

The complaint

Mr D complains that Barclays Bank UK PLC won't refund money he lost, which he believes was as the result of a scam.

What happened

The circumstances which led to this complaint are well-known to both parties and have been laid out in detail by our Investigator in their view, so I won't repeat them in detail here. But, in summary, I understand them to be as follows.

In or around April 2022, Mr D hired a firm of builders to carry out some renovation work for him, but the works weren't completed and so Mr D raised a scam complaint with Barclays. Barclays agreed that Mr D had been scammed and refunded the money he had lost to the builders.

Mr D has said the builders who had scammed him had sub-contracted another company to supply concrete. He's said the concrete was delivered at regular intervals, but he believes the concrete company has also scammed him, as Mr D says he was charged for more concrete than was actually poured and the concrete that was poured, was not of the strength that it should've been.

Mr D has said concerns were first raised to him by new builders, who he'd instructed and were carrying out the renovations for him after he'd been scammed. Mr D has said he believes the concrete firm were running a metre scam and tampering with the metre, to make it appear as if more concrete was being poured than actually was, leading to the cost roughly doubling.

In total Mr D made five payments to the concrete company totalling £7,824, made up of some cash and some faster payments.

Believing he had been the victim of a scam, Mr D raised the matter with Barclays. It looked into Mr D's complaint and sent its final response in July 2022, not upholding his complaint. In summary, it considered this was a buyer-seller dispute between Mr D and the concrete company. It added that due to data protection it couldn't divulge any information about the beneficiary account.

Unhappy with Barclays' response, Mr D brought his complaint to our service and one of our Investigators looked into things, but our Investigator didn't uphold Mr D's complaint. In summary she said that she'd considered the matter under the Contingent Reimbursement Model (CRM code), that Barclays is signed up to, but thought this was a civil matter and she couldn't say that Mr D was dealing with a scammer.

Mr D didn't agree with our Investigator's view. In summary, he strongly maintained that he'd been the victim of a scam. He added that he didn't think Barclays had taken into consideration his circumstances and that he was vulnerable at the time. Alongside this he thought Barclays could have done a better job of alerting him to the risks of scams.

As agreement couldn't be reached, the complaint has now 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.

I'm aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

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 have been good industry practice at the time.

Having thought very carefully about Barclays's actions, I don't uphold Mr D's complaint. I do appreciate how disappointing this will be for him and I don't underestimate his strength of feeling and I can see that this has been a very difficult time for him. But I don't think I can fairly say Barclays should reimburse him. Not all cases where individuals have lost significant sums are in fact fraudulent and/or a scam.

When considering what is fair and reasonable in this case, I've also thought about the Lending Standards Board's voluntary Contingent Reimbursement Model (CRM Code), which Barclays has signed up to and was in force at the time Mr D made these payments.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam. But the CRM Code is quite explicit that it doesn't apply to all push payments. It says:

"DS2(2) This code does not apply to:

(b) 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"

Subsections (a) and (c) have been omitted as they are not relevant to this complaint.

Both the bank and our Investigator felt the payments Mr D made formed part of a civil dispute and, as such, are not covered by the CRM Code. Mr D disagrees. He feels the concrete company has scammed him.

In order to conclude that the payments Mr D made were part of a scam, I'd need to be reasonably satisfied, from the available evidence, that the concrete company he was using set out to defraud him. But I don't think, based on what I know, that I can safely conclude that.

I've thought about what Mr D has said, in that he thinks less concrete was poured than was paid for and that he doesn't even know if it was actually concrete that was poured. And I appreciate Mr D has sent evidence which he believes supports this. It's clear the agreement Mr D entered into with the concrete company did not go as he thought it would and he believes he has not received what he was expecting. But I'm not persuaded, with what I

know and from the evidence provided, that I can say the concrete company set out with an intent to defraud him.

This means I don't think Barclays is responsible for reimbursing Mr D under the CRM Code or because of any wider obligation it has to protect Mr D. On balance, there are a number of factors which, in the circumstances of this case and when considered collectively, aren't typical of this being a scam. I say that because;

- There was work carried out, at least to an extent on a number of occasions. I'd usually expect a scammer to do as little work as possible, so it appears the concrete company did more work than I'd expect a scammer to have done.
- I'm also mindful that the concrete company has been registered at Companies House since 2017, with its nature of business being construction, and it continues to be registered. I've also seen confidential information in relation to the beneficiary account. I can't share any details with Mr D, but the information leads me to think it's more likely than not the concrete company were supplying their services legitimately. And it seems to me that the account was being used for normal business expenditure when Mr D made the payments.
- I'm also not aware of any criminal investigation into the concrete company by the Police, or any other authority, which would lead me to safely conclude there was an intent to defraud.

Given this and that the situation doesn't display the hallmarks most typically associated with this type of scam, I don't think it was unfair for Barclays to take the view that the situation formed part of a civil dispute. After taking everything into careful consideration, so the testimony and evidence provided by both parties, on balance, I can't safely conclude what has happened here meets the high legal threshold and burden of proof for fraud.

This being the case I'm satisfied the CRM Code doesn't apply. And I can't ask Barclays to refund the money Mr D has said he has lost, as I don't think Barclays treated Mr D unfairly when it said the payments he made formed part of a civil dispute.

Mr D has said that he was vulnerable at the time the transactions were made. I'm sorry to hear of the difficult circumstances Mr D found himself in and I don't doubt how challenging a time this must have been. While I don't underestimate what Mr D has told us, I have to be fair and reasonable to both sides in a complaint. I cannot fairly compel Barclays to do more when the relevant law, rules, codes and good practice do not say that it should. And for reasons explained, as I can't safely say that a scam has taken place, it means that the CRM code doesn't apply to the payments Mr D made, so Barclays isn't obligated to make a refund due to any potential vulnerabilities.

I am sorry to have to deliver this news to Mr D. I know this wasn't the answer he was hoping for. But, for the reasons I have explained, I cannot fairly say that Barclays should fairly and reasonably be held responsible for the loss Mr D believes he's suffered.

My final decision

My final decision is that I don't uphold this complaint against Barclays Bank UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 21 September 2023.

Stephen Wise
Ombudsman