

The complaint

Mr B complains that Barclays Bank UK Plc won't refund the money he lost after he fell victim to an 'authorised push payment' ("APP") scam.

What happened

The background to this complaint is well-known to both parties, so I won't repeat it all here, But briefly, and based on the submissions of both parties, I understand it to be as follows.

Mr B was looking to buy a vehicle and had a particular model he was interested in buying. He saw a vehicle for sale, on a well-known online marketplace, that he was interested in buying. He's told us that he contacted the seller, who told him that the vehicle was abroad due to them moving overseas for work. But that the vehicle was being sold in the UK, as the seller had been unable to find a buyer abroad, due to there not being much of a market for right hand drive cars. The price of the car was £5,630, which included international shipping to the UK.

Mr B has said he carried out a DVLA check on the vehicle and saw that it was taxed and had a MOT. Mr B agreed to buy the vehicle and the seller told him that he would be contacted by a third-party company that would handle the payments and the shipping. Mr B has said he researched the third-party company and has said they appeared on Companies House and had a professional looking website. Believing everything to be genuine, Mr B went ahead and made the following payments to who he thought was the shipping company;

14 May 2020	£1,630
14 May 2020	£2,000
14 May 2020	£2,000

Mr B realised he had been scammed when the vehicle wasn't delivered at the time that had been arranged. He then found he was unable to make any further contact with either the seller or the shipping company.

Mr B raised the matter with Barclays. Barclays is a signatory of the Lending Standards Board Contingent Reimbursement Model (CRM) Code which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. Barclays says one or more of those exceptions applies in this case.

Barclays issued its final response to Mr B on 31 January 2023, upholding his complaint in part. In summary it accepted that the payments Mr B made for the vehicle were out of character and substantial, when compared to previous payments he had made from his account. It added that it didn't defer the payment or provide a payment warning, so accepted that education regarding fraud wasn't clearly available to Mr B, so it thought it should carry some liability for Mr B's loss.

But Barclays added that it considered Mr B should be held jointly liable. It said this because it was unclear what research Mr B had undertaken before making the payments. It said the value of the vehicle appeared disproportionate to others advertised at the time and that Mr B

could have asked further questions about the vehicle before agreeing to buy it. Overall, Barclays thought it should share the blame with Mr B and agreed to refund him 50% of his loss, being £2,815.

Unhappy with Barclays' response, Mr B, through his representatives, then brought his complaint to this service. One of our Investigator's looked into things and thought the offer Barclays had made to refund 50% of Mr B's loss was fair. In summary, this was because he felt Mr B should've done more checks to make sure the payment he was making was for a legitimate vehicle. He noted that the price of the vehicle was way below market value and that Mr B ought to have been aware of this and it ought to have raised some suspicions that this was too good to be true.

Our Investigator also considered what Mr B had said about his personal circumstances. But he didn't consider Mr B would have been unable to have protected himself from this particular scam. Our Investigator was also satisfied that Barclays did what it could, once it had been made aware of the scam, to try and recover the money from the beneficiary bank (the bank to which the payments were made), but unfortunately no funds remained.

Mr B didn't agree with our Investigator's view. In summary, through his representatives, Mr B maintained that he had carried out sufficient checks and said that he shouldn't reasonably have been expected to know the current market value of the vehicle he was purchasing.

As agreement couldn't be reached, the complaint 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 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 be good industry practice at the time.

As I've mentioned above, the CRM Code provides additional protection for the victims of APP scams. I'm satisfied that the payments Mr B made fall within the scope of the CRM Code. But despite offering additional protections, the CRM Code includes provisions allowing a firm not to reimburse APP scam losses fully where the firm can establish that the customer failed to take sufficient care when making the payment (often referred to as the exceptions to reimbursement).

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that*:

- The customer made payments without having a reasonable basis for believing that: the payee was the person the Customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.
- The customer ignored an effective warning by failing to take appropriate steps in response to that warning.
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*There are further exceptions outlined in the CRM Code that do not apply to this case.

In this case, Barclays has accepted it didn't provide an 'Effective Warning' and that it should've made checks with Mr B about the payments he was making - which is why it's refunded 50% of the payments made. However I think Barclays has been able to establish that it may choose not to fully reimburse Mr B under the terms of the CRM Code. I'm persuaded one of the listed exceptions to reimbursement under the provisions of the CRM Code applies.

Taking into account all of the circumstances of this case, including the characteristics of the customer and the complexity of the scam, I think the concerns that Barclays has raised about the legitimacy of the transactions Mr B was making are enough to support its position that Mr B didn't have a reasonable basis for believing the person he transacted with was legitimate. I am not persuaded Mr B had a reasonable basis for believing that the payee was the person he was expecting to pay, the payment was for genuine goods or services and the person or business he transacted with was legitimate. I'll explain why.

Mr B has explained that he had carried out a DVLA search on the vehicle and could see it had been taxed and had a MOT. I can understand how that would have reasonably given him some assurance. But the vehicle Mr B was trying to purchase was advertised at just over £5,000 and having reviewed recognised industry trade guides, that provide average vehicle sale prices based on make, model, vehicle age and mileage, this price is considerably less than what comparable vehicles were being sold for at the time of the scam. The information I have seen suggests the market value for this vehicle in this condition was over £9,000. On this basis, I think the price the vehicle was advertised for was too good to be true and ought to have raised concerns, especially considering this price would also have included international shipping.

I'm mindful, through his representatives, Mr B has said he shouldn't reasonably have been expected to know the current market value of the vehicle he was purchasing. But given Mr B has said he was looking for this particular type of vehicle, because he'd always wanted to own one, I think it's fair and reasonable to reach the conclusion that he would have had a least a broad idea of what he could expect to pay for a vehicle of this kind.

Whilst I accept that people can and do arrange to sell items at a discount for a quick sale, I think there were things about the situation that in the cold light of day did not add up. I consider that Mr B ought to have had greater concerns about the legitimacy of the seller and vehicle and that, in turn, ought to have led to a greater degree of checking on Mr B's part.

In addition to this, Mr B was paying an individual. I think he ought to have been more concerned about this than he ultimately was, especially against the backdrop that he could not view the car in person. Mr B has said that he checked the shipping company and could see it on Companies House, so he thought he was dealing with a legitimate company. But the person he was paying, doesn't appear as an officer for the company and the nature of the business isn't consistent with a company dealing with the international shipping of vehicles.

I accept that Mr B did undertake some checks, but he ultimately placed a lot of trust in strangers. I consider that Mr B ought to have had greater concerns about the deal and that, in turn, ought to have led to a greater degree of scrutiny on his part. Buying a car unseen at a considerable discount was always a big risk. I think Mr B should have done more than he did to question the arrangement before paying any money.

I'm mindful that, taking any of the individual factors above in isolation, they may not have been enough to have prevented Mr B from proceeding. But when considering the specific circumstances of this case and the factors in the round, on balance, I think that there was enough going on and sufficient red flags that Mr B ought reasonably to have taken further

steps to protect himself. Buying a vehicle, unseen, at a considerable discount, without seeing any official documentation, was always a risk. I think Mr B should have done more than he did to question the deal and to satisfy himself that it was legitimate before making the payment.

With the above in mind, in the particular circumstances of this case, I consider that Mr B ought to have had concerns about the legitimacy of the goods he'd been offered and that, in turn, ought to have led to a greater degree of checking on Mr B's part. In not carrying out sufficient checks I don't find he had a reasonable basis for believing the goods were genuine. I therefore consider, in line with the provisions of the CRM code, liability should be shared equally between Barclay's and Mr B, and that the refund Barclays has already made of 50% of Mr B's loss is fair and reasonable.

Mr B has told us his circumstances made him vulnerable. The CRM Code talks about customers being reimbursed in full, despite exceptions (such that I have outlined above) applying, if the individual was vulnerable to the extent that they were unable to protect themselves from the scam. So, I have also considered what the CRM Code says about vulnerability and when it might lead to a full refund, even if Mr B didn't have a reasonable basis for belief.

I've thought carefully about what Mr B has told us. When considering the relevant part of the CRM Code, it says:

A Customer is vulnerable to APP scams if it would not be reasonable to expect that Customer to have protected themselves, at the time of becoming victim of an APP scam, against that particular APP scam, to the extent of the impact they suffered. This should be assessed on a case-by-case basis.

So I've considered whether there are vulnerabilities present to such an extent that Mr B was unable to take steps to identify the scam he fell victim to or to recognise steps he might take to test the legitimacy of what he was being told by the fraudster. To do so I must consider the details of the scam, Mr B's actions throughout, and the wider circumstances.

I don't doubt what Mr B has said about his medical conditions. But I've not seen anything to suggest that because of his condition Mr B was unable to protect himself from this particular scam. Mr B wanted to purchase a vehicle – a decision he proactively made. He found the advert on an online marketplace for the precise model of vehicle he wanted and he contacted the seller, asking questions and for further details about the vehicle.

Given this, I'm not persuaded that it would be unreasonable to expect Mr B to have protected himself against the particular scam he fell victim to. And so I don't find Barclays needs to refund Mr B's entire loss under the vulnerability clause of the code.

Finally, I've considered whether Barclays did all it could to try and recover the money Mr B lost once he had reported the scam to it. From the evidence I've seen, Barclays did contact the beneficiary bank when he raised the matter, but unfortunately the beneficiary bank told it that no funds remained. So I think Barclays has done what could reasonably have been expected of it to try to recover the money.

Mr B has my considerable sympathies. He's found himself in an unenviable situation where he has lost money to a fraudster. And I understand the whole experience has been deeply upsetting for him and I don't underestimate his strength of feeling. But overall, for reasons explained I'm persuaded that the offer Barclays has already made, to refund 50% of the money lost, is fair and reasonable considering the circumstances of this case. So I don't think Barclays has to refund any more of the money Mr B lost.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 23 August 2023.

Stephen Wise
Ombudsman