

The complaint

Miss B, Mrs B and Mr B complain that Barclays Bank UK PLC won't refund the money they lost when they were the victims of what they feel was a scam.

What happened

Around September 2022, Miss B was told by a friend of hers that they had been able to book discounted holidays through someone they knew who worked for a well-known travel company. Miss B was then put in touch with the person through an instant messaging service, and spoke to them about the holidays and discounts they had available. And Miss B then made a number of payments from her Barclays account to account details the person gave her, to pay for several holidays.

Miss B has said some of the money she sent to the person was sent on behalf of Mrs B and Mr B, who were also to go on some of the holidays. And so Mrs B and Mr B have also been added to this complaint.

Unfortunately, some of the holidays Miss B paid for weren't provided. And she was told by her friend that the person she had paid had handed themselves in to the police. So Miss B reported the payments she had made to Barclays as a scam, and asked it to refund the money she had lost.

Barclays investigated but said it felt this was a civil dispute between Miss B and the person she had paid, rather than a scam. It said Miss B had known the person previously, and had successfully received some of the trips she had paid for. So it said there wasn't enough evidence for it to treat this as a scam, and it didn't agree to refund the payments Miss B had made. Miss B wasn't satisfied with Barclays' response, so referred a complaint to our service.

One of our investigators looked at the complaint. They said the evidence they'd seen didn't suggest the person had set out to scam Miss B. And they said the actions of the person weren't in line with what they'd expect of a fraudster. So they didn't think what had happened met the definition of a scam, or that they could ask Barclays to refund the payments Miss B had made. Miss B disagreed with our investigator, so the complaint has been passed to me.

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.

Having done so, I don't think it would be fair to require Barclays to refund the payments Miss B made. I'll explain why below.

Banks are expected to make payments in line with their customers' instructions. And Miss B accepts she made the payments here. So while I recognise she now feels she has been scammed by the person she sent the money to, she did authorise the payments. And so the

starting position in law is that Barclays was obliged to follow her instructions and make the payments, and Miss B isn't automatically entitled to a refund.

There are certain activities banks are expected to carry out to try to protect their customers from falling victim to scams, and certain protections in place for customers who do fall victim to scams. Barclays is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This requires banks to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the code where they have been the victim of a scam – as defined in the code.

The CRM code defines a scam as where a customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person. Or where the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

The CRM code also says that it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier.

So in order to determine whether Barclays should refund the payments Miss B made under the CRM code, I need to consider whether she has been the victim of a scam – or, in other words, whether she was dishonestly deceived about the purpose of the payments to the point where she and the person she paid intended different purposes for the payments and the person she paid set out from the beginning with the intent to defraud her.

I've thought very carefully about this and I think it's a finely balanced matter in this case. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is likely to have happened, based on the evidence I do have.

Miss B says she first heard about the person offering discounted holidays through a friend of hers who said they had booked a number of holidays through them. She's also said her ex-partner booked a holiday using the person, which they and Miss B's children successfully went on. But I wouldn't expect a scammer to be able to arrange these kinds of personal recommendations. And that several people Miss B knew successfully went on holidays booked through the person suggests the person was operating legitimately, at least at some point.

Miss B has also said she was able to go on one of the trips she booked through the person, albeit she had to pay for the trip herself initially and then had the cost refunded by the person. And I think that she was able to successfully go on one of the trips booked through the person also suggests the person was at least attempting to operate legitimately at the time.

I've also seen evidence relating to the accounts the payments Miss B made were sent to. And while I can't share specific details of this evidence with Miss B, Mrs B and Mr B, the account appears to have been run as I would expect a legitimate travel agent's account to have been and nothing I've seen about the activity on the account suggests it was being used to operate a scam around the time of the payments Miss B made.

I appreciate how Miss B, Mrs B and Mr B feel about this case, and the disappointment not receiving the holidays they had paid for will have caused them. But I must make a decision on what I think is most likely to have happened. And them not receiving holidays they have paid for does not, by itself, mean they have been the victims of a scam. Based on the evidence I've seen, I think it's more likely the person Miss B paid here was attempting to

operate legitimately at the time and did intend to provide the holidays, but that other factors ultimately meant the holidays weren't provided.

I don't think the evidence I've seen suggests the person Miss B paid deceived Miss B, Mrs B and Mr B about the purposes of the payments or set out from the beginning with the intent to defraud them. I think both Miss B and the person's intentions for the payments were the same – to pay for holidays. So I don't think the circumstances here meet the definition of a scam from the CRM code. And so I don't think the payments Miss B made here are covered under the CRM code, or that Barclays should be required to refund the money Miss B, Mrs B and Mr B lost.

Miss B has mentioned that other people who sent money to the person have been refunded in full by their banks. She's also sent us a copy of a previous decision issued by our service, which she feels shows someone being refunded in similar circumstances. But our service looks at each complaint individually, on its own circumstances. So I can't comment on the differences between this case and any other and can only consider the circumstances of this complaint here. I also don't think other people being refunded in other circumstances necessarily means Barclays should have to refund Miss B, Mrs B and Mr B here.

Miss B has also mentioned that the person she paid is currently being investigated by a statutory body. But the outcome of this investigation, or of any subsequent action taken against the person, is not yet known. If significant new evidence subsequently becomes available which suggests the person was operating a scam, I would suggest Miss B, Mrs B and Mr B raise this with Barclays directly. And I would expect Barclays to consider their claim in light of that new evidence. But, based on the evidence I have at the moment, I can't see that this investigation shows the person was operating a scam here.

I sympathise with the position Miss B, Mrs B and Mr B have found themselves in, and I'm in no way saying they did anything wrong or that they don't have a legitimate grievance against the person Miss B paid. But I can only look at Barclays's responsibilities and, for the reasons I've explained above, I don't think it would be fair to hold Barclays responsible for the money they lost.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B, Mrs B and Mr B to accept or reject my decision before 24 April 2024.

Alan Millward

Ombudsman