

The complaint

Mrs E complains that Barclays Bank UK PLC won't reimburse her the money she transferred to a fraudster.

What happened

Mrs E explains that a former colleague introduced her to an individual they used to work with in a foreign currency exchange company. The individual offered to help Mrs E send money to Nigeria. Between March and November 2020, Mrs E made five payments to this individual, totalling £1,000, which was received by her intended recipient without issue.

The individual then approached Mrs E about a potential investment opportunity. He explained he was intending to purchase a bus from Germany for £6,000 which he would ship to Nigeria to use as a public service. He said in total, it would cost around £10,000 to £12,000, but that Mrs E would see this money returned within around six months once the bus was in service. Mrs E met with the individual for around 15 minutes and was shown pictures of the bus, after which she agreed to be involved.

In November 2020, Mrs E made three payments of £1,000 each, over the space of four days towards the bus. However, after the third payment, Mrs E says she began questioning whether she had fallen victim to a scam. She says she considered that she didn't know the individual that well, that he had no office address she was aware of and that she didn't know where he lived. On this basis she decided to stop making payments and asked the individual for a refund.

Mrs E has provided extracts from the instant messaging conversations she had with the individual in around June 2021. Within the messages, Mrs E makes reference to an agreement her and the individual have made for him to refund her. While the reasons for the refund being provided are disputed within the messages, the individual does confirm he will refund Mrs E. However the individual only refunded Mrs E £100 of the funds she'd transferred.

Mrs E has said she didn't realise she could raise this matter with her bank until 2023 when she heard about this on the radio. At this point she contacted her bank and raised a scam claim.

Barclays investigated Mrs E's claim and considered its obligations to provide Mrs E with a refund. 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. However, Barclays determined that in this case, there was limited evidence that Mrs E had in fact been the victim of a scam and considered this to be a civil dispute between herself and the other individual involved. As the CRM Code explicitly states that it does not apply to private civil disputes, Barclays didn't consider it needed to provide Mrs E with a refund.

Mrs E disagreed with Barclays so brought the complaint to our service. One of our investigators considered the case and didn't uphold it – he thought that there was sufficient evidence that Mrs E had been the victim of a scam – however, he didn't consider that Mrs E had done enough to confirm the legitimacy of the individual she was sending funds to before making the payment. He also thought that Barclays didn't need to provide an effective warning at the time of the payments, as the scam risk wouldn't have been apparent to

Barclays. The investigator therefore didn't consider that Barclays needed to do anything to put things right for Mrs E.

Mrs E didn't agree with the investigator. To summarise, she didn't think we had considered all of the evidence she'd provided of the conversation she had with the individual. She also thought Barclays should have provided an effective warning before she made the payments.

As Mrs E disagreed with the investigator's opinion, the complaint has 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, while I'm sorry to disappoint Mrs E, I'm not upholding her complaint. I'll explain why.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

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 and the terms and conditions of the customer's account. However, where the consumer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the consumer even though they authorised the payment.

When thinking about what is fair and reasonable in this case, I've considered whether Barclays should have reimbursed Mrs E under the provisions of the CRM Code and whether it ought to have done more to protect Mrs E from the possibility of financial harm from fraud.

The CRM Code

As I've mentioned, Barclays is a signatory of the Lending Standards Board Contingent Reimbursement Model (the CRM Code) which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances and it is for Barclays to establish that a customer failed to meet one of the listed exceptions set out in the CRM Code.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that*:

- The customer ignored what the CRM Code refers to as an "Effective Warning" by failing to take appropriate action in response to such an effective warning
- 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

**Further exceptions outlined in the CRM Code do not apply to this case.*

However, as I've mentioned, 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"

Subsections (a) and (c) have been omitted as they are not relevant to this complaint.

Having considered everything provided by both Mrs E and Barclays, I think it's questionable whether this case meets the high legal threshold and burden of proof for fraud, rather than a civil dispute. I say this based on the previous relationship Mrs E had with the individual, the continued correspondence that was maintained after Mrs E had stopped making payments (which is not a usual characteristic of scam payments) and the lack of any form of contract confirming what entitlement Mrs E may have to a refund, should she decide not to progress with the investment.

However, there are also some factors to Mrs E's claim that do suggest she *may* have been the victim of a scam, such as evidence provided by the beneficiary bank provider. Even if I do consider the case as a scam, rather than a civil dispute, I don't think Barclays would be required to provide Mrs E with a refund, based on the other exceptions of the CRM Code. Therefore, for completeness, I've considered the case as a 'scam' to further explain my reasons why.

As I mentioned, a bank may choose to not reimburse a customer if they made payments without a reasonable basis for believing the payments were for genuine goods or services. Based on the evidence provided by Mrs E, I don't think she did enough to satisfy herself that she was making legitimate payments towards purchasing a bus. I say this because Mrs E has herself acknowledged that after having made three payments, she had concerns that she 'didn't know' the individual she was paying, only having met him very briefly and knew of no ways to contact him other than his phone number should she need to. I think the fact that Mrs E identified this herself, without any 'trigger moments' that otherwise highlighted this to her as a scam, demonstrate that she became aware at this point that she didn't have enough information about the individual she was sending money to.

Mrs E hasn't referenced any additional information she was presented with regarding the planned purchase of the bus, such as agreements, contracts or contact information for the bus seller – only some pictures of the bus. I can't see she conducted any research about the price of the bus, or its condition, to assure herself that the price quoted was realistic.

While Mrs E had a previous history of sending money to the individual in question, I don't think this alone is sufficient to have assured her that this was a genuine investment opportunity – the funds she'd sent previously were in a different capacity and the value of those payments was also less than what she was now being asked to send.

With all of the above in mind, in the particular circumstances of this case, I consider that Mrs E ought to have had concerns about the legitimacy of the payments she was making and this, in turn, ought to have led to a greater degree of checking on Mrs E's part. In not carrying out sufficient checks I don't find she had a reasonable basis for believing she was making a genuine purchase and so fell below the level of care expected of her under the CRM Code.

Should Barclays have done more to try to prevent the scam and protect Mrs E?

I've thought about whether Barclays did enough to protect Mrs E from financial harm.

The CRM Code says that where firms identify APP scam risks in a payment journey, they should provide Effective Warnings to their customers. The Code also says that the assessment of whether a firm has met a standard or not should involve consideration of whether compliance with that standard would have had a material effect on preventing the scam.

I am also mindful that when Mrs E made these payments, Barclays should fairly and reasonably also have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things).

Having considered the payments Mrs E made, I don't think they were so remarkable, in comparison to her usual account activity (particularly when considering that this was a payee Mrs E had sent money to previously without issue) that they should've appeared as suspicious to Barclays. Having reviewed Mrs E's bank statements for the 12-month period prior to the scam, I can see there were other payments Mrs E made that were for similar or greater values.

I appreciate Mrs E disagrees and considers that the payment value was sufficient that Barclays ought to have provided a warning – but I think it's important to consider that warnings, by their nature, are only effective if they cause the recipient to stop and pay attention to their contents. I think it's fair to say if warnings were regularly presented to customers they could lose their impact. While there's always a balance to be struck between protecting customers from financial harm and not providing excessive barriers when making payments, I can't agree that Barclays ought to have done more before processing these particular payments. I therefore don't think Barclays failed to meet its standards under the Code by not providing Mrs E with an effective warning, prior to processing the payment.

Once it was made aware of the scam, Barclays tried to recover Mrs E's funds, but unfortunately was advised by the beneficiary bank that no funds remained. I don't think there's anything more Barclays could reasonably have done to recover Mrs E's payments.

Overall I'm satisfied that Barclays aren't required to provide Mrs E with a refund under the CRM Code. I do sympathise with Mrs E as I appreciate she has strong feelings on this matter, but the circumstances of the case and the evidence available lead me to find I'm unable to uphold this complaint.

My final decision

My final decision is that I do not uphold Mrs E's complaint against Barclays Bank UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 26 February 2024.

Kirsty Upton
Ombudsman