

The complaint

Mr K complains that Lloyds Bank PLC (“Lloyds”) won’t refund £8,000 he lost in 2018.

Mr K believes he lost the money as the result of a scam that Lloyds could’ve prevented at the time.

What happened

The background to this complaint is well-known to both parties, so I won’t repeat it all in detail again here. However, in summary, Mr K believes he has been the victim of a scam.

In 2018, Mr K sent £8,000 to a builder that had completed works on another property in the same street as his. This £8,000 payment was intended to be the first instalment in an agreed payment plan so the builder could start work on Mr K’s property.

However, shortly after the payment was made, the builder left Mr K’s neighbours property, where he had also been working, and disappeared.

Mr K now believes he has been the victim of a scam. He initially pursued the builder through the civil courts and was awarded a judgment against him but, ultimately, he has been unable to retrieve any of his lost funds via this route. Because of this, Mr K raised the matter with his bank, Lloyds.

Mr K told Lloyds what had happened and requested that Lloyds provide him with a refund because it should’ve done more to protect him from the scam at the time the payment was processed.

Lloyds looked into the concerns Mr K raised but it declined to offer him a refund. It said that Mr K’s circumstances amounted to a private civil dispute between him and the builder – rather than a scam. And so, it wouldn’t look to get involved now.

Unhappy with Lloyds’ response, Mr K brought his complaint to our service. He reiterated that Lloyds should’ve done more to protect him at the time the payment was made. Specifically, he said Lloyds should’ve told him to make the payment to the builder via credit card as this would’ve offered him more protection should anything go wrong.

Our investigator didn’t uphold Mr K’s complaint. He said even if he were to be satisfied this was a scam, it was unlikely that Lloyds could’ve done more to protect Mr K at the time the payment was made. He pointed out that had Lloyds asked Mr K further questions about the payment at the time, Mr K would’ve been able to provide Lloyds with a contract of agreed works and he would’ve been able to confirm that he’d seen the builder successfully complete work on his neighbour’s property. So, it’s unlikely the payment would’ve raised enough suspicion to have warranted it being stopped when it was initially requested. He also pointed out that there was no obligation for Lloyds to have told Mr K to make the payment by credit

card and even if it had done so, there was no evidence available to say that the builder would've been able to facilitate this payment method either.

Mr K didn't agree with our investigators view. He maintained that he had been scammed and that Lloyds should've done more to protect him from the outset.

As an agreement has not been reached the complaint has now been 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this and this simply reflects the informal nature of our service as a free alternative to the courts.

So, having thought very carefully about Lloyds' actions, I won't be upholding Mr K's complaint. I do appreciate how disappointing this will be for him, but I don't think I can fairly say Lloyds should reimburse him. I'll explain why.

Firstly, I want to say how sorry I am to hear of what's happened to Mr K, and I can understand entirely why he feels so strongly that his money should be returned to him - it's understandable for such a significant sum. I also understand why Mr K feels he has been the victim of a scam. But not all cases where individuals have lost significant sums are in fact fraudulent and/or a scam.

It's clear the agreement Mr K entered into did not go as planned and Mr K didn't receive the services he had been promised and paid for. However, in order to be satisfied that Mr K has been the victim of a scam, I'd have to be satisfied that the builder was not operating a legitimate business and was intent on defrauding Mr K from the outset. And I'm not satisfied that I can say that is most likely what happened here based on the evidence now available to me. I say this because there appears to be a number of factors that don't carry the typical hallmarks of these particular types of scams or of fraudsters with an intention from the outset to defraud:

- Mr K has told us that he first came into contact with the builder when he began working on a neighbouring property. Mr K said the builder had been working on this property for at least a year. The work completed was significant in nature and was completed to a high standard which ultimately meant that the property was sold on for a profit. This doesn't support that the builder was operating a scam, it suggests that the builder had been running a legitimate building business that had been able to engage in and successfully complete jobs to a recommendable standard over a

period of time. This leads me to the conclusion that something seems to have gone wrong after Mr K made the payment now in question.

- 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 indicates that the builder's account was legitimate and the bank hasn't said it had any concerns about how the account was being operated prior to Mr K making his payment.

So, it is not possible to say now, some five years later, with any degree of certainty whether the builder knew that when he took the payment from Mr K that he wouldn't be able to fulfil the contract entered into. And so, based on the evidence I've seen, it would not be reasonable for me to say that it was more likely than not that the builder set out to scam Mr K from the outset.

So, after taking everything into careful consideration, on balance, I can't safely say this meets the high legal threshold and burden of proof for fraud. Rather, this appears to be a contract entered into and later gone wrong. This being the case, I don't think Lloyds have treated Mr K unfairly in not pursuing this as a scam.

I understand that this outcome is likely to be seem unsatisfactory to Mr K and so for completeness, I also wanted to address his points about Lloyds having been able to prevent him from making the payment at the time.

To be clear, even if I had been satisfied that Mr K had been the victim of a scam here and I had assessed Lloyds' actions in processing the payment against the relevant regulations at the time, I still don't think this would have resulted in the outcome Mr K wanted – the return of his funds.

I say this because, at the time, in 2018, there wasn't any requirement for Lloyds to have told Mr K to pay by credit card. There's also no evidence that the builder, who, at the time was operating as a sole trader, would've even been able to facilitate this type of payment. And so even if this method of payment had been discussed at the time, there's no evidence to say it would've been possible. And it wouldn't now be reasonable to make the finding that this would've prevented Mr K from going ahead with the payment. At the time, he was apparently confident he was dealing with a legitimate tradesman who he had seen complete work to a high standard previously.

Furthermore, even if Lloyds had discussed the payment with Mr K and asked him some probing questions about his circumstances, it's likely that Mr K would've told Lloyds that he was engaging the services of a builder, that he had a detailed contract of works drawn up and he had known of the builder for a year and had seen him complete work to a high standard on his neighbour's property. This was the truth after all. Having been provided with this information and being satisfied that Mr K appeared to be engaging with a legitimate tradesperson, there would have been no reason for Lloyds to block the payment and there would've been no further checks to complete. And so, it seems likely that the payment would've been processed at Mr K's request. There would've been no indication at the time that anything untoward was happening. And so, I'm not recommending that Lloyds needs to refund the money Mr K has lost now.

In summary, as I don't think Lloyds have done anything wrong in treating Mr K's circumstances as a civil dispute. And I don't think there was anything else Lloyds could have done to prevent his loss either.

I realise that my decision will be disappointing for Mr K and I don't underestimate the impact this matter has had on him. But, based on what I've seen so far, for the reasons I've explained, I don't think I can fairly or reasonably ask Lloyds to refund his money now.

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 K to accept or reject my decision before 25 October 2023.

Emly Hanley Hayes

Ombudsman