

Complaint

Mr V is unhappy that Lloyds Bank PLC didn't reimburse him after he told it he'd fallen victim to a scam.

Background

Mr V was looking for someone to assist with the online marketing of a business venture and had been carrying out online research to that end. He found a company that I'll refer to as B. He made enquiries and one of its directors set up an online call with two other people who apparently worked for the company. They discussed how it operated and what services it could offer him. He waited several weeks before agreeing to go ahead.

On 8 June 2023, he transferred £1,000 to B from his Lloyds account. Lloyds had concerns about the risk of fraud. It stopped the payment and spoke to Mr V before deciding what to do next. After that conversation, it agreed to process it. Mr V told Lloyds that he wasn't happy the payment had been stopped. Lloyds accepted it had been overzealous and agreed to pay him £100 in recognition of that.

Shortly afterwards, Mr V was no longer able to contact the people he'd been communicating with at B. There was also no evidence that any of the work he commissioned them to carry out was ever done. He thought he must have fallen victim to a scam. He complained to Lloyds, but it didn't agree to reimburse him. It said that Mr V hadn't fallen victim to a scam, but instead had a civil dispute with B. Mr V was unhappy with that response and so he referred his complaint to this service. It was looked at by an Investigator who was also unpersuaded that Mr V was the victim of a scam.

Mr V disagreed with the Investigator's opinion. His response was lengthy, but I've summarised the key points he raised below:

- The Investigator appears to think that B intended to carry out the agreement, but there's no evidence to support that.
- Lloyds initially blocked Mr V's payment so it could carry out fraud prevention checks. Mr V says that the bank failed to provide "*effective education*" to him during that call and, if it had done so, he wouldn't have made the payment.
- If the bank had reasonable grounds to restrict the payment, they shouldn't have let it go through under any circumstances.
- Lloyds is obliged to refund him, unless it can show that he was grossly negligent.
- There is no dispute between Mr V and B – B didn't even attempt to defend its position, it simply ignored contact from Mr V.
- There are multiple pieces of evidence available online about the individuals who were running B which strongly indicate that they are professional fraudsters.

Because Mr V disagreed with the Investigator's view, the complaint has been passed to me to consider and come to a final decision.

Findings

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

I'm aware that I've summarised the complaint and Mr V's submissions in summary form and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the essence of the complaint— i.e., whether Lloyds should have done more to prevent his loss. 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 a fair outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as an alternative to the courts.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations 2017 and the terms and conditions of the customer's account. However, that isn't the end of the story. Lloyds is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code ("the CRM code"). This code requires firms to reimburse customers who have been the victim of authorised push payment ("APP") scams in all but a limited number of circumstances.

However, the Code doesn't apply to all transactions. For a payment to be covered, it needs to meet the Code's definition of an APP scam which is as follows:

a transfer of funds executed across Faster Payments where ...

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

The Code also specifically excludes what it terms "*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.*"

The question this case turns on then is whether the purpose for which Mr V made this transfer was, in fact, fraudulent. To reach a determination on that point, I need to consider what the intentions of B and its directors were – in other words, did they plan to deceive Mr V and take his money from the start with no intention of fulfilling their side of the agreement?

I can't know for sure what was in their minds at the time, so I have to look at the available evidence and infer what their intentions most likely were. Unless that evidence shows that it's more likely than not that B's directors intended to defraud Mr V, I can't make a finding that he is a victim of fraud and this payment would fall outside the scope of the CRM Code.

In responding to the Investigator's view, Mr V asked what evidence there was that B *did* intend to carry out its contract with him. I accept his point – there isn't really any additional evidence that shows that it did have such an intention. But unfortunately, as Mr V is the one making the complaint against Lloyds, the onus is on him to show that he is the victim of fraud, rather than being involved in another kind of dispute.

I've considered that point carefully and, having done so, I'm not persuaded that there's enough evidence to say that he was the victim of APP fraud, as defined in the Code. That means Lloyds isn't expected to refund the payment.

I accept that Mr V has paid B for a service that it hasn't provided. Although I understand Mr V's scepticism on this point (particularly in view of the information he's found online about B's directors), it doesn't automatically follow that B has defrauded him just because it has failed to perform the contract. The evidence that has been provided so far doesn't allow me to rule out other possible causes – it's at least as likely that the root cause was that the company was mismanaged or failed for some other reason. In such circumstances, Mr V may have a civil claim for damages for breach of contract, but it wouldn't entitle him to have his losses reimbursed by the bank under the CRM Code. Disputes of this nature, in my view, belong in the civil, rather than criminal, courts.

I've taken into account the evidence Mr V has pointed to regarding the directors of the company. This information found online appears to show that B's directors have run other companies that people have accused of fraud. I've seen online reviews left for one of those companies. Although those reviews are short on detail, they show that other clients of that company think that they've been the victims of fraud and describe the people running the company as scammers.

I don't have enough information to come to a firm conclusion on the significance of those reviews. However, I'm conscious of the fact that in everyday speech, a person might describe a company as a scam because it's engaged in sharp practice – i.e., carrying out activities that are strictly speaking legal, but could otherwise be seen as unethical. Overall, and while I know that it will be hugely frustrating to Mr V, I don't find that the evidence he's found online allows me to safely conclude that B defrauded him.

There is a high legal threshold for fraud and I'm also mindful of the fact that, while I understand multiple people have reported the activities of B's directors to the police, this hasn't resulted in any meaningful investigation or criminal charges. Mr V also tells us that he informed the relevant trading standards team, but this doesn't appear to have resulted in any meaningful action either.

It is, of course, possible that the situation may change and new material evidence may come to light about B's actions and intentions. That could affect the outcome here. However, I have to decide the case on the facts and information before me. I'm currently not able to conclude there is convincing evidence that Mr V has been the victim of an APP scam. If new material information does come to light, at a later date, then Mr V can bring a new complaint to Lloyds. But I'm satisfied, based on the available evidence that I have seen and been presented with by all parties, that this is a civil dispute.

Finally, Mr V has said that, if Lloyds handled the call with him differently, it's unlikely that he'd have gone ahead with the payment. He also contends that, if Lloyds had any reasonable basis for stopping that payment, it shouldn't have been allowed through under any circumstances. It's difficult to know whether, if Lloyds had handled that call differently, it would've changed what Mr V did. But in any case, in the absence of any fraud concerns, Lloyds has an obligation to make the payment in line with the customer's instructions and it wouldn't be expected to give general advice about the company Mr V was paying. I'm therefore not persuaded it did anything wrong in processing the payment.

I don't say any of this to downplay or diminish what Mr V has been through here. However, my role is limited to looking at the actions and inactions of the bank and, while I'm sorry to have to disappoint Mr V, I'm satisfied Lloyds' decision under the CRM Code was correct.

Final decision

For the reasons I've explained above, I don't uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 16 May 2024.

James Kimmitt
Ombudsman