

## The complaint

The estate of the late Mr M has complained that Barclays Bank UK PLC won't refund the money he lost after falling victim to a scam.

## What happened

Both sides are most familiar with the case, so I'll summarise what happened in brief.

Mr M fell victim to a romance scam. Scammers based in Ghana persuaded him that he was talking to a woman who needed money for various things. They said she would come to the UK to be with him, but provided various excuses as to why she couldn't do so yet.

Mr M's previous bank blocked him from sending money to Ghana, so he instead went to Barclays. Barclays also stopped him at first, and referred the matter to the police. But eventually, Barclays started letting the payments through, albeit warning Mr M repeatedly that it thought he was being scammed. Mr M sent around £50,000 to the scammers via Barclays, and Barclays charged him about £1,000 in international payment fees.

Mr M then passed away. The executor of his estate has brought this complaint. He thought Barclays should have prevented Mr M from making the payments.

Barclays felt it had done what it needed to by warning Mr M about scams. It pointed out that he'd been unhappy when payments got blocked, and told them he was being charitable. It also claimed that there was no evidence Mr M had been scammed.

Our investigator looked into things and didn't uphold the complaint, as they felt Mr M was determined to make the payments no matter what Barclays said. The executor asked for an ombudsman to look at things afresh, so the complaint's been passed to me to decide.

I issued a provisional decision on 29 November 2023, to explain why I thought the complaint should be upheld in part. In that decision, I said:

*I'm satisfied that the late Mr M fell victim to a scam here. The circumstances behind these payments are highly suspicious and fit closely with known methods of scams. The executor recovered emails between Mr M and the scammers which show the nature of the scam. And after numerous discussions with him, Barclays' own staff – as well as the police – also found that Mr M was almost certainly being scammed.*

*There's no dispute that the late Mr M authorised the payments involved, even if he didn't intend for the money to go to scammers. So, under the Payment Services Regulations and the terms of his account, Mr M – or his estate – is liable for the loss in the first instance. But the matter doesn't end there.*

*Taking into account the law, regulator's rules and guidance, relevant codes of practice, and what I consider to have been good industry practice at the time, I consider that Barclays should have fairly and reasonably:*

- *Monitored accounts and payments to counter risks such as fraud and scams;*
- *Had systems in place to look out for particularly unusual transactions or other signs its customers were at risk of fraud;*
- *In some circumstances, taken further steps or made further checks before a payment went out, or even blocked it, to help protect customers – irrespective of the type of payment involved.*

*I've reviewed Mr M's account activity in the months leading up to the scam, and I can't see any comparable activity. I think the payments involved stand out as being remarkable, so I think they should have prompted Barclays to intervene.*

*Indeed, I find that Barclays was clearly aware of the nature of these payments and reasonably knew that Mr M was almost certainly being scammed. I say this because:*

- *It knew that Mr M's previous bank had invoked the Banking Protocol and stopped him from making these payments to Ghana on scam grounds. It knew that Mr M had closed his account with them and come to Barclays in order to proceed with the payments. It knew this before allowing any payments.*
- *Mr M initially tried to send over £100,000 – an extremely high amount, and roughly all the money in his account – via Barclays to someone in a foreign country he'd never met in person. The reasons he gave were highly suspicious and Barclays' own staff thought he was being scammed.*
- *Before it began to allow these payments, Barclays invoked the Banking Protocol itself on the grounds that Mr M was being scammed.*
- *The police advised Barclays to decline payment, as by letting Mr M send his money this way it could be assisting in crime.*
- *Mr M's son had attempted to put a power of attorney in place with Barclays on the grounds that Mr M had symptoms of dementia and was being scammed.*
- *Mr M was an elderly and vulnerable individual, sending a large number of large payments to someone he'd never met, in a foreign country, under circumstances highly consistent with scams.*

*In reaching my finding that Barclays should have stopped these payments, I've taken into account the Supreme Court's decision in *Philipp v Barclays Bank UK PLC* [2023] UKSC 25.*

*In that case, the Supreme Court considered the nature and extent of the contractual duties owed by banks when making payments. In summary, among other things, it said:*

- *The starting position is that it is an implied term of any current account contract that, where a customer has authorised and instructed a bank to make a payment, the bank must carry out the instruction promptly. It is not for the bank to concern itself with the wisdom or risk of its customer's payment decisions.*

- *The express terms of the current account contract may modify or alter that position. For example, in Philipp, the contract permitted Barclays not to follow its consumer's instructions where it reasonably believed the payment instruction was the result of APP Fraud; but the court said having the right to decline to carry out an instruction was not the same as being under a duty to do so.*

*In this case, Barclays' terms and conditions gave it the right (though not obligation) to refuse a payment instruction if it reasonably thinks that it's connected to fraud, a scam, or any other criminal activity, including where it thinks the funds are being obtained through deception.*

*So the starting position in law was that:*

- *Barclays was under an implied duty at law to make payments promptly.*
- *It had a contractual right not to make payments where it suspected fraud.*
- *It had a contractual right to delay payments to make enquiries where it suspected fraud.*
- *It could therefore refuse payments, or make enquiries, where it suspected fraud, but it was not under a contractual duty to do either of those things.*

*While the account's terms did not oblige Barclays to refuse payments, I do not consider that any of these things precluded Barclays from doing so. And while Barclays was not required or obliged to do so, I am satisfied that, taking into account longstanding regulatory expectations and requirements, and what I consider to have been good practice at the time, it should fairly and reasonably have been on the lookout for the possibility of APP fraud, and should have taken additional steps – such as stopping payments – in some circumstances, such as in the circumstances of this case.*

*So for the reasons I've explained, I find that Barclays should have intervened in this case and stopped the payments involved.*

*I am aware that the late Mr M was most unhappy when these payments were questioned or blocked. And I accept that he was convinced by the scammers and was very keen to make the payments. But Barclays was clearly aware that he was almost certainly being scammed, and it was in a position to block these payments outright. It had the knowledge and ability to protect its customer from fraud, it reasonably knew that letting these payments through would most likely harm its customer, it had been warned by the police, and it was not supposed to further financial crime. Given what it knew before it started allowing these payments, I find that Barclays acted unfairly and unreasonably in letting them go through. It follows that Barclays bears some liability for the payments involved.*

*Of course, I've also thought carefully about Mr M's role in what happened, and I accept that he also bears some liability. I'm afraid I think Mr M ought to have had some concerns along the way about what he was being asked to do. I can't see that he carried out reasonable due diligence or verified who he was really speaking to – if he had done, it's likely he would not have gone ahead. And I can't see that he had a reasonable basis to believe what he was being told. Further, he ignored clear warnings from his bank, his family, and the police in order to make the payments.*

*So I can't fairly hold Barclays solely responsible for the late Mr M's losses. I find that Mr M (and therefore his estate) should also bear 50% of the responsibility for those losses.*

*Lastly, the executor complained about the way Barclays handled the matter for him. For example, Barclays didn't raise a scam case when he reported the matter, it passed him between departments and left him on hold for long periods, it was unclear about who was handling this, it was unhelpful when he was trying to find out what happened, and it tried to claim that there was no evidence Mr M had been scammed despite the clear signs this was a scam, being warned by the police, and its own staff even finding that he'd been scammed.*

*I certainly understand where the executor is coming from, and I think Barclays' actions here speak for themselves. However, I should explain that in a complaint brought by the late Mr M's estate, I'm only able to award compensation for losses to Mr M and his estate – but not to the estate's representative. And we're not the regulator, so we don't issue fines. So I'm afraid I'm unable to make any additional award for the way Barclays handled the matter for the executor – though I've noted everything he's said.*

I said I'd consider anything else anyone wanted to give me. Barclays accepted the provisional decision. The executor of the estate only wanted to raise one further point, which I'll talk about below.

### **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 executor of the estate asked that when considering liability, I take into account the late Mr M's cognitive state at the time, which he explained was in decline.

I am grateful to the executor for being open with us about this, not least as I can only imagine that it is not an easy subject to talk about. I hope I can reassure him that I did take this point into account. It is part of why I departed from our investigator's proposition of holding the late Mr M (and therefore his estate) liable for all of the loss.

I did also need to keep in mind that when the executor attempted to invoke power of attorney over the account, it was successfully blocked by Mr M, with the grounds given that he still had the proper capacity to manage his finances. And while Mr M was in a position of some vulnerability, I'm afraid that he appears to have acted with some recklessness beyond what one might reasonably expect. He disregarded clear warnings from his bank, his family, and his police, and pressed forward without having a reasonable basis for believing what he was being told. In these circumstances, I cannot fairly hold Barclays 100% liable for the loss either. So I still find that the fairest thing is to split the liability between the two parties here.

Otherwise, neither side had any new evidence or arguments. So having reconsidered the case, I've come to the same conclusion as before, for the reasons set out above.

## **Putting things right**

I direct Barclays Bank UK PLC to:

- Refund 50% of each of the disputed payments made to Ghana from Mr M's Barclays account, along with 50% of any related interest and fees;
- Add 8% simple interest per year onto each partly-refunded amount, from the date it originally debited until the date of settlement. This is there to compensate the estate for the time it was without this money.

If Barclays considers that it's required by HM Revenue & Customs (HMRC) to deduct tax from that simple interest, it should tell the estate's executor how much tax it's taken off. It should also give him a tax deduction certificate if he asks for one. The estate may be able to reclaim the tax from HMRC.

## **My final decision**

I uphold this complaint in part, and direct Barclays Bank UK PLC to put things right in the way I set out above.

If the estate accepts the final decision, Barclays Bank UK PLC must carry out the redress within 28 days of the date our service notifies it of the acceptance.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr M to accept or reject my decision before 3 January 2024.

Adam Charles  
**Ombudsman**