

The complaint

Ms M complains that Barclays Bank UK PLC has not refunded her after she was the victim of a scam in 2022.

She brings her complaint using professional representation, but in what follows I will refer solely to Ms M for reasons of clarity.

What happened

Before setting out the facts of the case, I should begin by acknowledging that the events in question took place some time ago. Perhaps as a result there are some discrepancies in the evidence in front of me. Where I have found any apparent contradictions with later submissions and all else being equal, I have given preference on the evidence from the time such as the chat messages provided by Ms M above later recollections.

Ms M holds a bank account with Barclays. In 2022, she met someone online through a dating website (I'll refer to that individual as S).

A few weeks after they'd met, S said he was going to send Ms M gifts, including a mobile phone and jewellery. He would also send Ms M cash hidden in the parcel for safekeeping.

S had told Ms M he was based in the US but was travelling for business so would send this parcel (and cash) from another country.

Ms M said S should transfer the money rather than posting it. But S insisted sending it concealed within the parcel would be quicker and safer.

Ms M was then contacted on a messaging app by someone claiming to be the courier (who I'll refer to as C). She was asked to pay £1,000 upfront for clearance fees. C gave her payment details to use. These were for a personal account rather than a business account.

When Ms M input these details into her Barclays banking mobile app, she received a warning that the payee details couldn't be matched. She queried this with C and was given a different set of account details to use instead, this time possibly those of a business.

Ms M then made a Faster Payments transfer to this second account for the sum of £1,000.

C told Ms M a sum of 360m Indonesian Rupiah in cash had been found concealed in the parcel. C said customs required Ms M to pay £5,000 to have the money converted into pounds sterling. Ms M was then given the details of another bank account she should pay.

This new payee appeared to be another personal account. Ms M set up the new payee on her Barclays app but received warning messages that the payee name didn't match the account. C gave her another set of details to use, again seemingly in a person's name rather than a business.

Ms M appears to have encountered difficulties making the payment to this account. She tried

a few times and for each successive attempt, Ms M reduced the payment value, lowering from £3,000 to £1,500. None of her attempted payments were successful, apparently blocked by Barclays. When it became clear that this wasn't working, Ms M messaged C saying: *"Give me an account which is not [a] business account ... Get a personal account"*.

C provided another new payee to use instead, once again apparently in the name of an individual. Ms M attempted to pay £3,000, £1,500 and £1,500, all of which were blocked.

At that point Ms M reduced the payment amount to £1,000. She also chose the payment purpose option "Paying your other account". This sum was successfully transferred. She sent two more payments of £1,000 to the same destination. At this point she told C she had no more money to transfer.

C then told her the cash being sent to her represented the proceeds of crime obtained through money laundering. C said that could lead to her imprisonment. She was told the money would be cleared through customs if she paid the remainder of the £5,000 fee.

Ms M was unsure about this. She contacted S. S reassured her that she should make the payment, and that there would be more than enough cash in the parcel to cover these costs when it arrived with her.

The following morning, Ms M sent two further payments of £1,000, to the same payee.

Ms M had transferred a total of £6,000 at this point. But C kept giving excuses for delaying the delivery. Ms M realised she had been deceived and asked C to return her money. When that didn't happen, Ms M reported the matter to Barclays as an Authorised Push Payment scam (APP scam).

Barclays is a signatory to the Lending Standards Boards' Contingent Reimbursement Model Code (CRM Code) which in many circumstances can provide reimbursement to the victims of APP scams. But Barclays didn't think it was liable to reimburse Ms M. It initially said she hadn't had a reasonable basis for believing what she did when she made these payments. It wasn't at fault and was not required to refund her losses. It was however able to recover just under £100 of her money from the beneficiary accounts.

Left significantly out of pocket Ms M referred her complaint to this service for an impartial review.

Our Investigator looked into things. The Investigator agreed with Barclays that Ms M hadn't had a reasonable basis for believing what she did when she made the transfers.

But the Investigator thought Barclays could have done more to protect Ms M. She thought at the point Ms M attempted the third successful payment to the scam, Barclays should have provided an Effective Warning under the CRM Code (a warning to Ms M about relevant scam risks). It had not done so, and so the Investigator said Barclays should share liability for the payments from this point onwards. She said the bank should reimburse Ms M half the loss incurred through payments three to six, together with interest on that sum.

Barclays agreed with the Investigator's view. The bank has offered to settle Ms M's complaint on that basis.

Ms M didn't agree. She said the circumstances had meant she'd been fully convinced that she was in a long-term relationship with S. She thought the names she was paying might be the bank accounts of the individuals who worked for the courier company (and customs).

In light of this disagreement, I have been asked to make a final decision on Ms M's complaint.

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 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.

These were 'authorised payments' even though Ms M was the victim of a scam. Ms M made the payments herself. So, although Ms M did not intend the money to go to a fraudster, under the Payment Services Regulations 2017, and the terms and conditions of her account, Ms M is presumed liable for the loss in the first instance.

As noted above, a relevant consideration in this complaint is the voluntary CRM Code. Following the Investigator's assessment of the matter, Barclays offers to partially reimburse Ms M - accepting it has a share of liability under the terms of the CRM Code.

Specifically, Barclays now offers to refund half of the payments Ms M made from the point of payment three onwards - with interest added at the rate of 8% simple per year from the date it initially declined her claim under the code.

As Barclays has accepted part liability under the CRM Code, I have considered whether it is required to do more in the circumstances of this complaint.

Under the CRM Code, a bank need not fully reimburse payments made through an APP scam where it can establish the customer made the payment(s) without holding a reasonable basis for believing what they did. Relevant here, that includes the beliefs that they were dealing with a legitimate business, paying for a genuine service, and paying the person or business they expected to pay. Here, Barclays and the Investigator have both found that Ms M didn't have such a reasonable basis of belief.

I've considered the evidence available to me to decide whether that point has been correctly established by Barclays.

All of the disputed payments were being made on the instruction of the supposed courier C, rather than to the individual Ms M believed she was in a relationship with. Nothing I've seen suggests that Ms M had any prior dealings with C, so her belief in the nature and legitimacy of the payments she made was principally based on what C told her, through the brief social media messages she received.

I understand Ms M's point that she'd not had prior dealings with other courier services, and so she says she believed that paying individual employees' personal bank accounts might be the usual practice. I accept that she may have believed also that the later payments (purportedly being made to Customs) might similarly have been routed via individual employees' own personal bank accounts.

But taking all of the evidence into account, there are significant factors that I consider should nevertheless have led Ms M to have had serious doubts about what she was being asked to do.

The basic premise here was that of sending a large sum of cash internationally, concealed within a parcel. Arguably that in itself should have prompted serious doubts for Ms M about the legitimacy of what was being proposed.

But besides this, Ms M was given multiple payee names supposedly for the same courier firm, and without any real explanation. Even if I accept Ms M's point that she'd had no prior dealings with couriers, I am not persuaded it was reasonable to think a legitimate business of any type would require her to pay its employees' personal bank accounts rather than a business account, let alone pay multiple individuals.

Ms M's payments at various points appear to have generated payee warning messages, and several of the transfers she attempted failed. I think this should reasonably have prompted Ms M to have had doubts about who she was paying and why. Her subsequent actions, including repeatedly reducing the attempted payment value, and her comments in the messages to C, including her request to C for a different payee to use, suggest to me that Ms M herself recognised that these warnings and failed payments were the result of protections that Barclays had put in place - which she was trying to work around.

At various points her messages with C and with S suggest Ms M did have doubts about what she was being asked to do. Ms M should have trusted her instincts here. However, it unfortunately appears she was tempted to go ahead - perhaps in the expectation of receiving a significant sum of money, perhaps in a wish not to disappoint S. Ultimately, I think these factors led her to overlook her justified doubts, and to go ahead with the payments regardless.

Taking everything into consideration, I'm satisfied that Barclays has established that when Ms M made these payments, she did so without holding a reasonable basis of belief (as defined in the CRM Code).

Under the CRM Code, where that has been established, a code signatory may still be liable to refund up to 50% of a payment (or payments) where it hasn't met the standards set by the code. On this basis I understand that Barclays accepts it is liable for 50% of payment three onwards.

As set out above, I do not find it is liable for a larger proportion of these payments under the CRM Code's terms, but what remains to be determined is whether any liability should also apply to payments one and two.

However, all considered, there is nothing I've seen to indicate that Barclays failed to meet any of the standards required of it by the CRM Code in respect of these two initial payments.

In particular, I don't think Barclays was at fault in not identifying a specific APP scam risk for either payment one or payment two (which, for example might have created the requirement to provide Ms M with an Effective Warning under the terms of the CRM Code). While they were being made to new payees, these were relatively low value payments. Her statement history shows Ms M had made several (presumably legitimate) Faster Payment transfers earlier that month for the same or greater amounts. I have not found other features of the payments that should have caused any specific APP scam concerns on Barclays' part.

In short therefore, I do not find that Barclays failed to meet the CRM Code's requirements in respect of payments one and two. On that basis, I do not find it is liable to partially reimburse these payments. I have considered whether there would be any greater liability created outside the confines of the CRM Code terms, but I do not consider there is.

That is not to take away from the fact that Ms M has been the innocent victim of a criminal scam here. I have natural sympathy for her, especially in light of the impact she describes this having had on her. However, that impact principally resulted from the actions of the scammers who deceived Ms M. So that does not, in itself, make Barclays liable for more than it currently offers Ms M. As set out above, I do not find Barclays needs to do more.

Putting things right

Within 28 days of receiving confirmation of Ms M's acceptance of this final decision, Barclays should settle Ms M's complaint in line with the settlement the bank has already offered her. Barclays should:

- Refund half of the loss incurred as a result of the third and subsequent payments Ms M successfully made to the scam (having deducted any sums already recovered or otherwise returned to Ms M in respect of those payments); and,
- Add interest to the resulting sum at the rate of 8% simple per year from the date Barclays first declined to reimburse Ms M until the date of settlement.

My final decision

For the reasons given above, I uphold Ms M's complaint about Barclays Bank UK PLC in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 30 January 2024.

Stephen Dickie
Ombudsman