

The complaint

Mr E complains that Lloyds Bank Plc won't reimburse 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 2021 Mr E made a series of payments from his Lloyds account. At the time he believed he was settling invoices from a building firm 'N'. He'd contracted with N (who had been recommended to him by an architect) to do work at his home. The payments were made between July and August 2021 and totalled around £50,000. The payments were all paid into an account in the name of N's director that was also held with Lloyds.

In October 2021 Mr E concluded he'd been the victim of a scam – he reported this to Lloyds and to the police. Ultimately Lloyds said they were unable to recover or return any funds. They considered this to be a civil dispute between Mr E and N, they also said they had no concerns about the beneficiary account. Mr E complained and when Lloyds maintained their position, he referred his complaint to our service.

One of our Investigators didn't recommend it should be upheld. In summary she thought the conclusion Lloyds had reached was reasonable. Mr E disagreed and asked for an Ombudsman to review his complaint.

In June 2023 I issued a provisional decision in which I said:

"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'm intending to reach the same overall outcome as our Investigator. But as I'm providing some additional reasoning, I'm issuing this provisional decision to give everyone a further opportunity to comment. I'm also aware of a linked complaint that Mrs E (Mr E's wife) has against another bank. But this decision is solely in relation to Lloyds' actions.

It isn't in dispute that Mr E authorised the payments that left his account. But he alleges that he has been the victim of an Authorised Push Payment (APP) scam and that N's intent from the start was to deceive him.

Lloyds are also a signatory to the voluntary CRM Code. This is a scheme through which victims of APP fraud can sometimes receive reimbursement from the banks involved. But the CRM code does not apply to "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, I need to decide whether Lloyds acted fairly, when concluding that this amounted to a civil dispute and not a scam. I'm intending to find that they did, and I'll explain why.

Whilst I can quite understand why Mr E feels that N has scammed him, there is a high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006). 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.

Of particular relevance to this are the pictures that Mr E has provided. These show building work in progress. Parts of walls have been knocked through and I can see that some blocks have been laid. There also appears to be a trench dug (presumably for foundations). I acknowledge Mr E says the work was done poorly or incorrectly, but that isn't, in itself, evidence of this being a scam. There is also some evidence of materials and a skip having been delivered to the site as well as an excavator.

I'm also mindful that N are a limited company, registered on Companies House and that invoices which included reasons for each payment were provided. I also understand there was a contract drawn up for the works and that the quote received by Mr E was in line with similar quotes received. Often, where the intention is to be dishonest from the start, then a quote will be very competitive to secure the work.

The payments which include those made from Mrs E's account, took place between May and August 2021 (around three and a half months in total). Mr E says he had to make payments for materials due to extended lead times as a result of Brexit and Covid. And they continued to do so as they didn't want to delay progress. He says that when N was challenged about the whereabouts of those materials, he was told these were stored in a lock up to prevent theft. Whilst these do seem like plausible reasons for delays, there was presumably enough work done to reassure Mr E sufficiently to make further payments.

Mr E told Lloyds that N had been recommended by a legitimate architect who had vouched for the builder. Further to this, evidence on the linked complaint show that that banks investigation notes also record that Mr E had said "the building inspector advises that the builder has completed some jobs, and nearly finished others, and he cannot understand why this happened to this job." This doesn't support that N were operating a scam, rather that something seems to have gone wrong and that this was a private civil dispute between Mr and Mrs E and N.

Ultimately there is insufficient evidence to persuade me that the conclusion Lloyds reached was unfair or unreasonable. I appreciate that the police are investigating the director of N and there are said to be other customers of N who are in a similar position. But based on all the information I've seen to date, I don't think Lloyds' decision to treat this as a civil dispute was unfair or unreasonable. It's entirely possible that N had overcommitted in the work they'd taken on and had been unable to complete all the work they'd agreed. And whilst this would clearly be unacceptable to Mr E, this doesn't mean that it meets the bar to be considered a scam where it's required for the intention to have been to deceive from the start.

Mr E has said that he thinks Lloyds failed to intervene in the payments at the times they were made and to provide suitable warnings. But given that I'm supportive of Lloyds' decision to conclude this is a civil dispute, there isn't any basis upon which they ought to have intervened in the payments. Lloyds have obligations to be alert to fraud and scams, but there is no obligation for them to intervene in authorised payments unless there is a fraud, scam or the misappropriation of funds. So, I can't fairly criticise Lloyds for not having done more in these circumstances.

Once Lloyds were made aware of Mr E's allegations about the payments he'd made, I can see that they contacted their accountholder. The accountholder provided their explanation of the situation. This is what I'd expect them to do in these circumstances and I don't think Lloyds deciding that this was a civil dispute was unfair nor unreasonable. And given that finding, I also don't think there were any failings by Lloyds as a receiving bank (within the context of our service's jurisdiction) which would have impacted on the position Mr E finds himself in.

I'm of course sorry to hear of the difficult situation in which Mr E finds himself. But as I don't think Lloyds have acted unfairly, there isn't a reasonable basis upon which I can direct that they need to do more to resolve this complaint."

Lloyds responded and said they had nothing further to add. Mr E didn't respond to my provisional 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.

As neither party had any further evidence or comments for my consideration, I see no reason to deviate from the outcome explained in my provisional decision.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 8 August 2023.

Richard Annandale
Ombudsman