

The complaint

Mr M complains that Barclays Bank UK PLC won't refund money he lost when he fell victim to a scam.

What happened

In July 2020 Mr M fell victim to a scam.

Both parties are aware of the circumstances of the complaint, so I won't repeat them all in great detail here. But in summary, it's not in dispute that Mr M was contacted by a fraudster, who had intercepted an exchange of emails he'd had with a solicitor, regarding the purchase of a property. The fraudster tricked Mr M into making a payment for £363,000 that Mr M thought was payment towards the property – but that was actually made to an account controlled by the fraudster.

Mr M had been communicating with his solicitor's since March 2020, by email, regarding the purchase of a property. On 1 July 2020, Mr M received an email requesting payment, along with account details for where the payment should be made. Mr M has explained that as he was expecting to make a payment and as the email was received from the same email address, he believed the request to be genuine. But unknown to him at the time, fraudsters had intercepted the email communication between Mr M and his solicitor and had provided details for an account that was controlled by the fraudsters.

Believing everything to be genuine, Mr M visited a Barclays branch on 1 July 2020 to make the payment. Mr M has said that he told branch staff that the payment was for the purchase of a property and that a solicitor had instructed him to make the payment. He's said he showed the branch staff the email he'd received and that the branch staff typed the account details into the system and asked Mr M to check them. Mr M has said he recalls being asked if he was making the payment under duress, to which Mr M replied he was not. Mr M has said that at no point did anybody tell him that this could be a scam.

Barclays has said, due to the size of the payment, the branch manager took Mr M to a private room to discuss the payment. The branch manager said that he spoke to Mr M about fraud and scams and read a script. Following which, Mr M went ahead and made a payment for £363,000 to the account details he had been given.

The following day Mr M has said he received a further email, telling him that he should recall the payment he had made, as there was a quarterly audit being carried out on the account and the funds couldn't be accessed. This email was also from the fraudster, but the email address differed to the genuine solicitor's email address by one character. Mr M contacted Barclays on the same day to request the payment be recalled.

Barclays contacted Mr M around two weeks later to tell him it had made attempts to recover the funds, but it hadn't received anything from the beneficiary bank (the bank to which the payment was made). On 4 August 2020, Barclays told Mr M that no funds remained in the beneficiary account and suggested he contact his solicitors. In the meantime, Mr M was still receiving emails from the fraudsters, pretending to be his solicitors.

Mr M visited his genuine solicitor's premises on 5 August 2020, at which point the scam came to light, when the solicitors told Mr M they hadn't asked for any payment from him.

Mr M raised the matter with Barclays. Barclays is a signatory of the Lending Standards Board Contingent Reimbursement Model (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. Barclays says one of those exceptions applies in this case, it says; Mr M made the payment without a reasonable basis for believing the payment was for genuine goods or services.

Barclays issued its final response in November 2020. Barclays reviewed Mr M's complaint under the CRM code and upheld the complaint in part. This was because it said it could have done more to protect and advise Mr M prior to him making the payment. As it said the warning it gave in branch wasn't effective enough, as it did not prompt the customer to carry out further checks with the solicitor via telephone or in person. But it didn't agree that it should refund Mr M the full amount that had been lost, this was because it didn't think Mr M had carried out enough checks before making the payment and didn't think he had a reasonable basis for believing who he was paying was genuine.

Because of this Barclays considered it was 50% liable for the payment Mr M made, and it agreed to refund £181,500. Barclays also said that when Mr M raised the matter with it, it attempted to recover the funds from the beneficiary bank, but no funds remained.

Mr M then brought his complaint to our service and one of our investigators looked into it. Our investigator thought the complaint should be upheld. In summary she said this because she thought Mr M had a reasonable basis for belief when making the payment. So she didn't think it was reasonable for Barclays to choose not to reimburse Mr M under the provisions of the CRM Code. The investigator said Barclays ought to refund Mr M the remaining amount he had lost as a result of the scam and pay 8% simple interest on the amount from the date Barclays decided not to uphold the complaint.

Barclays didn't agree with our investigators position. In summary it said that considering the value of the transfer, it would have expected Mr M to have contacted his solicitors by telephone to ensure the details were correct, rather than just relying on the email that had been received. It acknowledged it could have done more, but felt both it and the customer were responsible for the loss.

As agreement couldn't be reached the complaint was passed to me for a decision. I explained to Barclays that my initial thoughts were that I was minded to uphold the complaint, broadly in line with the view reached by our investigator. In summary, this was because I wasn't satisfied Barclays had shown Mr M lacked a reasonable basis for belief when making the payment. Alongside this I also thought Barclays missed an opportunity to prevent the scam at the point Mr M made the payment.

Barclays didn't agree with my initial thoughts. In summary it said that due to the size of the payment it would have expected Mr M to have confirmed the account details with the solicitors prior to making the payment. It didn't think it was acceptable that Mr M did not conduct any checks. It added that it would have expected Mr M to confirm that he was paying an account that belonged to the solicitor, considering the name (of the account), did not match the solicitors. Alongside this it said that one letter was different in the email address from the fraudster, which would have indicated that it was not an email from the genuine solicitor.

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.

I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. 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 the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

I'm mindful that Barclays have said Mr M ought to seek reimbursement from his solicitors for the loss. I note that Mr M did raise matters with his solicitors, however they accepted no liability. Alongside this Mr M also sort counsel from another firm of solicitor's, who Mr M has said advised him that what happened doesn't fall under a negligent behaviour on his solicitor's part. Mr M hasn't been successful in recovering any funds through raising matters with his solicitor. But in any event, my decision here focuses solely on the actions of Barclays and whether it met its obligations when Mr M made the payment and when he reported matters to Barclays.

Having done so, I am satisfied that:

- Under the terms of the CRM Code, Barclays should have refunded Mr M the full amount he lost. And I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case.
- In the circumstances Barclays should fairly and reasonably refund Mr M the money he has lost.

Barclays, although admitting it could have done more to protect Mr M before he made the payment, argue that the following exception from the CRM Code applies. It argues;

- Mr M made the payment without a reasonable basis of belief that the person he was paying was the person they were expecting to pay and was legitimate.

I have carefully considered Barclays representations about whether Mr M had a reasonable basis for believing the transaction to be genuine. But it does not persuade me to reach a different view. In particular I am not persuaded that Mr M failed to take the requisite level of care required for Barclays to choose not to reimburse under the terms of the CRM Code and I don't consider Mr M lacked a reasonable basis of belief. I say this because;

- Mr M wasn't aware of how email impersonation / intercept scams worked and hasn't previously been a victim to this type of scam. He was expecting to make a payment in regard to the property he was purchasing. The email, which contained the account details, appeared to come from the same email address he had been communicating with his solicitor on for many months.
- I have seen a copy of the emails from the genuine solicitor and the scammer. The email from the scammer providing the account details, in my opinion, is not too dissimilar in tone or style to that of the genuine solicitor, and I don't think it would fairly and reasonably have caused Mr M any concern.
- Barclays has said the account name, to which the payment was sent, was different to

the solicitors. Mr M has said he thought this was just another trading name for his solicitors and as it had come from their genuine email it didn't raise any concerns. The email, in essence, provided the account details of where the payment was to be made to. I'm mindful solicitors and / or businesses often have multiple accounts for a variety of reasons, and the accounts aren't always necessarily in the name of said business and can be called something different. Overall, given the genuine and plausible feel to the email, alongside Mr M expecting to make a payment and being unaware of how email intercept scams worked, I can't say Mr M should have had any cause for concern or reason to be suspicious.

- Barclays argue that the email address from the fraudster was different. I've seen that the email address used by the fraudster differed by only one letter. Considering this I don't consider it fair, reasonable or realistic for Barclays to expect its customers to identify such a minor discrepancy in an email address - particularly when a firm has not sufficiently alerted a customer to the possibility of a fraudster posing as a legitimate business in the middle of a chain of genuine email correspondence, using the same or a similar email address. I can understand, without detailed knowledge of how these scams work, why Mr M would have considered the email he received, with an instruction to make a payment, to be genuine.
- Barclays has also pointed to a warning the genuine solicitors provided in a footer of emails it had sent to Mr M previously, which advised that the solicitors wouldn't change bank details during the course of a transaction. It's important to note that the fraudsters emails did not contain the disclaimer. I don't think it's unreasonable that Mr M didn't notice the absence of the disclaimer and I don't think the absence is remarkable. It not being present also means that Mr M wouldn't have read the disclaimer just before making the payment anyway, it seems the fraudster deliberately removed the disclaimer/didn't include the disclaimer in their email to maximise the chance of the scam succeeding. And in any event, and importantly, the disclaimer that was included in earlier emails talks about the fact the solicitor will never change bank details, but Mr M was not under the impression the bank details had changed, these were the first bank details Mr M had received. I'm not persuaded the inclusion of the disclaimer, on earlier emails, means that Mr M didn't act reasonably, or made the payments without a reasonable basis for belief that the money was being sent to his solicitor.

With all of the above in mind, in light of all the circumstances here, and in line with the requirements of the CRM Code, I'm not satisfied Barclays has been able to establish that when Mr M sent the payment he did so without a reasonable basis for belief.

Could Barclays have done anything else to prevent the scam?

I've also thought about the interaction Barclays had with Mr M, in branch, when the payment was made. And considered whether Barclays could've done anything else to prevent Mr M falling victim to the scam.

Having thought carefully about this and considering what was good industry practice at the time, I think Barclays could fairly and reasonably have taken further steps, which if it had of done would more likely than not have prevented the scam.

The payment Mr M was making, for £353,000, does appear out of character compared to how the account was typically run. While I think the branch manager, in taking Mr M to a private room to discuss the payment has made an attempt to ask questions about the payment. I don't think it went far enough.

I say that as I'm satisfied Mr M has confirmed to branch staff the purpose of his payment was to pay a solicitor for the purchase of a new property, and Mr M has said he showed the branch staff that he'd received the payment details by email. With this I think it's fair and reasonable that the branch, should have then been on alert that Mr M could possibly be at risk of financial harm – given its knowledge of these types of scams and the prevalence of email intercept scams, which can often involve transfers of large sums, as was the case here.

In response to what Mr M had told and showed it. Barclays could and should have brought to life what an email intercept scam would look and feel like. And to ensure that Mr M wasn't at risk of financial harm, suggested he contact his solicitor on a verified number (or in person) to confirm the legitimacy of the bank details he had been provided with. If Barclays had done this, and then asked Mr M, as I think it ought to have done, if he would like to make a call/visit his solicitors to confirm the details before going ahead with the payment, while emphasising that he was potentially at risk of losing all of this money - I think it more likely than not he would have taken this additional step to protect himself.

I've considered that Barclays has suggested Mr M ought to have taken this step anyway. But I'm mindful that Mr M thought he had received instructions from his genuine solicitor. I don't think it was apparent to him that a fraudster could intercept an email midway through a genuine exchange of emails and it didn't occur to him that there could be a risk. So I can fairly and reasonably understand why he wouldn't have thought it necessary to take this step, especially in the absence of a warning around how these scams typically feel and play out. Barclays, as the professionals here, could've and should've given Mr M advice that I think more likely than not would have led to the scam being uncovered.

For clarity, my findings that Barclays ought to have prevented Mr M from losing £353,000 have a limited impact on the outcome of this complaint, given I'm minded to decide Mr M should've been reimbursed under the provisions of the CRM Code. The impact relates to the interest payable only.

I'm conscious it's the fraudsters, rather than Barclays, that have ultimately caused the loss. But all things considered and in the circumstances, I think Barclays ought to have fully refunded Mr M under the provisions of the CRM Code and so it should fairly and reasonably refund the remainder of that loss now.

Putting things right

The CRM Code explains that where a customer has met their requisite level of care (which as I've explained, I'm satisfied was the case here) they should be refunded all of the money that was lost. So I think it's fair that Barclays Bank UK PLC;

- refund Mr M the remainder of the money he lost, being £181,500
- pay 8% interest on this amount from the date of the transaction to the date of settlement.

My final decision

For the reasons set out above, my final decision is that I uphold Mr M's complaint against Barclays Bank UK PLC and order it to pay the redress I have indicated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 May 2022.

Stephen Wise
Ombudsman