

The complaint

Mr R complains that Lloyds Bank PLC won't refund the money he lost when he was the victim of what he feels was a scam.

What happened

In July 2023, Mr R wanted to get some building work done at his sister's property. He was recommended a builder by his nephew, and the builder then visited the property and provided a quote for the work. And, as Mr R was happy with the quote, he made a payment from his Lloyds account to the bank details the builder had given him to pay for materials.

The builder started the work, and it was then agreed they would carry out some additional work at the property as well. And Mr R made a second payment to the bank details the builder had given him. But the builder then said they couldn't come to the property to work the following day, and Mr R says they only came to the property once after that and never completed the work. The builder then also stopped responding to Mr R's messages, so Mr R reported the payments to Lloyds as a scam and asked it to refund the money he had lost.

Lloyds investigated but said Mr R had sent money to the director of a limited company, who had completed some of the agreed work. So it felt this was a civil dispute between Mr R and the builder, rather than a scam, and it didn't agree to refund the payments he had made. Mr R wasn't satisfied with Lloyds' response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think there was enough evidence to say the builder had intended to defraud Mr R from the outset. So they didn't think this met the definition of a scam and didn't think Lloyds had to refund the money Mr R had lost. Mr R 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 payments Mr R made. I'll explain why below.

In broad terms, the starting position in 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.

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 decide whether Lloyds should refund the money Mr R lost under the CRM code, I need to consider whether he has been the victim of a scam – or, in other words, whether the builder set out from the beginning with the intent to defraud him.

I've thought very carefully about this and I think it's a finely balanced matter in this case. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is likely to have happened, based on the evidence I do have.

Mr R has said he was recommended the builder by his nephew, who works as an estate agent and so uses builders regularly. And even though Mr R has now said he doesn't think his nephew ever saw any work done by the builder, I still wouldn't expect a scammer to be able to arrange this kind of personal introduction or recommendation.

The builder's company was registered on the government register of limited companies, with the builder himself showing as the director, and had been so for a number of years before the work agreed with Mr R. And I wouldn't necessarily expect a scammer to have arranged this, or to have kept the company running for so long. And even though the company has now been dissolved, I don't think this necessarily means the builder was a scammer as companies can fail for a number of genuine and legitimate reasons.

From what Mr R has said, the work was supposed to be completed in around three days. And the builder carried out at least some work at the property on two days. So it appears the builder carried out more than an insignificant proportion of the agreed work, and more work than I would expect from someone who never intended to complete the work.

The builder also continued to communicate with Mr R about the work after the payments had been made, which I wouldn't expect of a scammer who never intended to complete the work. The builder also paid for a skip to be delivered and did at least some work at the property after the payments were made. So, even though Mr R has said the skip was paid for out of the money he had already paid the builder, I wouldn't expect a scammer who never intended to complete the work to have done these things.

The bank the payments were sent to has also told us it hasn't received any other scam reports about the account. And 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 account the payments were sent to, it appears to have been operated as I would expect a legitimate business to have been.

I appreciate how Mr R feels about this case, and that he has had to arrange and pay other builders to complete the intended 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 work wasn't completed. I don't think the builder set out from the beginning with the intent to defraud Mr R, or that he has been the victim of a scam here.

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

I sympathise with the position Mr R 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 I can

only look at Lloyds' responsibilities and, for the reasons I've explained above, I don't think it would be fair to hold Lloyds responsible for the money he lost.

Mr R has mentioned that other people have made complaints about this builder. But the complaints he's mentioned don't necessarily mean those other people have been the victim of scams either as, for example, delayed or substandard work wouldn't necessarily mean the builder set out with the intent to defraud. And, as I explained above, the bank the payments were sent to told us it hadn't received any other scam reports about the account. So I still don't think the evidence suggests Mr R has been the victim of a scam, or that Lloyds should have to refund the money he lost.

Mr R has also suggested the CRM code should be amended so that it does apply to this type of situation. But the Financial Ombudsman Service doesn't have the power to amend the CRM code, and I don't think it would be fair to hold Lloyds to a standard in excess of the code it has signed up to or any other standard of good business practice currently in place.

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 Mr R to accept or reject my decision before 2 February 2024.

Alan Millward
Ombudsman