

The complaint

Mr S complains that Lloyds Bank Plc (“Lloyds”) won’t refund the money he says he lost to a scam.

What happened

The detailed background to this complaint is well known to both parties. So, I’ll only provide a brief overview of some of the key events here:

In late 2022, Mr S purchased a property which needed some renovation work before he could move in. So, Mr S decided to engage the services of a builder who could complete the work for him.

It is unclear how Mr S found the builder, however, it seems likely that he was found online and was asked to attend Mr S’ property to provide him with a quote for the works to be completed.

The builder visited Mr S’s property and it was agreed that a series of payments would be made as the work continued and was ultimately completed – the first £1,000 being paid upfront. Although no agreement or schedule of works was drawn up at the time, Mr S did receive a receipt for his initial £1,000 payment.

After the initial payment was made, the builder told Mr S that he was in attendance at the property. But Mr S wasn’t able to check and confirm this or supervise the work as he was residing some 120 miles away whilst it was being completed. However, around 10 days after the first payment was made, the builder contacted Mr S to ask if a further payment of £2,000 could be paid to pay for some tiles and some water damage. And so Mr S made the required payment. The builder then contacted Mr S again a little later to request another payment for £1,000 for some flooring. Mr S also made this payment and this brought his total outlay to £4,000.

During the above time period, Mr S asked the builder, on numerous occasions, to provide him with pictures of the work progressing but the builder failed to provide any. Eventually, the builder contacted Mr S to say the work had been completed and Mr S could visit the property. But when Mr S did so, he realised it was still in a state of disrepair. Mr S now says that none of the agreed works had been completed and when he expressed his dissatisfaction to the builder, he provided him with various excuses as to why the work hadn’t been completed as agreed. The builder told Mr S that he was ill in hospital and that his marriage had broken down so he would be going away for a while. Eventually, the builder stopped responding to Mr S’s messages and all contact ceased. Mr S now says he has been left without a property to live in and without the money to have the necessary works completed.

Mr S reported what had happened to him to Lloyds and asked it to provide him with a refund.

Lloyds looked into Mr S's complaint and offered him a refund of the first £1,000 payment but not any of the others. There was some back and forth in regard to this payment as, at first, Lloyds mistakenly only refunded £500. It did, however, later refund the additional £500 payment plus 8% simple interest and £25 to compensate Mr S for the inconvenience. Lloyds also later refunded £1.93 to Mr S that it was able to retrieve from the receiving bank.

Unhappy with Lloyds' response, Mr S brought his complaint to this service and one of our investigators looked into things. Our investigator didn't recommend the complaint be upheld.

In summary, she said she didn't think Mr S had been the victim of a scam at all. She was persuaded that his circumstances more likely amounted to a private civil dispute between him and his builder and so she didn't think he was eligible for a refund under the relevant regulations. To support this, she said it appeared that the builder had attended the property and completed some of the work – just not as much as had been agreed and not to the agreed standards. She said this indicated that this was a dispute as to the quality of the work completed rather than a scam. As the investigator didn't think Mr S was due a refund under the relevant regulations, she didn't think Lloyds needed to do anything further.

Mr S disagreed and he maintained he had been the victim of a scam and was due more than what Lloyds had already agreed to refund him.

As the case could not be resolved informally, it 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.

Having done so and having thought very carefully about Lloyds' actions, I'm not upholding Mr S's complaint.

I do appreciate how disappointing this will be for him. And, whilst I'm sorry to hear of what's happened to him and his new property, I don't think I can fairly hold Lloyds liable for his loss.

This is because not all cases where individuals have lost sums of money are, in fact, fraudulent and/or a scam. And I'm not persuaded that I can say Mr S, has more likely than not been the victim of a scam here. So, whilst I can quite understand why Mr S feels that he has 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. I'll explain my reasoning in further detail below:

The CRM code

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 Mr S 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 S has set and whether Lloyds ought to reimburse him 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.”

Our investigator was of the opinion that Mr S's circumstances fall into this definition of a private civil dispute, and I agree that this is most likely, based on the evidence I've seen. I'm also not persuaded that I can reasonably conclude, based on what I know and what the evidence shows, that Mr S's builder set out with an intent to defraud him 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, not a scam.

Mr S has provided numerous photographs which he says show that the agreed work wasn't completed. And I agree that the photographs in question show a property in a state of disrepair. However, I haven't been provided with any evidence that shows me what work was actually agreed between Mr S and the builder. And so, it's now difficult for me to establish what work has or hasn't been completed. However, Mr S has provided this service with some of the messages shared between him and his builder and these messages indicate that some work was completed – for example tiles were fitted, albeit badly. So, whilst I can understand Mr S being of the opinion that the value of the work completed does not reflect what he paid, and this would clearly be unacceptable to him, this doesn't mean that his circumstances now meet the high legal threshold for this to be a scam where I would need to be satisfied that it was the builders intention to deceive from the start. Had this been the builder's intention, it seems unlikely that he would've completed any work at all or have kept in contact with Mr S after the money had been received.

In addition to the above, the messages shared between Mr S and the builder appear to show a breakdown in their relationship. The builder hasn't simply taken Mr S's 'money and run'. He is continuing to communicate with Mr S about the ongoing costs of the job and his personal circumstances. There would have been no benefit to the builder in continuing to communicate with Mr S after the payments had been received had his intention been to scam Mr S out of the agreed funds – he already had them at this point. And one of the messages appears to indicate the builder is refusing to return to the property because he is unhappy with some actions taken by Mr S and the amount of money provided - not because he intended to defraud Mr S. This rather suggests a disagreement between Mr S and his builder both in terms of the amount of work that was expected for the payments made and for some more personal reasons. And, again, I think this is suggestive of a civil dispute between Mr S and the builder rather than a scam.

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 suggests the receiving bank didn't have any concerns about how the account was being operated prior to Mr S making the payments now in question here and also reached the conclusion that this was most likely a civil dispute between Mr S and his builder.

Overall, I've had to base 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 or agreed. I haven't seen anything that persuaded me that the builder set out from the beginning with the intent to defraud Mr S.

I've also thought about whether Lloyds should've done anything else to protect Mr S. But given the relatively low value of the payments in question, I don't think Lloyds needed to

provide him with a scam warning at the time. And, given that I'm satisfied that this is most likely a private civil dispute, there isn't any basis upon which any further intervention ought reasonably to have caused concern with the payments. So, I can't fairly criticise Lloyds for not having done more in these circumstances.

Customer service failings

Whilst I acknowledge that Lloyds took a little longer than it should've to send Mr S its final response letter, I understand it needed more time to complete its investigation and it notified Mr S accordingly and so I'm not satisfied that this wouldn't warrant additional compensation now. I also acknowledge that Lloyds initially made a mistake in terms of the refund paid to Mr S but Lloyds rectified this mistake as soon as it was notified of it and it paid Mr S 8% simple interest to compensate him for the amount of time he had been out of pocket and also paid £25 in compensation to compensate him for any inconvenience caused. And so I'm satisfied that Lloyds has already taken the necessary steps to put things right for Mr S and that it has already paid a reasonable amount of compensation. So, I won't be asking it to do anything further now.

I know this will be a huge disappointment to Mr S. This is not a decision I've made lightly. I appreciate how Mr S's feels about this case, and that his property was left unfinished. I sympathise with the position Mr S has found himself in, and I'm in no way saying he did anything wrong or that he doesn't have a legitimate grievance against the builder. But, for the reasons I've explained above, I don't think his circumstances meet the high legal bar for this to be a scam and because of this, I don't think it would be reasonable to ask Lloyds to refund him more than it already has.

Overall, I'm not persuaded that the payments made to the builder are covered under the CRM code, or that Lloyds should be required to refund any more than it already has.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 4 December 2023.

Emly Hanley Hayes
Ombudsman