

The complaint

X complains that Lloyds Bank PLC won't refund 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 what happened here.

X engaged the services of a builder – which I'll call D – to do some work at his home. This builder had been recommended by X's neighbour. X agreed a price for the work and paid a 10% deposit of £2,660 on 31 July 2023. D attended X's property on 16 August 2023, but said that due to one of his subcontractor's being injured he would not be able to do the job he'd been engaged to do. D agreed to refund X's deposit, but when X did not receive this refund within the expected period of time he contacted Lloyds to say that he thought he had been scammed.

Lloyds looked into what had happened, but said X wasn't eligible for a refund under the relevant regulations as it didn't think he had been the victim of a scam. It said it thought this was more likely a private civil dispute between X and the builder.

Unhappy with Lloyds' response, X brought his complaint to this service and one of our investigators looked into things. But they agreed with Lloyds that this was most likely a civil dispute, and so X was not entitled to a refund of the payment he had made. X remained unhappy, he says D had no intention of doing the work he'd been paid for and so feels it is clear that this was a scam. So as the case could not be resolved informally, it's been passed to me for a 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.

Having done so and having thought very carefully about Lloyds' actions, I agree with the findings set out by our investigator. I do appreciate how disappointing this will be for X but, whilst I'm sorry to hear of what's happened, I don't think I can fairly hold Lloyds liable for his loss.

This is because not all cases where individuals have lost sums of money are in fact fraudulent and/or a scam. So, whilst I can quite understand why X feels that he has been scammed, there is a high legal threshold or burden of proof for fraud 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.

When considering what is fair and reasonable in this case, I've thought about the Contingent Reimbursement Model Code (the CRM Code) which Lloyds has signed up to and which was in force at the time X made this payment.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam. So, I've thought about whether the CRM code applies in the circumstances of this complaint, and whether Lloyds therefore ought to reimburse X under the provisions of the CRM Code.

The CRM Code is quite explicit that it doesn't apply to all push payments. It says:

"DS2(2) This code does not apply to:

(b) 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."

Lloyds is of the opinion that X's circumstances fall into this definition of a private civil dispute and I agree that this is most likely the case here. I'm not persuaded that I can safely say with any certainty, based on what I know and what the evidence shows, that D set out with an intent to defraud X from the outset. It seems more likely to me that this is a dispute about a builder failing to complete the work agreed or to refund the deposit when it became clear that he would not be able to do the job.

X argues that D had no intention of doing the work. But the evidence I've seen does not support that. X has provided a record of the messages exchanged between himself and D and those suggest to me that D did intend to do the work. Those messages also suggest that when D had to decline the job, he also intended to refund the deposit to X. And D's explanations for why the refund was not forthcoming, while undoubtedly frustrating for X, do appear to be plausible. In addition, while I cannot share details of what I've seen, I have also had sight of D's account statements, which do appear to suggest that D was operating as a legitimate business.

With this in mind, I'm satisfied that D does appear to have been operating a legitimate business. And it's clear from what has happened that X paid a deposit for services which have not been provided, so I'm satisfied that this situation meets the definition of a civil dispute as set out in the CRM code, this means that X is not entitled to a refund from Lloyds under the Code.

I appreciate X will not agree, but from Lloyds' point of view this situation doesn't display the hallmarks most typically associated with a scam. This is not to say that there is no issue at all between X and D, clearly there is. But this type of dispute isn't something that the CRM Code covers.

I know this will be a huge disappointment to X. I appreciate how he feels about this case, and that he has lost a significant amount of money here. And some of the information X has sent us does suggest that D wasn't always acting professionally, but that does not mean that this was a scam, rather than a case of poor business practices. So, for the reasons I've explained above, I do not consider that the payments in dispute here are covered under the CRM Code, or that it would be fair to hold Lloyds responsible for the money lost.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 1 August 2024.

Sophie Mitchell
Ombudsman