normal use of Mr B's account. So, I don't consider Lloyds needed to intervene before processing it. In any event, there was nothing at the time of payment to indicate that anything was amiss.

Overall, whilst I'm sorry to hear that Mr B hasn't received what he expected, I can't hold Lloyds responsible for his loss.

My final decision

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 December 2023.

Jay Hadfield
Ombudsman