

## The complaint

A company which I'll refer to as R complains that Lloyds Bank PLC ('Lloyds') haven't refunded all the money it lost in a scam.

Mr B, who is a director of R, brings this complaint on R's behalf.

## What happened

R was incorporated in 2019 to buy and let properties. In March/April 2021 Mr B decided to look into buying properties. Through a friend of a close friend, Mr B was introduced to someone I'll refer to in this decision as M. He says that he met M and M explained in detail his business model. M said he worked with an asset management company which dealt with residential repossession asset management to find buyers for the properties. Mr B checked the asset management company and found it was legitimate. M also showed Mr B correspondence with the asset management company and with solicitors, his online banking and P60 document, as well as addresses of properties he had bought previously.

M then showed Mr B details of some local properties being bought by the asset management company. Mr B initially decided to go ahead with buying two properties and on 10 May 2021 made two payments of £10,000 which represented 15% of the purchase price of each property. He later decided to buy two more properties. Mr B saw the second two properties from the outside, but M told him it wasn't possible to see inside because there were tenants. The price of these properties was reduced as a result.

After Mr B had made the first two payments M introduced him to a mortgage advisor. Mr B exchanged messages with this mortgage advisor from 12 May 2021. Some of the chat was about instructing solicitors to act on Mr B's behalf. I understand Mr B chose the solicitor and the mortgage advisor claimed to communicate with the solicitor on Mr B's behalf. Mr B has also said he was copied into emails with the solicitor, but I've not seen them, and he now knows they were fake.

Mr B's friend was buying a house through M. M told Mr B his account had been restricted and asked Mr B for a loan of £20,000. If Mr B didn't loan this money, M said Mr B's friend wouldn't get his house and the purchase of the other properties wouldn't go ahead. Mr B felt he had no choice about providing this loan.

Mr B made the following transactions from R's account:

Date	Amount
10/05/21	£15,000
10/05/21	£15,000
04/06/21	£18,000
07/07/21	£18,750
26/09/21	£20,000
<b>Total</b>	<b>£86,750</b>

Mr B and M agreed completion dates but they were all delayed and Mr B was given various excuses. In around December 2021 Mr B called the solicitor he believed to be acting for him and was told she hadn't received instructions and hadn't been in contact with M or the mortgage advisor. Mr B then contacted the company he thought was arranging the mortgages. Again, Mr B was told they had no records and no mortgages had been approved for him. Mr B then realised M and the mortgage advisor were scammers. He reported the scam to Lloyds on 30 May 2022.

Lloyds considered Mr B's complaint under the Lending Standards Board Contingent Reimbursement Model Code (CRM Code) which requires firms to reimburse victims of scams in most circumstances. Lloyds refunded 50% of R's loss as the transactions were unusual but said that Mr B, on behalf of R, should have completed more checks before making the payments. For example, Mr B could have verified the person he was dealing with and verified the paperwork he was shown. And the fact that Mr B wasn't shown the inside of the properties should have been a red flag that something wasn't right. Lloyds tried to recover R's funds but was unable to do so.

### *Our investigation so far*

R has received a refund of some of the last two payments plus interest from the bank that received the scam funds.

The investigator who considered this complaint didn't recommend that it be upheld. She said Mr B, on behalf of R, didn't have a reasonable basis for believing M was providing a legitimate service and so she didn't recommend that Lloyds paying anything more.

Mr B didn't agree with the investigator's findings and asked for a final decision, so the complaint has been passed to me. In summary, he said Lloyds should refund all the funds he lost in the scam for the following reasons:

- Mr B was referred to M by someone who was a trusted friend and experienced property developer who had worked in the industry for many years and had previous profitable dealings with the scammer.
- M was very professional and knowledgeable in all his dealings with Mr B. He clearly explained the business model to Mr B and proved the profitability and efficiency of the business by showing Mr B documents. The scammer shared documents relating to previous property sales, correspondence from clients and associated companies (including an asset management company and a mortgage company), his online banking records and personal identification documents.
- Mr B completed checks in respect of the asset management and mortgage companies.
- M acted as a facilitator for the whole process and said he engaged with various companies on Mr B's behalf. This was why his emails said 'consultant' and funds were paid to M's personal account.
- Mr B wasn't purchasing properties in the standard way as homes were being repossessed by an asset management company and he was paying a deposit and to get mortgages.

### **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.

When thinking about what is fair and reasonable in this case, I've considered whether Lloyds should have reimbursed R under the provisions of the CRM Code and whether it ought to have done more to protect R from the possibility of financial harm from fraud.

There's no dispute here that Mr B was tricked into making the payments. But this isn't enough for R to receive a refund of the money under the CRM Code. The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this, in all but a limited number of circumstances. Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that:

- The customer made payments without having a reasonable basis for believing that: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.

Taking into account all of the circumstances of this case, I think the concerns Lloyds has raised about the legitimacy of the transactions Mr B made are enough to support its position that it may rely on an exception to reimbursement in the CRM Code. I don't think he had a reasonable basis for believing the payments were for genuine services or that the person he transacted with was legitimate and will explain why. I should also say that it's the combination of these factors that lead me to reach this conclusion.

- M acted in a personal capacity and didn't provide a company name, although he and the mortgage advisor referred to many other clients. But Mr B's representatives have said that documentation shown to Mr B proved M had a well-established and highly functioning business. I think the fact M didn't offer a business name ought reasonably to have caused Mr B concern. If a business name had been provided Mr B could have researched the company.
- M sent emails confirming receipt of R's funds, which I have seen. None of these emails provide contact details as would be expected and the emails aren't from a company.
- Other than the emails referred to above, M communicated with Mr B via a messaging app. This isn't what I'd expect of a well-established and successful property investor.
- No formal agreement was made and signed to set out the details of the terms agreed between Mr B and M. Given the amounts involved, I don't consider it was reasonable for Mr B to rely solely on documents and information he says M showed him when they first met. And no other documentation was shared with Mr B as the property purchases were supposed to be taking place.
- Payments were made to an account in M's name trading as "MK PR" rather than to a firm of solicitors. And payment was made up front, without any supporting documentation. I recognise Mr B didn't have experience of buying properties from an asset management company, but consider this arrangement was unusual.
- M provided Mr B with details of a mortgage broker/financial advisor and Mr B communicated with him quite extensively. Although the name of a company was mentioned, there was nothing to link the advisor to that company and Mr B didn't receive documents from the company as I'd expect. The email address of the advisor also didn't relate to the name of the firm Mr B was told the advisor was from.
- Mr B was told that all four mortgages were approved, and all the surveys were fine but didn't receive, or ask for, any evidence. The advisor also communicated with Mr B via a messaging app, which isn't what I'd expect of a legitimate financial advisor.
- Mr B decided to buy two further properties without seeing any evidence that the first two sales had progressed.
- Mr B thought solicitors had been instructed on his behalf by the advisor. Solicitors can only take instructions from a client or someone with legal authority to represent someone. When taking on a client a solicitor agrees a fee for their work and there is documentation to sign. None of this happened here and I consider this ought reasonably to have led Mr B to take additional steps.

- Mr B provided a loan to M from R's account with Lloyds. Being asked for a loan in these circumstances isn't what I'd expect of someone carrying out a legitimate service and I think the threatened consequences should have concerned Mr B. The rate of return on this loan was also far too good to be true. At the end of September 2021 Mr B was told that by 1 November 2021 he'd receive his £20,000 back plus £10,000 interest.

Taking all these points into account, I'm satisfied Lloyds acted reasonably in relying on an exception to reimbursement under the CRM Code.

Finally, I've considered whether Lloyds did enough to recover R's funds. Lloyds contacted the bank that received R's funds the same day the scam was reported but was advised that no funds remain. In the circumstances, I don't consider there was anything more Lloyds could have done. Fraudsters usually remove funds quickly and in this case the scam was reported six months after the first payment was made.

I recognise this scam has had a substantial impact on Mr B's business and on him personally, but can't fairly ask Lloyds to refund anything more than the amount already returned to R.

### **My final decision**

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 29 August 2023.

Jay Hadfield  
**Ombudsman**