

## **The complaint**

Miss M is unhappy that Barclays Bank UK PLC won't refund the money she lost when she fell victim to what she considers to be a scam, whereby she sent money to an account held at Barclays.

## **What happened**

The details and facts of this case are well-known to both parties, so I will not repeat them at length here. But in summary, Miss M received a letter from a company I'll refer to as RB advertising a way to get onto the property ladder. Miss M met with RB at its offices and entered into an agreement with it. She proceeded to make three payments between January and March 2020 to RB.

Miss M first made a card payment in January 2020 for £5,250 and then two further bank transfers in March 2020 for £1,000. The total amount Miss M sent to RB was £7,250. She made these payments from an account she held with a different banking provider, to an account held with Barclays.

Miss M complained to her bank and has also raised concerns about Barclays (where the receiving account was held) via our service.

Miss M's bank and Barclays are signed up to the Lending Standards Board's voluntary Contingent Reimbursement Model (the CRM Code). The CRM Code was implemented to reduce the occurrence of Authorised Push Payment (APP) scams. It sets out what is expected of the 'Sending Firm' when payments are made which includes a consideration of whether a customer met their level of care when making the payment. And it also sets out the obligations for the 'Receiving Firm' to prevent, detect and respond to the receipt of funds from APP scams in order to prevent accounts from being opened, or used, to launder the proceeds of APP scams. Where there is a failing by either the Sending Firm or Receiving Firm, they may be required to reimburse the customer. And the customer may also be required to share some responsibility for the loss if it is determined that they also failed to meet their level of care under the CRM Code.

Barclays, once notified of the fraud, restricted the account in question and investigated. Having done so, it considered this a buyer seller dispute. In its final response letter of 4 January 2023, Barclays said it was unable to identify a bank error or any liability.

Miss M didn't receive a refund from her bank or Barclays and so, she brought her complaint about her bank (sending firm) and Barclays (receiving firm) to our service.

Miss M's complaint about her bank, as the Sending Firm was looked at under a separate complaint reference and an Investigator at our service issued their view on the case. This case has now been closed. In that case, the Investigator, concluded that the bank was not liable for the card payment and for the faster payments as they didn't think the CRM Code applied - they thought it was a civil dispute. It followed that, the Investigator in that case didn't think Miss M's bank as the sending firm was liable for the money she'd lost.

In this case, Miss M considers Barclays, as the Receiving Firm is liable for the money she's lost.

Barclays, under the CRM Code, didn't agree that it was liable for any loss Miss M incurred. While it said it couldn't provide any specific information about the beneficiary account, it assured Miss M that the account was opened following its processes and procedures, that the account activity at the time was what it'd expect to see from an account of its type and that it hadn't received any other scam claim notifications against the account at the time she'd made her payments. Barclays added that it had no reason to be suspicious of the beneficiary account holder.

Our Investigator looked into things and didn't recommend that Barclays needed to do anything further. Our investigator issued two views on this complaint. Overall, she concluded that the card payment Miss M made wasn't covered by the CRM code and neither were the two faster payments as she considered this to be a civil dispute between Miss M and RB. She also didn't think there was anything in relation to the beneficiary account activity that ought to have caused Barclay's concern whereby it ought to have intervened. She thought Barclays had taken the appropriate actions once notified of the scam claim and that it did so in a timely manner.

Miss M didn't agree and asked for an ombudsman to review the complaint.

### **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.

First, to clarify, this decision focuses solely on the actions of Barclays – as the Receiving Firm of the account where Miss M made payments to.

I'm aware that I've summarised this complaint and the responses 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 – which is to determine whether Barclays could have done more to prevent Miss M's losses. 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 an alternative to the courts.

I'm sorry to disappoint Miss M but I'm not upholding her complaint about Barclays. I do appreciate how disappointing this will be for her, but I don't think Barclays has acted unfairly in its answering of the complaint. I'll explain why.

When considering what is fair and reasonable in this case, I've thought about the CRM Code, which Barclays (as a Receiving Firm) is a signatory of and was in force at the time Miss M made the payments.

I've thought about if the CRM code applies in the circumstances of the payments Miss M made.

First, the CRM Code only applies to authorised push payments (APP) so faster payments, chaps payments – so it doesn't apply to the card payment Miss M made.

And 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.

Having reviewed all the information and evidence provided, I agree with the view reached by our Investigator – that this is a civil matter rather than a scam. I will explain why.

To be satisfied that Miss M fell victim to fraud, I’d need to be persuaded that RB had the intention from the outset to defraud her. This isn’t a straightforward question to address, and I can’t know for sure what was in the mind of RB at the time they entered into this agreement with Miss M. So, when considering the above, I need to decide whether the available evidence suggests it is more likely than not that the seller intended to defraud Miss M.

While I am unable to share details about a third party and the nature of their relationship with their bank, Barclays has said that at the time Miss M made the payments it had not received any scam claims against the account. It wasn’t until several months after Miss M made her payments that it received a scam/fraud claim raised against it. And on its review of these claims Barclays deemed them to be a buyer seller dispute/civil dispute. I acknowledge that other scams claims were raised, but none were raised prior to Miss M’s. If RB wasn’t a genuine firm, I’m persuaded more scam claims from other “victims” would’ve been raised in the prior nine months, especially when taking into account when the receiving account was opened (around nine months prior) and considering the regular credits into the account.

Further, having reviewed the information given to me, such as bank statements from the date the account was opened, the account activity I’ve seen supports that RB was trading and regularly receiving credits into the account – not too dissimilar to Miss M’s payments. I’m also not persuaded that the account activity prior to Miss M’s payments was unusual or inconsistent with an account of its type.

I’m also mindful that the scam claims all appear to have been raised after the country went into lockdown with Covid. From my own research, I can see RB was registered on Companies House around 9 months prior to Miss M making her first payment and that it was submitting accounts up to April 2020. In November 2021 there was a notice issued of a proposal to strike RB off – however this was suspended in April 2022.

Further, I’m aware based on what Miss M has told us that she attended RB’s offices and talked to members of staff and made the initial payment whilst at the office. I accept that attending a premises doesn’t in and of itself mean that RB is a genuine firm, but I think its another factor that ought fairly and reasonably to be considered amongst all the other available information and evidence.

I can’t say for sure what happened here, and I accept that Miss M has made payments and not received what she paid for. But that doesn’t necessarily mean that Miss M was scammed. In such circumstances, I have to reach my decision based on what I think is more likely than not to have happened having weighed up all the evidence given to me. Having done so, I think it is more likely than not that RB was a firm that encountered financial difficulty and the loss Miss M has incurred has arisen through RB’s business failure rather than the business setting out with the intention to scam/defraud her from the outset.

As set out above, the CRM Code is clear that it doesn't apply to payments that weren't made as the result of a scam or fraud and it also doesn't cover payments that aren't APP, as was the case with the initial payment Miss M made by debit card.

For the reasons I've explained above, I can't safely conclude Miss M was the victim of a scam, and so I can't apply the CRM Code or ask Barclays, as the receiving bank, to refund Miss M under the Code.

For completeness, I'd like to assure Miss M that I've considered her submissions to our service – in particular, her reference to another case brought to our service about RB in which she says a refund was provided. I can understand why Miss M therefore feels she should be reimbursed. But it is each respondent firm's own commercial decision as to whether it wishes to offer to settle a complaint for its consumer. Barclays in this case deemed the matter a civil dispute. So while I've taken Miss M's comments on board as to why she feels this should mean she's reimbursed the money she's lost, I'm afraid I can't agree. Each case brought to our service is considered based on its own individual merits and I've explained above, based on the particular circumstances of this case, why I can't fairly ask Barclays to refund her losses.

I appreciate that Miss M is going to be disappointed, but I hope my explanation sets out why I've reached the outcome I have.

### **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 Miss M to accept or reject my decision before 29 December 2023.

Staci Rowland  
**Ombudsman**