

## **The complaint**

Miss M complains that Barclays Bank UK PLC (“Barclays”) won’t reimburse the money she says she 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 some of the key events here. In March 2022, Miss M made a payment of £11,309.40 from her Barclays account. At the time she believed she was settling an invoice from a building firm – I will refer to as P. This was the fourth instalment due to the builder – with the first three payments coming from her husband’s account (this is being dealt with under a separate complaint reference).

Miss M had contracted with P (who had been recommended to her by another firm who had fitted her windows) to do work at her home. The payment was paid into an account in the name of P.

In June 2022, Miss M concluded she’d been the victim of a scam – she reported this to Barclays and employed a solicitor and attempted to start court proceedings but it seems P had disappeared and stopped responding to Miss M and her legal representative. Ultimately Barclays said they were unable to recover or return any funds.

Barclays considered this to be a civil dispute between Miss M and P, it also said it had no concerns about the beneficiary account and no other claims of a similar nature had been made. Miss M complained and when Barclays maintained its position, she referred her complaint to our service.

One of our Investigators recommended the complaint should be upheld. In summary he thought this was a scam and Barclays should refund Miss M in full under the Contingent Reimbursement Model (CRM) Code. Barclays disagrees and maintains this is a buyer seller dispute and it cannot conclude for certain that the builder had intentions from the start to scam Miss M.

I issued my provisional decision on 11 August 2023 explaining why I was reaching a different outcome to the investigator and concluding that this is a civil dispute. Miss M didn’t agree and outlined a number of reasons why she considers this to be a scam. Barclays did not reply.

## **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.

In deciding what’s fair and reasonable, I’m required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

I understand Miss M has strong views about what has happened. I want to assure her that I've considered everything she's provided to support the complaint very carefully. I have read the detailed response to my provisional decision. I have listened to the calls and all the evidence on the file.

However, my findings focus on what I consider to be the central issues, and not all the points raised. The purpose of my decision isn't to address every single point the parties have raised or to answer every question asked. My role is to consider the evidence presented by all parties and reach what I think is a fair and reasonable decision based on the facts of the case.

I think I should make it clear I am in no way finding in favour of P. The complaint I am considering is against Barclays. I appreciate Miss M may feel that because I have deemed this a civil matter and not a scam that I am supporting P - but that is not what I'm saying. I cannot decide the case between her and P. This is the whole point of my decision - that this is a civil dispute.

Listening to the calls Miss M has referred to - I can't comment on the content before the call happens but what I've listened to just reinforces in my mind this is a civil dispute between the two parties. In the call with P, he seems to want to reach 'an agreement to carry on' and 'still wants to do the job'. Both parties are talking about solicitors and court action.

The reasons we can't deal with matters like this is quite simply we are not set up for this - I cannot call witnesses (such as the new builder) or demand a third party such as P to give his version of events. I can only look at Miss M's dispute with Barclays.

In terms of the beneficiary bank account - I did explain in my provisional decision that I am unable to share details about a third party and the nature of their relationship with their bank.

But I did explain the evidence I've seen, regarding the beneficiary account (including statements) indicates that the builder's account was legitimate and had been established long before Miss M's payment was made. And the bank hasn't said it had any concerns about how the account was being operated prior to Miss M making her payment. I asked it again recently to confirm no other similar claims had been made and it confirmed this was still the case. This is not typical of a scammer's account.

I appreciate Miss M does not agree, but this situation doesn't display the hallmarks most typically associated with a scam. Even if I take the window fitter's recommendation out of the equation - I can't safely say that this situation meets the high legal threshold and burden of proof for fraud. This is not to say that there is no issue at all between Miss M and the builder. Clearly there is. But this type of dispute isn't something that the CRM Code covers (or we as an organisation are set up to deal with). So, I don't think it was unfair for Barclays to take the view that it was unable to refund Miss M under the CRM Code.

I also understand how helpless Miss M may feel and how frustrating it is - as I can't adequately answer her questions - but this type of cross examination is better placed as a civil dispute.

I realise how difficult things have been for Miss M and her husband and I know she will remain very disappointed by my decision. However, for the reasons I have explained, I'm satisfied Miss M isn't due a refund under the CRM Code. Nor can I see there are any other grounds on which I could say Barclays should, fairly and reasonably, have done more or that it should bear the responsibility for the remaining loss.

Despite Miss M's detailed response to my provisional decision and strength of feeling, my decision remains the same and for completeness, I have set this out below:

It isn't in dispute that Miss M authorised the payment that left her account. But she alleges that she has been the victim of an Authorised Push Payment (APP) scam and that P's intent from the start was to deceive her.

Barclays are also a signatory to the voluntary CRM Code. This is a scheme through which victims of APP fraud can sometimes receive reimbursement from the banks involved. But the CRM code does not apply to *"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."*

So, I need to decide whether Barclays acted fairly, when concluding that this amounted to a civil dispute and not a scam. I'm intending to find that they did, and I'll explain why.

Whilst I can quite understand why Miss M feels that P has scammed her, there is a high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006). 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.

Miss M has provided a picture which shows work in progress – including foundations and blocks laid. I appreciate Miss M's opinion is that the value of the work completed does not reflect what they had paid, and she feels the quality of that work was inadequate and unsafe. Whilst this would clearly be unacceptable to Miss M, this doesn't mean that it meets the bar to be considered a scam where it's required for the intention to have been to deceive from the start.

In addition, the Council's building inspector report (on the linked case) shows numerous visits to the site between 21 January 2022 and 11 May 2022. The entries reflect that foundations appear to have been laid and damp course proofing and lintels were in place. I also acknowledge Miss M says the work was done poorly or incorrectly, but that isn't, in itself, evidence of this being a scam.

The payments, which include those made from Miss M's husband's account, took place between 21 December 2021 and 18 March 2022 (around three months in total). Whilst there may have been delays and occasions when the builder wasn't on site (for example the inspector's entry of 4 February 2022 indicates the builder was not on site due to rain) there was presumably enough work done during this time to reassure Miss M sufficiently to make further payments – including what ended up being the final one on 18 March 2022.

Miss M also told us that P had been recommended by another 'reputable' firm who had fitted her windows. This doesn't support that P was operating a scam, rather that something seems to have gone wrong and that this was a private civil dispute between Miss M and P.

Whilst I am unable to share details about a third party and the nature of their relationship with their bank, the evidence I've seen, regarding the beneficiary account, indicates that the builder's account was legitimate and had been established long before Miss M's payment was made. And the bank hasn't said it had any concerns about how the account was being operated prior to Miss M making her payment. I asked it again recently to confirm no other similar claims had been made and it confirmed this was still the case.

It's entirely possible that P had overcommitted in the work he'd taken on and had been unable to complete all the work he'd agreed. Certainly, the last Council inspection entry might suggest that. The last entry on the Council's inspection report does indicate there may have been a minor boundary dispute and that the fence was in the wrong place against land registry information. The note suggests the inspector had advised the builder to contact planning.

I must make a decision on what I think is most likely to have happened. And, based on the evidence I've seen, I think it's more likely the builder here was attempting to operate as a legitimate business at the time and that other factors ultimately meant the building work wasn't completed. I don't think the builder set out from the beginning with the intent to defraud Miss M, or that Miss M has been the victim of a scam here.

Barclays did intervene when Miss M made the payment and gave a warning. I'm not going to go into detail on this because, given that I'm supportive of Barclays' decision to conclude this is a civil dispute, there isn't any basis upon which any intervention ought reasonably to have caused concern with the payment. So, I can't fairly criticise Barclays for not having done more in these circumstances.

I know this will be a huge disappointment to Miss M – especially as my conclusions differ from the Investigator's. This is not a decision I've made lightly. I appreciate how Miss M feels about this case, and that her property was left unfinished and she has had to pay for another builder to finish the work. And some of the information she has sent us does suggest the builder wasn't acting professionally. I sympathise with the position Miss M has found herself in, and I'm in no way saying she did anything wrong or that she doesn't have a legitimate grievance against the builder. But, for the reasons I've explained above, I don't think it would be fair to hold Barclays responsible for the money she's lost.

So, I don't think the payments Miss M made to the builder are covered under the CRM code, or that Barclays should be required to refund the money she lost.

### **My final decision**

My final decision is I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 22 September 2023.

Kathryn Milne  
**Ombudsman**