

The complaint

Mr C is unhappy that Barclays Bank UK PLC won't reimburse money he lost as a result of a scam.

What happened

On 24 January 2024, I issued my provisional decision on this complaint. I wanted to give both sides a chance to respond with any more evidence and arguments before I issued my final decision. That provisional decision forms part of this final decision and is copied below.

In February 2022, Mr C was looking to purchase a new vehicle. He found one on a popular auction website. The price was £5,800 for a six-year-old van. The advert showed multiple pictures of the inside and outside of the van.

Mr C contacted the seller and asked why the van was being sold. The seller claimed to no longer have any need for it. Unfortunately for Mr C, the listing was not genuine and Mr C was actually dealing with a fraudster.

The fraudster agreed to take a 50% deposit for the vehicle and Mr C made a corresponding payment of £2,900 on 7 February 2022. Mr C agreed to travel to collect the vehicle, but before he did that, the fraudster contacted him again, claiming not to be comfortable handling a significant amount of cash and requesting full payment in advance of collection. At this point Mr C seems to have requested proof of identity from the seller. This was eventually supplied in the form of a utility bill. On 8 February 2022 Mr C made a second payment of the same amount as the first to the seller.

Mr C travelled to collect the vehicle but, on arrival, he found that the address he'd been given was occupied by unrelated third parties.

Mr C has explained to our service that, at the time, he was suffering from some very difficult personal circumstances – dealing with the breakup of his marriage and becoming the sole carer for his children and being on a low income.

Mr C contacted Barclays and it considered his claim under the Contingent Reimbursement Model Code ("CRM Code") which requires signatories like Barclays to reimburse victims of APP scams like this one in all but a limited number of circumstances.

In this case, Barclays said that it had provided warnings to Mr C and that he ought to have known that the price of the vehicle was too good to be true.

Mr C, through a professional representative, referred the matter to our service and one of our Investigators upheld the complaint in part. They thought that Barclays could fairly rely on one of the exceptions to reimbursement set out in the CRM Code to decline full reimbursement, but that Barclays had also failed to meet its obligations under the Code; namely to provide an 'Effective Warning'. So, they recommended that Barclays refund 50% of the payments Mr C made, as well as interest at the relevant account rate.

Mr C accepted our Investigator's recommendation, but Barclays did not. In summary, it said:

- *The offer was too good to be true.*
- *Mr C shouldn't have paid for the vehicle before seeing it.*
- *The payments were not out of character.*
- *Mr C didn't select the most relevant payment reason. If he had done he would have seen an 'Effective Warning'.*
- *In any case, the warning he did see mentions the consequences of paying by bank transfer.*

As no agreement could be reached, the case was passed to me for a final decision.

what I've provisionally decided – and why

The starting position under the relevant regulations, the Payment Services Regulations 2017, is that Mr C is responsible for payments he's authorised himself. There's no dispute about that here. But, as explained, Barclays are signatories to the CRM Code. It seeks to rely on two of the exceptions to reimbursement under the code:

- *The Customer ignored Effective Warnings*
- *In all the circumstances at the time of the payment, in particular the characteristics of the Customer and the complexity and sophistication of the APP scam, the Customer made the payment without 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.*

Like the Investigator, I've concluded that, even taking into account Mr C's personal circumstances at the time, he didn't have a reasonable basis for believing that the sale was legitimate. He's accepted the Investigator's view on this point, so I'll only briefly address this issue:

- *The price of the van was significantly lower than it ought to have been, such that Mr C ought to have recognised that it was likely to have been too good to be true. The reason given for the sale (that the seller no longer needed the vehicle) didn't provide an adequate explanation for the reduced price.*
- *A 50% deposit is very substantial and ought to have caused some concern.*
- *Mr C only appears to have asked for proof of identity from the seller after paying the initial deposit. That proof of identity is a very low-quality image.*
- *The seller's explanation for wanting the full payment in advance – that he felt uncomfortable handling so much cash is questionable – Mr C could have paid by bank transfer once he'd confirmed the seller had possession of the vehicle.*

So, I'm satisfied that Barclays can rely on an exception to reimbursement in the CRM Code. I don't therefore need to consider whether Mr C also ignored an Effective Warning.

But Barclays has obligations under the CRM Code – the most relevant being to provide an Effective Warning where it identifies a scam risk in a payment journey. In order to decide

whether a firm has met its standards, I need to consider whether any failure to do so is likely to have had a material impact on preventing the scam.

I've reached a different outcome to the Investigator on this point. Having reviewed the bank's electronic records I can see that, in fact, only one warning was provided (not two, as our investigator believed). That warning was only provided in relation to the first payment and Mr C chose 'something else' as the payment reason.

Mr C told the bank that he cannot remember why he selected the payment reason he did and he told our service that he cannot remember seeing the warnings at all. Our Investigator thought that the selection of 'something else' was reasonable in the circumstances because Mr C was not directly "paying for a large item" (the other, more relevant, choice) but rather just the deposit.

As noted, I don't know why Mr C chose this reason. And, while his choice might not have been completely unreasonable, it was clearly not the most relevant choice and it prevented Barclays from giving a more targeted warning. I've seen nothing to suggest that Mr C considered all of the option available to him and selected this one. In these circumstances, it isn't fair to say that Barclays hasn't met its obligations under the CRM Code as, even if the warning Mr C might have seen had he chosen the more relevant reason was 'Effective' Mr C wouldn't have seen it.

As I've explained, Barclays didn't provide a warning for the second payment. I wouldn't expect it to require Mr C to select a payment reason for this payment too – that would likely only lead to him seeing the same warning as he'd seen in relation to the first payment. So, I don't think it would be fair to say that Barclays should have, but failed to, provide an Effective Warning in relation to the second payment either. But taking into account regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, Barclays ought, fairly and reasonably to have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams. So, I've considered whether Barclays ought to have done more here and contacted Mr C about either payment before they debited his account.

I've reviewed Mr C's statements in the six months before the scam and I can see that there are a number of payments of similar size to those in dispute, including at least one which was significantly larger. So, I don't think that either payment in isolation would have stood out as being particularly unusual. I note that the second payment was sent the day after the first but I don't think it would be fair to say that a concerning pattern had developed by this point. Overall, I don't think that Barclays ought to have recognised that there was a heightened risk of fraud associated with either payment and I don't think it made a mistake by allowing them to debit Mr C's account without further intervention.

Finally, I'm satisfied that Barclays did what it could to try and recover Mr C's money – it contacted the bank which received it within about an hour of being contacted. The receiving bank confirmed that no funds remained.

My provisional decision

For the reasons I've explained, I do not intend to uphold this complaint.

Neither Barclays nor Mr C provided any further submissions. Mr C's representative told us that Mr C accepted the provisional 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.

As neither party has provided any further evidence or arguments, I see no reason for me to depart from the provisional decision I've set out above.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 6 March 2024.

Rich Drury
Ombudsman