

The complaint

Miss B complains that Barclays Bank UK PLC (“Barclays”) refuses to refund payments she says she made as a result of a scam.

Angelus Law represents Miss B in this matter.

What happened

The circumstances of this complaint are well known to both parties, so I will not repeat them all again here in detail. But I will provide an overview of events below.

Miss B says she made two card payments to a scam company I will refer to as J in this decision. She says J duped her into making these payments for the maintenance of a timeshare she had: *‘They gave [Miss B] an offer and said that if she paid £6,480 upfront, then this would go towards the upkeep of the timeshare and that they would be able to get her money back plus some more.’* The two payments Miss B made to J were: £1,296 (27 August 2021) and £5,184 (31 August 2021). Miss B says she later discovered she had been scammed when J stopped communicating with her.

Miss B raised this matter with Barclays requesting a refund. As Barclays declined this, Miss B raised a complaint which she referred to our Service.

One of our investigators considered the complaint and did not uphold it. As Miss B did not agree with the investigator’s findings, this matter has been passed to me to make a decision.

What I have 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, I agree with the conclusions reached by the investigator for reasons I set out below.

But first, I would like to say at the outset that I have summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there is a submission I have not addressed, it is not because I have ignored the point. It is simply because my findings focus on what I consider to be the central issues in this complaint.

Based on the information I have seen online, I am persuaded, on balance, that J is a scam company and that they likely duped Miss B into making the payments she did.

Chargeback

Chargeback is a voluntary scheme whereby Visa will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two ‘presentments’. Such arbitration is subject to the rules of the scheme – so there are limited

grounds on which a chargeback can succeed or be deemed a 'valid claim'. Our Service's role in such cases is not to second-guess Visa's arbitration decisions or scheme rules, but to determine whether the regulated card issuer (in this case, Barclays) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder (in this case, Miss B).

Barclays did not raise a chargeback on behalf of Miss B. It argues, amongst other things, that Miss B referred this matter to it outside of the timescales required under the Visa chargeback scheme (120 days). Miss B says the reason for the delay was due to J informing her that it could take up to six months to process the termination of her timeshare agreement.

From what I can see, the payments concerned occurred in late August 2021, and Miss B contacted Barclays about them in August 2022. On the face of it, under the Visa chargeback scheme, Miss B was out of time when she contacted Barclays – even when factoring in the reasons she has put forward regarding her delay.

Notwithstanding this, even if it could be argued that Miss B should be afforded more time – for example the 540 days set out under the scheme – I am not persuaded Miss B had or has the sufficient evidence required for a chargeback claim under the most applicable reason code, which would be misrepresentation. I say this because one of the evidential requirements under this rule would be evidence of the alleged scammer's representations which induced Miss B to make the payments she did. However, I have not seen any evidence of this before me. Miss B has provided, amongst other things, a termination agreement, invoice and receipt from J. However, in my judgment, these would not be enough to satisfy the evidential requirements under the chargeback scheme, as they do not set out the representations alleged. Therefore, I consider Barclays's decision not to raise a chargeback on Miss B's behalf to be fair and reasonable.

Were the payments to J so unusual and out of character?

It is not in dispute that Miss B authorised the payments concerned. However, that is not the end of the story. Barclays has a regulatory obligation to be on the lookout for, amongst other things, unusual and out of character payments – to protect its customers from financial harm from fraud.

Having considered the two payments in this matter, I am not persuaded that they were so unusual that they ought to have triggered Barclay's systems prompting it to intervene and speak to Miss B before releasing the payments. I say this because I do not consider the two payments to be so out of character in terms of the general spending activity on Miss B's account. For example, in the month prior to the disputed transactions (July 2021), I can see large payments leaving Miss B account for: £1,500 x2, £2,000, £3,500 and £4,000. Further, I can see other large outgoing payments in May 2021 for £7,000 and £6,499. I do acknowledge the two payments to J appear to be international, however, weighing these against the significant spending activity I have identified on Miss B's account – I am not persuaded that these two payments should have flagged.

I also do not consider any other reason as to why the payments to J should have triggered Barclay's systems.

Taking all the above points together – I am satisfied that Barclays has not done anything wrong in the circumstances of this complaint. Therefore, I will not be asking it to do anything further.

My final decision

For the reasons set out above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 16 August 2023.

Tony Massiah
Ombudsman