

The complaint

Mr B complains that Lloyds Bank PLC (Lloyds) won't refund money he lost after falling victim to a scam.

What happened

In June 2020, Mr B sold his home in the UK and received the proceeds into his Lloyds bank account.

Mr B says he had been travelling to a location in Spain for a number of years and decided to buy a house there from his sale proceeds. Mr B was referred to an estate agent (who I'll refer to as G) by a friend who ran a local business in Spain. G worked for an estate agency which was only a couple of doors away from Mr B's friends' business. Mr B says he had no experience in buying property abroad, so wanted to use a proper estate agent. And, the estate agency G worked for had been operating for 30 years and came highly recommended by those living in the area. Also, while G hadn't sold properties to anyone Mr B knew, G was their letting agent for their long-term rentals.

Mr B says he met G on several occasions and viewed properties, until he found one he wanted to buy. Mr B was told he had to hold funds in a Spanish bank account in order to purchase a property and says it was usual practice for the buyer to set up an account with the estate agency to hold the deposit. Mr B says that G set up an account for him with the estate agency while he was in their office and showed Mr B screen shots which confirmed the account was set up. Mr B was also required to provide personal ID and evidence of the source of his funds being used for the purchase – all of which he provided.

Unfortunately, the purchase for the first property fell through. Mr B says, as he was actively looking for another property, he decided to leave the funds in the estate agency account so that they could be used for the next property. Mr B says that a few weeks later G told him he was leaving the employment of that estate agency and instead would be working with a developer he knew. Mr B says he was told the developer was experienced and owned multiple businesses and properties across the area. Mr B was introduced to him by G and they met the developer on one of the development sites.

Mr B says he entered into a contract to purchase one of the new build properties the developer was building and was told he needed to put more funds into an account to secure the property. Mr B says he was told the account was in his name and that the funds would be stored there until the house purchase went through. With the funds only being released to the vendor on completion of the property.

Mr B says it was common practice not to have a solicitor involved in the initial stages of the purchasing process and only to engage their services when the money is due to be exchanged with the vendor. As such, he didn't have a solicitor engaged. Mr B signed a contract which wasn't in English but says G translated it for him.

Between August 2020 and March 2021, Mr B sent payments totalling over £194,000 to G. Mr B has explained that he thought his account was with G's sole trader business, which is

why the payments were made to G's name and not to his own.

These are the payments Mr B made as part of the scam. I have identified the payments Mr B made in relation to his rent, which weren't part of the purchase price for the new property. All of these payments were made to a UK bank account in G's name.

Date	Pmt no:	Details of payment	Amount
7.8.2020	1	Faster payment to G	£ 904.50
11.8.2020	2	Faster payment to G	£14,669.00
13.8.2020	3	Faster payment to G	£10,221.00
18.8.2020	4	Faster payment to G	£25,000.00
19.8.2020	5	Faster payment to G	£25,000.00
24.8.2020	6	Faster payment to G	£25,000.00
25.8.2020	7	Faster payment to G	£25,000.00
3.9.2020	8	Faster payment to G	£25,000.00
4.9.2020	9	Faster payment to G	£ 8,884.40
9.11.2020	10	Faster payment to G – rent payment	£ 660.00
13.11.2020	11	Faster payment to G	£25,000.00
14.11.2020	12	Faster payment to G	£ 350.00
26.11.2020	13	Faster payment to G	£ 280.00
7.12.2020	14	Faster payment to G	£ 2,100.00
11.12.2020	15	Faster payment to G	£ 230.00
14.12.2020	16	Faster payment to G	£ 912.00
31.12.2020	17	Faster payment to G – rent payment	£ 404.00
9.1.2021	18	Faster payment to G – rent payment	£ 406.00
18.1.2021	19	Faster payment to G	£ 1,594.00
1.2.2021	20	Faster payment to G – rent payment	£ 741.00
14.2.2021	21	Faster payment to G	£ 100.00
22.2.2021	22	Faster payment to G	£ 2,000.00
1.3.2021	23	Faster payment to G – rent payment	£ 250.00
		Total payments made	£194,705.90
		Total less rent payments of £2,461	£192,244.90

Eventually Mr B was told the property was complete, and he asked for the keys. But he says G gave him excuses and then stopped answering his calls. Mr B went back to the original estate agency where his account had been opened, and asked for the money to be moved from the holding account to the developer so he could sign the contract and move in. But the estate agency couldn't get hold of G and discovered that Mr B's payments had gone to a personal account held by G – not a business or holding account. Mr B says that included in the payments he made to G was rental for the temporary home he was living in, while he waited for the new home to be built. However, G didn't pass the rental payments onto the property owner and Mr B was evicted. At this point Mr B realised he'd been the victim of a scam.

Mr B contacted Lloyds in March 2021 and raised a fraud claim, asking Lloyds to help recover his money.

Lloyds considered Mr B's fraud claim under the Lending Standards Board's Contingent Reimbursement Model (the CRM Code) and initially declined to refund Mr B. Mr B raised a complaint with Lloyds about the decision they'd reached and Lloyds reviewed Mr B's claim again.

Ultimately Lloyds agreed to refund Mr B 50% of the payments he'd made, from payment 5 onwards – but excluding payments 17 and 18. The 50% refund totalled £71,550.70. They

also agreed to pay interest on that refund at 8% simple interest and paid Mr B £40 compensation for not reaching the right answer the first time. Lloyds told Mr B that they didn't think the first four payments he made were unusual, so they wouldn't have issued a warning. However, they thought they should've issued a warning from the 5th payment as the activity was significantly out of character for his account. But they felt that Mr B should've done more checks before making the payments. As such, they felt they should share the responsibility for the loss with Mr B and only refund 50% of those payments. They excluded payments 17 and 18 from the refund, as they were rent payments and not related to the purchase scam.

Mr B wasn't happy with Lloyds' offer, so he brought a complaint to our service.

An investigator looked into Mr B's complaint and upheld it. They felt Mr B had a reasonable basis for believing that G was legitimate, and therefore recommended that Lloyds refund the remaining 50%.

Mr B agreed with the investigator's recommendation. Lloyds didn't agree and raised the following points:

- Mr B didn't do any checks of his own, so didn't meet the required level of care under the CRM code.
- Mr B should've questioned why he wasn't making international payments.
- They're not satisfied that Mr B was shown sufficient evidence that an account had been set up in his name.
- Mr B hasn't provided invoices for all the payments he made.
- Mr B should've had evidence when the first purchase fell through of where his funds were being held.
- Mr B should've had a solicitor involved, even if it wasn't a requirement.
- Mr B didn't receive documentation in relation to the new house purchase.
- Mr B relied on G's translation of the signed contract, whereas they would've expected him to get his own translation.

Lloyds also raised a concern about whether Mr B could potentially gain double benefit from the overseas court case being pursued against G.

As Lloyds didn't agree with the investigator's opinion, the case was passed to me to review.

My provisional decision

On 14 September 2022, I issued a provisional decision explaining I was reaching a different outcome than the investigator. I asked for both parties to provide any more comments or evidence they wanted to be considered before issuing my final decision.

In my provisional decision I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Lloyds are a signatory to the Lending Standards Board's Contingent Reimbursement Model (the CRM Code) which requires firms to reimburse customers who have been the victims of APP scams like this, in all but a limited number of circumstances. It sets out standards that must be met by both Lloyds and Mr B.

I've started by looking at whether Lloyds have met the standards expected of them under the CRM Code.

Did Lloyds meet the expected standards set for them under the CRM Code?

Under the CRM Code, Lloyds are expected to take reasonable steps to protect their customers from APP scams. This should include procedures to detect, prevent and respond to APP scams. And, where they identify an APP scam risk, they should take reasonable steps to provide their customer with effective warnings.

Lloyds told Mr B they should've provided a warning when he made the 5th payment, which was for £25,000. They say at this stage the number of payments, the pattern of the payments and the value of the payments became significantly out of character for Mr B's account. However, I think Lloyds should've provided a warning when Mr B made the second payment. This wouldn't warrant an intervention or Lloyds getting in touch with Mr B, but I think they should've generated a system warning - which is less onerous.

I say this because Mr B had only made one payment for over £10,000 in the previous 12 months. His account was mainly used for low value day to day transactions rather than regular larger payments.

Lloyds have provided a copy of the warning they say Mr B would've seen. However, I don't consider that warning to meet the required definition of an effective warning under the Code. The warning isn't specific to the scam Mr B was experiencing and wasn't impactful. It only asked Mr B if he knew the person he was making the payment to, it didn't suggest that the person he was paying could be scamming him. Also, it didn't provide any consequences if Mr B continued to make the payment – that he may not be able to recover his funds. And, it didn't give Mr B any information about how he could protect himself from the scam. On this basis, I'm not satisfied that Lloyds met the standards set for them under the CRM Code as they didn't provide Mr B with an effective warning. Therefore, Lloyds should refund Mr B for all of the payments he made, from the second payment onwards.

However, I also have to consider whether Mr B met the standards set for him as it will affect whether he's entitled to a full refund.

Did Mr B meet the expected standards set for him under the CRM Code?

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*

** there are further exceptions outlined in the CRM Code, but they don't apply to this case.*

So, I need to be persuaded that Mr B had a reasonable basis for believing that G was operating legitimately.

Mr B has told us that he trusted G for many reasons. Saying he was referred by a friend and highlighting that G worked for an estate agency that had been operating for 30 years and was highly recommended by those living in the area. Also, while G hadn't sold properties to anyone Mr B knew, he was their letting agent for their long-term rentals. He also says he saw positive reviews and personal referrals saying he should use G.

But I'm not satisfied that Mr B had a reasonable basis for believing G was legitimate for the following reasons:

- It's unclear why Mr B was making payments to a UK bank account when G was based overseas and the property Mr B was buying was overseas. Especially considering Mr B says the account was set up in front of him while he was in the estate agency's office abroad. I appreciate that he says G told him it was a business currency account, but that still doesn't explain why it would be a UK bank account.*
- It's not clear how Mr B was kept updated with regards to the payments he had made, evidence that they had been received and how they affected the balance he owed in regard to the property he was purchasing.*
- Mr B has provided us with a contract he signed, which wasn't in English. As this is an important document and a large amount of money is involved, I would've expected Mr B to arrange to have it translated independently and not rely on G's translation of it. Mr B doesn't know what he signed to, or what terms or conditions could be attached to the sale.*
- It appears that with the first house Mr B tried to buy (the sale of which fell through) Mr B only paid a deposit. It's not clear why there appeared to be a different process with the second property, whereby Mr B made regular and sizeable payments prior to the property being completed. Also, it's not clear why Mr B would be making payments in stages, if the property Mr B was purchasing was part of a larger development. And regardless, I wouldn't expect Mr B to make full payment until the property was completed and signed off, which would've involved checks/confirmation that it met various building regulations. I can't see that Mr B was given any updates or evidence of the funds he was sending being spent on the property, and if it wasn't being spent on the property then it doesn't make sense why he was sending money piecemeal rather than just on completion.*
- It's not clear why G terminated his employment with the estate agency and decided to go out on his own. Mr B has told us that he was reassured by using a reputable estate agency, so I would've expected this to raise some questions for Mr B. But I can't see that Mr B asked any questions or did any checks as a result.*
- Mr B has told us that a solicitor isn't usually engaged until the final stage of the purchase process when the money and keys are exchanged with the vendor. However, Mr B was making sizeable payments to G, so I think it would've been prudent to have engaged a solicitor to make basic checks on what he had agreed to and the progress of the purchase.*

As I've listed, there were a number of concerning factors, that I think should've been red flags for Mr B and warranted him doing additional checks or getting a solicitor involved. Importantly, it's all of these points taken in combination rather than each individual reason considered in isolation, that suggests to me that Mr B should've had concerns.

Based on what I've seen, I'm not satisfied that Mr B did have a reasonable basis to believe G was legitimate, so I don't think Mr B met the standards set for him under the CRM Code. Because of that, I think Mr B should share the responsibility for his loss with Lloyds, so Lloyds should only refund 50% of the payments Mr B made – from the second payment onwards.

Should Mr B be refunded for the rent payments he made?

While Mr B was waiting for the property to be built, he was renting a property. As indicated in the table above, Mr B made several payments in relation to that rental. From the evidence Mr B has given us, it appears that the owner of that property hasn't received the rent they were due, and Mr B hasn't evidenced that he arranged to remake the payments to her. As Mr B would've had to make these payments regardless, he's not technically out of pocket for these funds. So, I can't fairly ask Lloyds to reimburse Mr B for the rent payments – which are payments 10, 17, 18, 20 and 23.

Additional points raised by Mr B or Lloyds

Lloyds have raised a concern about whether Mr B may receive double benefit, if he recovers money from the overseas court case that is being pursued against G. However, based on the information we've seen, it seems unlikely that G has any money – as he could've returned the funds and the court case would've been dropped. It also appears that G has been remanded in custody in another country and will be held for a substantial period of time. I haven't seen anything that suggests Mr B is likely to recover his funds from G directly, however it wouldn't be unreasonable if Lloyds asked Mr B to sign an indemnity whereby any funds that are recovered by him are offset against the refund Lloyds have given him.

I can't see that Mr B has raised any points with regards to the £40 compensation he's received from Lloyds. However, for completeness, I'm satisfied that this payment is fair and won't be asking Lloyds to pay any more.

Lloyds have been able to recover £72.57 from the beneficiary bank, which they should refund to Mr B if they haven't already done so. From what I've seen they contacted the beneficiary bank promptly on being made aware of the scam but were only able to recover £72.57, as the balance of the funds had been removed from the account. Lloyds have taken the appropriate steps in the circumstances to try and recover Mr B's funds and I won't be asking them to do anything further in that regard.

I appreciate that Mr B is going to be very disappointed that I'm recommending a smaller refund than the investigator did. However, I'm not satisfied that I can fairly hold Lloyds 100% liable for his loss for the reasons given above.

Putting things right

My provisional decision was that I intended to uphold this complaint and ask Lloyds to:

- Pay Mr B the £72.57 they've recovered from the beneficiary bank – if they haven't already done so.*
- Refund Mr B 50% of payments 2 to 9 (inclusive), payments 11 to 16 (inclusive), payment 19 and payments 21 and 22 - being £95,597.63 (50% of £191,340.40 less the £72.57 they recovered).*
- Lloyds should pay interest on those refunds at 8% simple interest from the date they declined his claim until the date of settlement.*

- *Lloyds should pay Mr B the £40 compensation they offered - if they haven't already done so.*
- *Lloyds can deduct from the overall refund, any payments they've already made to Mr B.*

Responses to the provisional decision

Lloyds accepted my provisional decision. As such it agreed to refund an additional £24,046.93 and pay interest on that refund at 8% from the date of the claim until the date of settlement. Lloyds confirmed that the £40 compensation and recovered funds of £72.57 had already been refunded to Mr B.

Mr B responded disagreeing with my provisional decision and provided extensive points. I've read all of Mr B's points, however I've focused on the main points he's raised which get to the heart of the matter I'm being asked to consider. These include:

- Mr B wasn't going to sign a contract for an unfinished building, this would've been irresponsible. Once the works were complete and Mr B was happy he would've requested a contract. Any contract before this would've been a huge risk.
- Mr B had no idea that a UK personal bank account was the final destination of his money. If he had known, this would've been a red flag and no money would've been sent.
- Mr B was regularly shown "his account" and its balance in an office on a computer, so he could see the payments he'd made. Mr B also kept his own record of payments and believed his bank statements were formal evidence/proof of his payments.
- The contract that wasn't in English that Mr B signed related to the first property.
- Mr B wasn't paying for the property in stages, the idea was to send lump sums to the currency account when the exchange rate was in his favour based on what needed to be paid for. The rest of the money was to be held in a secure account ready for release when the property was built.
- G's employment didn't change, he was always a sole trader. He worked with the first agency because it was a long-standing business with many property listings. However, G wasn't happy with how the agency was dealing with things in respect to Mr B's property purchase and didn't feel they had Mr B's best interests at heart. So, he cut ties and went to work for another reputable business. This reassured Mr B that G was trustworthy and had his back.
- Mr B didn't engage a solicitor for the second purchase, as a solicitor isn't usually engaged until the final stage of the property purchase when the money and keys are exchanged with the vendor.
- The £40 compensation paid by Lloyds is insufficient as it doesn't cover the costs incurred since the start of this complaint.
- Lloyds have been neglectful. If they had intervened and found out where the funds were ultimately going the scam would've been prevented. The issue would've been raised with G and it's likely a solicitor would've been engaged.

Now both parties have provided their response to the provisional decision, I've reconsidered the case.

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 carefully considered everything that Mr B has said in response to the provisional decision, I've reached the same outcome as I did in the provisional decision. I still think there were a number of red flags that should've concerned Mr B and resulted in him doing additional checks or getting a solicitor involved. These are:

- Mr B didn't sign any form of contract for the second property he was buying. This meant there was no clear agreement as to what the purchase price was, what deposit he was paying, or what the terms of the purchase were. So, Mr B was entering into an agreement without any protection. I'm not satisfied that signing a contract before the property build was completed was a risk as suggested by Mr B. As potentially Mr B could've lost some or all of the money that he had paid to G, as there was nothing to say what would happen if the deal fell through or he decided to back out of the purchase. I would expect some sort of agreement setting out the terms of the transaction.
- Mr B has said that he wasn't paying for the property piecemeal as it was being built, rather that he was sending lump sums when the exchange rate was in his favour. However, it's unclear why Mr B wouldn't send all of the funds if the exchange rate was particularly favourable, rather than these spread out payments. Also, Mr B still refers to sending payments based on what needed to be paid for. This suggests he was making some payments towards the purchase of the property or building/furnishing costs. This only adds to the concern that Mr B was paying money without any agreement of the terms.
- I still have concerns about G changing his working arrangements and moving from a business that Mr B believed to be respectable with a long-standing local reputation. Especially as Mr B had told us that he was reassured in using G because of his working arrangement with the agency. It's not clear what checks Mr B carried out to satisfy himself that what G was telling him was accurate.

For all of the reasons set out above, I believe Mr B should've had concerns and carried out more checks or got a solicitor involved before making the payments. And, I'm still not satisfied that Mr B had a reasonable basis for believing the payment was for genuine goods or services, and/or the person or business with whom he transacted was legitimate. Therefore the refund that I've asked Lloyds to make should be reduced by 50%.

Mr B says that he wouldn't have risked his money if he had any concerns as it was a huge part of his life savings. And, that with the benefit of hindsight, there may have been things Mr B could've done. But he feels that any short comings on his part don't outweigh what Lloyds should've done or their duty of care to him.

I'd like to assure Mr B that I realise he has been the victim of a particularly cruel scam and the impact the loss of this money is having on him. However, the CRM Code sets standards that both the business (Lloyds) and the consumer (Mr B) are expected to meet. In this case, I agree with Mr B that Lloyds should've done more and haven't met their obligations under the Code. On that basis, I recommended that Lloyds should refund the payments from payment two onwards. However, I'm not satisfied, based on what Mr B has told us, that he has met the standards set for him under the Code either – which is why I reduced this refund by 50%.

Mr B has now raised a concern about the £40 compensation that Lloyds paid, which Lloyds said was for reaching the wrong answer when they initially reviewed Mr B's fraud claim. In making a compensation award, I can't award based on the complaint process, the costs in bringing a complaint or because a business reached a different answer on a case than we ultimately did. The complaints process requires financial businesses to investigate complaints and communicate the outcome to customers. They're also required to provide referral details for our service, so if the customer remains unhappy, they can bring their complaint to our service. Often a financial business may reach a different answer than we do following our investigation of the complaint. But we don't make an award of compensation on that basis, so I can't fairly ask Lloyds to increase the compensation of £40.

Mr B has raised a point that if Lloyds had intervened, they would've found out the ultimate destination of the funds – which would've caused Mr B to raise concerns with G and would likely have resulted in a solicitor getting involved. I think it's worth noting that intervention by Lloyds wouldn't have involved them doing a money trail audit. In this case, the information that Lloyds would've had is the same information that Mr B had, which is that he was making payments to a UK bank account. Mr B would've known this because the sort code and account number he used to set up the payment on his online banking was for a UK bank. There was no information, for example an IBAN number or any other indication that he was making a payment to an overseas account.

I'm really sorry to disappoint Mr B, but having carefully considered everything he's said, I'm unable to recommend a full refund.

Putting things right

To put things right Lloyds Bank PLC should:

- Pay Mr B the £72.57 they've recovered from the beneficiary bank – if they haven't already done so.
- Refund Mr B 50% of payments 2 to 9 (inclusive), payments 11 to 16 (inclusive), payment 19 and payments 21 and 22 - being £95,597.63 (50% of £191,340.40 less the £72.57 they recovered).
- Lloyds should pay interest on those refunds at 8% simple interest from the date they declined his claim until the date of settlement.
- Lloyds should pay Mr B the £40 compensation they offered - if they haven't already done so.
- Lloyds can deduct from the overall refund, any payments they've already made to Mr B.

My final decision

My final decision is that I uphold this complaint against Lloyds Bank PLC and require them to compensate Mr B as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 14 December 2022.

Lisa Lowe
Ombudsman

