

The complaint

Mr N complains that Lloyds Bank PLC hasn't reimbursed his losses after he fell victim to what he considers was a scam.

What happened

The details of this case are well known to both parties, so I don't need to repeat them at length here. In summary, in April 2023 Mr N made a payment of £750 from a savings account he held with Lloyds for collectable cards he wished to purchase. Mr N says he came across the seller on a known marketplace.

On receipt of the collectables, Mr N disputed the quality of the goods and didn't consider the cards to be genuine/authentic.

Mr N contacted Lloyds to see if there was anything it could do to help and to see if his money could be recovered. Lloyds declined to reimburse Mr N his loss. Lloyds considered the payment Mr N made under the voluntary code called the 'Contingent Reimbursement Model' (the CRM Code) which came into force in May 2019, and it is a signatory of. It concluded Mr N didn't have a reasonable basis to believe that the purchase was genuine. It felt Mr N didn't do enough to protect himself.

Unhappy, Mr N referred the matter to our service. An Investigator looked into things and, in short, she considered whether the faster payment Mr N made was covered under the CRM Code.

The CRM Code sets out when banks (so both sending banks and receiving banks) should reimburse a scam victim and it provides increased protection for customers who are the victim of scams. But the CRM Code doesn't apply to every type of disputed payment. The CRM Code doesn't apply to disputes that are deemed to be a 'civil dispute' between two parties.

Our Investigator didn't uphold the complaint as she considered the matter was a civil dispute – and the CRM Code didn't apply to the payment Mr N had made. So, she didn't consider Lloyds was liable to refund Mr N for his losses.

Mr N disagreed and has asked for an ombudsman's review as the final stage of our process. So, as the matter hasn't been resolved, it's been passed to me to decide.

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.

There's no dispute here that Mr N authorised the payment. Under the Payment Services Regulations 2017, that means he is liable for it in the first instance. But, as mentioned previously, Lloyds agreed to comply with the CRM Code. In certain circumstances, that code

can entitle a customer to be reimbursed by the bank after they've fallen victim to a scam, so I've taken that into consideration.

I've thought carefully about Lloyds' actions and having done so, I don't uphold this complaint. I do appreciate how disappointing this will be for Mr N, but I don't think I can fairly say Lloyds should reimburse him. I will now explain why.

I'm really sorry to hear of what's happened to Mr N, and I appreciate this has had an impact on him. It's understandable, having lost this sum of money, why Mr N feels he has been the victim of a scam. But not all cases where individuals have lost money are in fact fraudulent and/or a scam.

The CRM code is explicit that it doesn't apply to "*private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services ... but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier.*"

This isn't a straightforward question to address. To be satisfied that Mr N fell victim to fraud, I'd need to be persuaded that the seller he dealt with had the intention from the outset to defraud him. I can't know for sure what was in the mind of the seller at the time they entered into this agreement with Mr N. So, when considering the above, I need to decide whether the available evidence suggests it is more likely than not that the seller intended to defraud Mr N.

Overall, based on what I've seen and been told, I'm not persuaded it can reasonably be said that Mr N fell victim to fraud here. I say this because, looking at the advertisement/listing for the goods (collectable cards), I can see the seller set out that the cards were found in a house clearance and was open to offers. The listing showed a picture of one of the cards and set out that others were available. Whilst I acknowledge Mr N's comments about the legitimacy of the cards and his belief that on discovering the cards that the seller would have recollected their origins and legitimacy, I am mindful that the listing that's been given to our service does not specifically comment on the goods authenticity. Further, I note from Mr N's submissions to us that it was after he made the payment that he says he brought up the legitimacy of the goods. He's said this was after a friend made some points about one of the cards.

Within the messages I've seen between Mr N and the seller, where Mr N raised the legitimacy of the cards, after he made the payment, I note the seller informed Mr N that to the best of their knowledge the cards weren't counterfeit. I haven't seen any information that shows the seller tried to validate the authenticity of the cards but merely explained that to their knowledge the goods were genuine. In this case, I haven't seen any evidence that shows the seller was experienced in selling/trading such goods – collectable cards. Simply, that cards were found in a house clearance and were listed for sale.

Further, in the messages given to us, I can see the seller attempted to respond to Mr N's messages about the cards and the quality of them - in what appears to be an attempt to address the differences/discrepancies he'd raised. It's not typical that somebody with an intent to defraud will stay in contact, after claiming a victim's money, to try and address any issues with what's been provided. More typically a fraudster won't be contactable after they've got the money. Here, at least for a time, Mr N was still communicating with the seller and the seller did show some intent to try and resolve things. So having thought carefully about the above, I'm not satisfied the evidence I've seen shows it is more likely than not that they intended to defraud Mr N.

In this case, I also have to keep in mind that Mr N made a payment for collectable cards, which the seller sent to Mr N. Whilst I recognise Mr N says the seller didn't provide the

tracking number for the goods as they said they would, I'm mindful Mr N has confirmed he did receive the goods he paid for, albeit he is dissatisfied with the quality of the cards he received.

Further, I also note that Mr N says the seller told him that if he wasn't happy with the goods once received, that on returning the cards, a refund would be given. Mr N has told us that no return address was provided by the seller and that he was then ignored by the seller. I'd like to assure Mr N that I can appreciate his frustrations and unhappiness that he stopped receiving replies to his messages. But I have to keep in mind that there are many reasons why two parties might stop communicating with each other, such as a breakdown in the relationship. So, this aspect, in and of itself doesn't automatically lead me to make the finding that there is enough evidence of a scam in this particular case.

I recognise Mr N isn't happy with the quality of the collectable cards received and that he believes the goods received aren't genuine/authentic. However, based on the evidence presented to me, I can't safely conclude that it is more likely than not that the seller set out with the intention to defraud Mr N from the outset.

Our Investigator also got in touch with the bank Mr N sent his payment to. While I am unable to share details about a third party and the nature of their relationship with their bank, the receiving bank has said that there were no other concerns raised prior to Mr N making the payment.

It follows that I can't safely say the evidence presented to me demonstrates that it is more likely than not that Mr N is a victim of fraud. The information supporting that proposition is simply not strong enough for me to uphold the complaint. I'm also satisfied that there wasn't anything else Lloyds could have done to either prevent the loss or recover the funds. I say this because I don't think the payment was so remarkable or out of character to such an extent whereby, I would expect the bank to have concerns about it and intervene.

For completeness, I can see Mr N in his response to our Investigator's view highlighted the distress caused by this matter and, in particular about compensation. I'd like to assure Mr N that in reaching my conclusions I have taken everything he has told us about his personal circumstances into account. In turn I don't underestimate the impact this matter has had on him, but for the reasons I've explained above, I can't fairly or reasonably ask Lloyds to refund him the money he's lost. It follows that I also don't make any recommendation for compensation.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 22 December 2023.

Staci Rowland
Ombudsman