

The complaint

Mrs R (represented by her son, Mr R) complains that Barclays Bank UK PLC trading as Barclaycard (Barclays) won't refund her for the money she lost to a 'rogue trader' scam.

What happened

The details of this complaint are well-known to both parties. So rather than repeat them all again here, I'll focus on giving my reasons for my 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.

Having done so, I've decided not to uphold it. I'll explain why.

In line with the Payment Services Regulations 2017, Barclays is expected to execute authorised payment instructions without undue delay. And so, as Mrs R authorised the payments she's disputing, the starting position is that she's liable for them.

But there are some situations where we believe that banks—taking into account relevant rules, codes and best practice—ought to have identified a fraud risk, so should have looked at the wider circumstances surrounding the transaction before making the payment. If Barclays failed to do so, and that failure led to a fraudulent loss, it might be fair to hold it liable.

In all the circumstances, I'm not persuaded Barclays ought to have intervened with these payments. I appreciate that, over time, their overall value was significant. But looking at the payments individually, I don't think they were reasonably of a level where the bank ought to have identified a fraud risk – bearing in mind its duty to promptly follow authorised payment instructions without undue delay.

There are several factors that will have made these transactions look less concerning to Barclays' fraud detection systems. The level of the individual payments didn't seem suspiciously high, given Mrs R's general spending. The ATM and Post Office locations used for the withdrawals were local to her. She had previously used the ATM to make withdrawals of the same/a similar size to those made during the rogue trader scam. More widely, the level of the withdrawals was in line with previous ATM withdrawals. And her genuine card and correct PIN were being used.

While I understand some withdrawals were done over the counter in the Post Office, they were processed by Post Office staff, not Barclays' employees. So there wouldn't have been the same expectation – or opportunity – for them to intervene beyond processing the payments as instructed. For example, they didn't have access to Mrs R's account history to see if there was anything concerning about her account activity.

Overall, I'm therefore not persuaded that Barclays can be held at fault for not intervening with these payments.

I appreciate Mrs R's nearest Barclays branch had recently closed. Mr R says, if it had remained open, Mrs R would have used the branch for the withdrawals – and it would have been apparent to staff that she was being scammed. But I can't fairly say, in response to this individual complaint, that Barclays made *an error* by closing this branch. Nor have I seen any suggestion that Barclays acted improperly in notifying customers of the closure or considering the impact of it.

In any event, I would consider it too remote and speculative to conclude that, but for the branch closure, Mrs R wouldn't have lost out. We don't know she would have visited the branch, rather than using the nearer Post Office and/or ATM facilities, for any of the payments. Nor do we know that, if she had done so, it would have been apparent to branch staff that she was at risk from fraud.

Additionally, although I've not found Barclays' ought to have intervened, I'm also not persuaded it would have uncovered the scam even if it had spoken to Mrs R about the payments. The builder was hired based on a personal, trusted recommendation. And I've not found any negative, public information prior to this incident which would have made it obvious he was acting improperly. That will have made the circumstances look less suspicious.

At least initially, there was an invoice for the works being done. And it's accepted that further works were agreed. Although we know (in hindsight) that they were done to a poor standard, some works were completed. I've asked Mr R about those further works, and whether paperwork was produced in relation to them. I've not received a clear answer to this. So, based on the information I do have, it's not clear to me that Barclays would have realised the builder was acting fraudulently if it had spoken to Mrs R.

I'm mindful Trading Standards valued the works at around £3,610. That factored in the poor workmanship and remedial work needed. If the work had been done to a good standard, they said the valuation could have been up to £5,500. So that means, of the £6,500 Mrs R is disputing, some of that has been paid fairly. And if the bank had questioned Mrs R about the amount she was paying compared to the work being completed, it would have been less apparent that the builder may have inflated the costs.

In saying all of this, I do want to make it clear that I greatly empathise with Mrs R's situation. She's unfairly lost out due to his cruel actions of the trader. Trading Standards say there is evidence of criminal offences in relation to his dealings with Mrs R. But I'm not persuaded that the fraud risk ought to have been obvious to Barclays based on the transactions. Nor am I persuaded that, even if it had identified such a risk, it was likely to have uncovered the scam and prevented (some of) Mrs R's loss by questing her about the payments. And so, in the circumstances, I don't consider it fair to direct Barclays to refund her.

My final decision

For the reasons given 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 Mrs R to accept or reject my decision before 18 August 2023.

Rachel Loughlin
Ombudsman

