

The complaint

Mrs B is unhappy about Barclays Bank UK PLC's (Barclays) decision not to refund the £7,000 she paid for landscaping services.

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. Between 2 November 2022 and 8 November 2022 Mrs B made four payments totalling £7,000 from her Barclays account. At the time she believed she was paying for services from a landscape gardener – I will refer to as M.

Mrs B feels M didn't carry out the work agreed and walked off site. Barclays deemed the matter a civil dispute. Mrs B says this was a scam and wants the bank to refund her.

Our investigator did not uphold the complaint. She said the evidence didn't suggest that the events were more likely a scam. She thought Barclays correctly classed this as a civil dispute between Mrs B and M and isn't covered by the Contingent Reimbursement Model (CRM) Code. Mrs B did not agree, so the case has been passed to me for a decision.

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.

It isn't in dispute that Mrs B authorised the payment that left her account. The starting position – in line with the Payment Services Regulations 2017 – is that she's liable for the transaction. But she says that she has been the victim of an Authorised Push Payment (APP) scam and that M's intent from the start was to deceive her.

Barclays is 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."*

It's important to note that I am not deciding a dispute between Mrs B and M – I don't have the power to look into a complaint about M. My role is limited to deciding the dispute between Mrs B and Barclays. So, I need to decide whether Barclays acted fairly, when concluding that this amounted to a civil dispute and not a scam. I find that they did, and I'll explain why.

Whilst I can quite understand why Mrs B feels that M 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.

M started the work, which suggests an intention to deliver the agreed services. A dispute about the services and measurements ensued, and M walked off without completing the work. I think the messages with M do reinforce this is a civil dispute rather than a scam. I appreciate there seems to be no scope for a civil conversation with M now. I also appreciate the trader's platform found the work to be substandard but that is not the same as the intention to defraud. As the Contingent Reimbursement Model (CRM) Code highlights where customers have paid a legitimate supplier for services but they are defective in some way or the customer is otherwise dissatisfied with the supplies - this still amounts to a private civil dispute.

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 M's account was legitimate, and the activity run as the beneficiary bank would expect. The bank hasn't said it had any concerns about how the account was being operated prior to Mrs B making her payment. Both banks have sent/received payments to the account from other customers and no other concerns have been raised. This is not typical of a scammer's account.

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 here M was attempting to operate as a legitimate business at the time and that other factors ultimately meant the work wasn't completed. I don't think M set out from the beginning with the intent to defraud Mrs B or that Mrs B has been the victim of a scam here.

I don't think the payments were particularly out of character as there were other recent payments higher than the ones in question. Barclays did provide a warning when Mrs B made the payments. 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 Mrs B but I can't safely say that this situation meets the high legal threshold and burden of proof for fraud. I sympathise with the position Mrs B 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 M. But this type of dispute isn't something that the CRM Code covers. So, I don't think it was unfair for Barclays to take the view that it was unable to refund Mrs B under the CRM Code.

So, 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.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 31 January 2024.

Kathryn Milne
Ombudsman