

The complaint

Mrs M complains that Barclays Bank UK PLC (Barclays) wouldn't refund the money she lost in a scam.

What happened

Mrs M is represented by a third-party claims firm, but I will refer to Mrs M in this provisional decision.

Mrs M was a single mother of six and had gone through a difficult separation and divorce from her husband. He left her with no money. In June 2016, she met someone through an online dating website. I will call this person 'Mr X'. In a short period of time, she became deeply attached to Mr X, who lived in the USA. Mr X said he was a businessman, buying and selling gold jewellery. He had a website which appeared genuine. Mr X said they would get married and he would move countries to live with Mrs M. Mrs M is a devout Christian, and Mr X said he was also - and they found a common bond in their beliefs. They spoke frequently on the phone and exchanged many emails.

In July 2016, Mr X said he was in the UAE on business. But he said his credit card wouldn't work – he needed to pay for his hotel room. He asked Mrs M to send him £2,000 to pay for the hotel. She withdrew cash from Barclays and sent it to a beneficiary in the UAE – using a money transfer service. He showed Mrs M the receipt which appeared genuine.

He then said he wanted to buy some gold in the UAE. Some of which was to pay for their wedding and for them to visit Africa. She sent £10,000 from her Barclays account to a beneficiary in the UAE.

The transactions were:

Date	Transaction	Amount
19 July 2016	Cash withdrawal at branch and transfer to third party beneficiary	£2,000
15 August 2016	Payment to third party beneficiary	£10,000
15 August 2016	Payment fee	£25

Mrs M's son then became aware of what had happened and said the website wasn't genuine. Mrs M then realised she had been scammed.

Mrs M says she was particularly vulnerable after her divorce. She believed Mr X to be genuine, and he convinced her he was a devout Christian (as she is) to build a relationship of trust with her. She also assumed he had been vetted by the dating website. Mrs M says Barclays should've intervened in both transactions. The cash withdrawal was unusual, as was the large payment. Barclays didn't contact her about either. If Barclays had done so, she wouldn't have made the payments. She reported the scam to Barclays, but it took them over a year to respond. Mrs M says the scam caused her a lot of harm and she had to leave her job of 40 years as a result. She says Barclays should refund £12,025 and pay compensation of £500 for the distress caused.

What Barclays said:

Barclays said they had no record of Mrs M contacting them at the time of the scam. On the cash withdrawal – Barclays said this was freely made by Mrs M and the money then sent to a third party. They didn't consider such a cash withdrawal to be unusual.

Barclays looked at the payment of £10,000 under the principles laid down by the Contingent Reimbursement Model Code (CRM Code) – even though this code wasn't in place until 2019, three years later. They said the payment was out of character compared to the previous spend on Mrs M's account. But on the other hand, Mrs M didn't display any due diligence herself before making the payment to someone she'd never met and had only known for a short period of time. And so - they refunded half of the payment (£5,000) because there was blame on both sides. To this, they added interest at 8% per annum - £1,905.09.

Our investigation so far:

Mrs M didn't agree and brought her complaint to us. Our investigator issued two views. The first view agreed with the Barclays' payment already made.

Our investigator's second and final view said Barclays should refund all the money – the cash withdrawal of £2,000 and the payment of £10,000; plus interest at 8% per annum. She said Mrs M was vulnerable at the time and was in financial difficulty. She said Barclays should've questioned the cash withdrawal in the branch.

Mrs M accepted this view, but Barclays didn't. They said that of itself, Mrs M's vulnerability didn't mean the money should be refunded. There wasn't any evidence to say that Mrs M's vulnerability affected her judgement. Barclays asked that an ombudsman look at Mrs M's complaint, and so it has come to me to do that.

I made a provisional decision which said:

I'm sorry to hear that Mrs M has lost money in a cruel scam; particularly as it happened at a difficult time in her life. It's not in question that she authorised and consented to the cash withdrawal and the payment in this case. So although Mrs M didn't intend for the money to go to the scammer, she is presumed to be liable for the loss in the first instance.

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. In July and August 2016, there were some circumstances where a bank should have taken additional steps before processing a payment to help protect customers from the possibility of financial harm. For example, there were some guidelines which should have been followed when older or vulnerable customers asked to make unusually large cash withdrawals or where someone appeared to be telling them what to do.

In recent years, there has been an increase in sophisticated fraud and scams, leading to greater expectations of banks in terms of its role in preventing fraud. This started with a super complaint in September 2016. For example, the British Standards Institute's 'Protecting Customers from financial harm as a result of fraud or financial abuse – Code of Practice' was published in October 2017. This recognised that banks should look to identify and help prevent transactions – particularly unusual or out of character transactions - that could involve fraud or be the result of a scam. And the Contingent Reimbursement Model (CRM) Code, effective from 28 May 2019, was set up to provide protection for customers

who fall victim to Authorised Push Payment (APP) scams, and also to reduce the occurrence of APP fraud.

Bearing all of this in mind, I need to decide whether Barclays acted fairly and reasonably in its dealings with Mrs M when she requested the payments I have discussed above, based on the expectations of banks in 2016. I also need to consider whether Barclays did all that it ought to have done when Mrs M reported that the payments were fraudulent. Having done so, I'm not persuaded Barclays should refund Mrs M the amount she lost. But I note that Barclays has considered Mrs M's complaint under current best practice and refund 50% of her loss plus interest. In doing so, Barclays has gone beyond what it needed to do.

I have set out below the position in respect of each payment.

Cash withdrawal of £2,000: Barclays have no record of whether this was questioned in the branch or not – given the passage of time. I accept this to be a reasonable argument to make. I looked at Mrs M's account – and noted there weren't any other significant cash withdrawals. But the withdrawal was for a relatively small amount and there was no requirement for Barclays to intervene – so I think Barclays acted reasonably in allowing the cash withdrawal.

Payment for £10,000: I'm also not persuaded that good industry practice in 2016 meant Barclays should have intervened in any way at the time this payment was made. But even if Barclays had intervened and called Mrs M – I don't think it would have made a difference and caused her to stop the payment.

I've reviewed in depth the emails between Mrs M and Mr X – between May 2016 and August 2016. And here, for me – it seems that Mrs M was completely committed to Mr X. She clearly believed everything she was told and was looking forward to her new life with him. She believed he was going to marry her and move countries. They shared all their personal information between each other – for example, families, houses, jobs, and their daily experiences. Moreover, they shared a deep Christian belief – and I saw that Mrs M believed they were brought together by their beliefs. I therefore think it is reasonable to say - that even if Barclays had stopped the payment (although there was no obligation to do so at the time) and contacted Mrs M – she would've gone ahead with the payment anyway. So that means – I don't think Barclays should refund the money.

Barclays agreed to consider Mrs M's case under the provisions of the CRM Code and has already refunded half of the £10,000 payment plus interest. So Barclays has already paid Mrs M more than I am recommending.

Vulnerability: Mrs M has argued that she was particularly vulnerable at the time, and so was easily taken in by Mr X. I can accept that to be the case. But equally, I think we could only reasonably have expected Barclays to have taken account of that if they knew of her situation. And in Barclays' records – there's nothing to suggest that was the case. So – I don't think we could've expected Barclays to have done anything differently because of this.

Recovery: We would expect firms to contact the beneficiary bank in cases of scams – to try to get the money back. But here the scam took place in July 2016 and August 2016 – and Barclays say the first contact they received was in July 2022. I can see from Barclays' records that Mrs M called them in October 2016 about a scam, but for £15,430 – which wasn't this case. So in those circumstances, given the passage of time, it wouldn't be reasonable to expect Barclays to have done anything to try to recover the money.

Mrs M lost a lot of money at a difficult time in her life. She was completely taken in by a sophisticated and skilled scammer. But my role is to come to a decision based on the

balance of evidence put forward by both sides. And in the circumstances of this, my provisional decision is that Barclays acted reasonably and don't have to refund any more money here.

Responses to the provisional decision:

Barclays made no comments, but Mrs M did, through her advisors. This said:

- Both payments were out of character and should've been picked up and questioned by Barclays. If they had, Barclays staff would've warned Mrs M and the scam would've been stopped. Barclays staff are well trained in what to do and the questions to be asked. This is now standard across the banking industry.
- The amounts involved were not relevant when it comes to fraud detection systems.
- Barclays were aware of Mrs M's vulnerability which was because of her recent divorce.

I now need to consider these points and make a final 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.

The point I made in the provisional decision was that the checks that Barclays made at the time (2016) and under the guidelines then in force – were not the same as now. So – I cannot reasonably expect Barclays to have made the checks then that would be expected later.

The amount of the withdrawal is relevant – it was then, as now. I don't think it's reasonable to expect a bank to stop and question every payment, regardless of amount – this would place an unreasonable onus on banks and would mean their day-to-day operations were affected.

I made the point in the provisional decision – that Barclays had no record of Mrs M's personal situation and her divorce, or its impact. We can't reasonably expect Barclays to have taken this into account if they didn't know about it.

Having considered the points made, I'm not persuaded to change my view from the provisional decision. Therefore, my final decision is unchanged from the provisional decision. And Barclays don't need to do anymore here.**(continued)**

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 2 August 2023.

Martin Lord
Ombudsman