

The complaint

Mr H complains that Barclays Bank UK PLC won't refund money he lost when he fell victim to a scam.

What happened

On 12 May 2021, I issued a provisional decision on Mr H's complaint. In this, I explained why, based on what I had seen so far, I was intending to uphold this complaint. I wanted to give both parties a chance to respond to my findings. I have copied my provisional decision below and it forms part of this final decision;

What happened

Mr H and his partner Ms L were in the process of purchasing a property. On 10 October 2019, the day of exchange, Mr H was unexpectedly asked to pay the outstanding balance, including a substantial deposit, to their solicitor.

As he was away from home, he requested the solicitor's bank account number and sort code over the phone. When he arrived at a branch of Barclays to make the payment he still hadn't received the bank details – so he sent an email to remind the solicitor.

The genuine solicitor responded but, unfortunately for Mr H, so did a fraudster just a minute or so later. The fraudster's email contained account details, as expected, but the details weren't those of the solicitor. Mr H, having only seen the fraudster's email, said he checked it had come from the solicitor's email address and was happy that it had. The account Mr H was instructed to pay wasn't in the name of the firm of solicitors Mr H was expecting to pay. And, a few minutes later, a further email from the fraudsters was received explaining the account belonged to 'an accounting firm who provide accounting and auditing services' for the solicitors.

As Mr H had only seen the fraudster's emails he instructed the bank to make a £52,000 CHAPS payment using the bank account details they provided. He doesn't recall exactly what, if anything, Barclays asked about the payment, but does remember reading a statement from a computer screen.

Later that day the solicitor reported not having received the payment. Mr H contacted Barclays, as well as the solicitors, to report what had happened. The solicitors denied responsibility and Mr H hasn't heard from them since. Barclays said they'd contact the bank the money was sent to. Despite chasing Barclays, visiting a branch on multiple occasions and raising a complaint about the receiving bank, weeks went by without any news. It wasn't until 19 November 2019 that Mr H was told no money was left to be recovered. Mr H complained about Barclays the same day.

Barclays, in response to the complaint, said it had considered and rejected the claim under the Contingent Reimbursement Model ("CRM"). It said Mr H had been questioned in the branch about the purpose of the transaction and how the account details had been obtained.

It felt sufficient warnings had been provided to Mr H and therefore it did not bear responsibility for the loss.

It did, however, accept there had been failings in the service it provided and offered £200 compensation to reflect this.

One of our investigators looked into the complaint. She didn't think the warnings provided by branch staff were clear, specific or impactful. In addition, she felt Mr H had a reasonable basis for believing the instruction he received was genuine, so Barclays were liable under the provisions of the CRM Code. In any case, she felt Barclays ought to have done more to intervene and stop the payment, given its size and how out of character it was for him. She also recognised the impact Barclays' failure to prevent the scam had on Mr H and recommended a total of £400 in compensation to reflect this.

Barclays disagreed and provided a more detailed statement from the member of staff, which it said showed the correct process had been followed. And, after reviewing the first fraudulent email Mr H had received, felt there were a number of issues which ought to have alerted him to the fact the instructions weren't genuine:

- The fraudulent email contained spelling and grammatical errors.*
- It didn't contain the logo of the solicitor's firm, a reference number or contact details.*
- The account details were different to the account Mr H paid previously and the account had a different name.*
- The genuine and fraudulent emails were sent a minute apart and would have appeared alongside each other. Mr H ought to have reviewed both emails before making the payment.*

Consequently, Barclays felt Mr H hadn't done enough due diligence or made relevant checks before proceeding with the payment.

Our investigator, in response, pointed out that the email had come from the solicitor's genuine email address. She agreed there were some differences between the fraudulent and genuine email but not enough to give Mr H cause for concern. She also disputed that Mr H had paid the solicitors before.

As there was no agreement, the complaint was passed to me for a final decision.

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 say that Mr H ignored an effective warning and made the payment without a reasonable basis for believing that the payee was the person they were expecting to pay.

I am also mindful that when Mr H made these payments, Barclays should fairly and reasonably also have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And in some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

What I've provisionally 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 am satisfied that:

- *Under the terms of the CRM Code, Barclays should have refunded the money Mr H lost. I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case.*
- *Having recognised this payment was unusual and out of character, Barclays should have gone further than it did to question the payment. If it had done so, I am satisfied the fraud would have come to light and the loss would have been prevented.*
- *In the circumstances, therefore, Barclays should fairly and reasonably refund the money Mr H lost.*
- *Mr H has been deprived of the funds and the opportunity to purchase the property. It's clear he would have used the funds as a deposit for the property had the scam not happened. So, I think it's fair and reasonable that he should be awarded 8% interest from the date of the transaction to the date of settlement.*
- *Because Barclays failed to prevent the loss, Mr H has paid legal costs for which he's received no benefit and lost out on a bonus from the Help to Buy ISA scheme. I think it's fair and reasonable Barclays should reimburse these losses too.*

I have carefully considered Barclays' representations about the warnings it gave and whether Mr H had a reasonable basis for believing the payee was whom he was expecting to pay. But they do not persuade me to reach a different view. In particular I am not persuaded that Mr H failed to take the requisite level of care required for Barclays to choose not to reimburse under the terms of the CRM Code.

In this case I'm satisfied that the requirements of the effective warning exception were not met, and I'll explain why.

Barclays provided warnings in the form of a statement (which it said staff asked Mr H to read and confirm he understood) and, according to their adviser, a short conversation they had with Mr H. The statement, among other things, says: 'We recommend you check new payee details with someone you trust in person, before making a payment.' Barclays also says their adviser asked 'if the customer had obtained the details directly from the solicitor', before explaining to Mr H that 'the reason why we ask is due to fraudulent details or transactions of this nature/property.'

Confirming account details in person or over the phone with the sender is almost always sufficient to prevent this type of scam. So, it's crucial that the importance and relevance of doing this is explained to a customer (as well as the consequences of not doing it).

The written statement, though recommending checking account details 'in person', had a broad scope. It also didn't explain the relevance of checking the account details or what the consequences of not doing it were. And, advising a customer to check account details 'in person' could reasonably be taken to mean face to face – which would normally be an impractical step in the context of this type of scam. Most importantly, the warning fails to advise the customer to call the person they are expecting to pay.

And, the circumstances of the scam made even the more relevant parts of the statement less effective. Mr H hadn't received the payment request unexpectedly, he'd requested the

payment details. Neither would he have considered the account details to be 'new' – he'd contacted the solicitor that day because he didn't have a copy of those details and assumed the ones he received were the solicitor's existing details.

Though the adviser's question is more relevant to this particular scenario, it wasn't very effective. Presumably the adviser intended 'directly' to mean in person, or over the phone, but it could equally mean by email – the way in which the account details had been received. There's also no suggestion the adviser asked how the account details had, in fact, been obtained. And, while the adviser provides an explanation for the question being asked, they don't explain how checking details with the solicitor directly would prevent fraud or what the risk was. Overall, neither the statement nor the adviser's questions really brought to life what a scam of this nature looks like – how a fraudster can pose as a solicitor and send emails from their email address or something which looks very similar.

It's important to note that these warnings were given in circumstances that were fortuitous for the fraudster. Mr H had spoken to the solicitor that day, had asked for the account details and didn't know the ones he received were new or different. So, it was particularly important for any warning to bring alive the scam, how it works and how it could be prevented.

Of course, it wouldn't be practical for branch staff to do this for every conceivable scam, but the adviser's questions show that the particular risk had been correctly identified here, yet the warnings failed to do this.

So, I don't think the warnings given were impactful nor went far enough to be effective. And, I don't think Mr H acted unreasonably by proceeding with the payment after hearing them.

I'm also satisfied Barclays has not shown that Mr H lacked a reasonable basis of belief.

Importantly, Mr H was expecting to receive an email from his solicitor, having requested their account details twice that day. The arrival of just such an email was unlikely to have caused any concern. In fact, it appears to have come as some relief that the email had arrived – as Mr H had to make the payment that day and was waiting at the branch to do so.

While the fraudulent email, in hindsight, wasn't perfectly written nor entirely consistent with the format of the genuine solicitor, it wasn't so poorly written or unusual that it ought to have reasonably caused Mr H to question whether it was genuine, particularly given that it was an email he was expecting.

And, I haven't seen anything to show (and I don't agree) the fraudulent and genuine emails would have necessarily appeared alongside each other, as Barclays suggests. It's entirely plausible that Mr H would have just seen the more recent emails. Neither do I find it unreasonable Mr H didn't check his inbox for other emails before proceeding – he'd have no reason to do so.

I do note that Mr H recognised the possibility that an email could be fraudulent and says he copied and pasted the email address to ensure that it was correct. I can understand why, without detailed knowledge of how these scams work, this convinced him that the instruction was genuine, even if his actions weren't, in fact, enough to prevent the scam.

The second fraudulent email, received a couple of minutes after the first one, provided an explanation as to why the account name was different. Though odd that such an explanation wasn't provided in the first email and that a second email was sent unprompted, I can understand why the explanation didn't seem unreasonable to Mr H.

Given that the email (though not perfectly written) was not only expected, but requested, and Mr H, in any case, took steps to verify its authenticity, I'm satisfied he had a reasonable basis for believing the instruction he received was genuine.

In addition, Barclays ought reasonably to have done more to prevent this scam. The branch advisor appears to have recognised that this payment was unusual for Mr H, as well as the risk associated with it, but (as I've already set out) failed to adequately explain that risk or ask appropriate questions – such as how the account details had been obtained.

I'm satisfied that a few further questions by branch staff, along the lines I've set out would have reasonably led to Mr H contacting the solicitor by phone to check the account details. Had that happened, the scam would have come to light and Mr H's loss would have been prevented.

The relevance of this finding is that Barclays ought to have prevented the loss, rather than just reimbursed Mr H under the provisions of the CRM Code. It follows Barclays should pay Mr H interest from the date of loss, rather than the date it decided not to refund Mr H under the CRM Code. And, Barclays should also reimburse losses that Mr H has suffered as a direct result of their failure to prevent that loss. In this case, Mr H was unable to continue with the purchase of the house. I'm satisfied from the completion statement provided that Mr H had already paid the solicitors £350 which, because the house sale fell through, he received no benefit from. But, I've also taken into account that after the sale fell through, Mr H says he received a refund from the solicitor of £177.46, so his loss is £172.53. It's also fair and reasonable that Barclays should refund the £25 payment fee, which also wouldn't have been incurred had the transaction been prevented.

The completion statement lists a bonus obtained from the government Help to Buy ISA scheme. I can also see a corresponding amount (four times the listed bonus) credited Mr H's account ten days before the date of the scam, which satisfies me that the bonus was due to Mr H. Had the scam not happened, it's very likely the house sale would have proceeded and, consequently, Mr H would have received the bonus. I'm mindful that I'm asking Barclays to pay the bonus in cash, something which wouldn't be allowed under the scheme. But, as the Help to Buy ISA is no longer available, Mr H is currently at an advanced stage of purchasing a property without the assistance of an ISA bonus (so wouldn't have time to accrue a similar benefit using a different ISA scheme) and Barclays would not be able to restore Mr H's position, I'm satisfied Barclays should pay the lost bonus.

The entire experience has clearly been very distressing for Mr H. He says both he and Ms L have been suffering from depression since the scam took place. They were unable to go through with the house purchase and have been without a significant amount of money for quite some time.

I'm conscious it's the fraudsters, rather than Barclays that have ultimately caused that loss, but Barclays, at least, should have refunded the loss under the provisions of the CRM Code and, I'm persuaded, prevented the scam altogether. Had it done so, much of the distress and inconvenience caused to Mr H would have been avoided.

Barclays accept there were service failings and it took longer than it ought to have done to deal with the complaint but, for the reasons outlined, I think they should pay a total of £400 in compensation.

My provisional decision

For the reasons outlined above, I've provisionally decided it is fair and reasonable to uphold this complaint about Barclays Bank UK PLC – and I therefore require the bank to pay Mr H:

- £52,000
- The payment fee of £25
- The Help to Buy ISA bonus Mr H would have received - £1,811.14
- Legal costs totalling £172.53
- A total of £400 compensation for the material distress and inconvenience Mr H has experienced
- Interest at 8% on the amount of the transaction, the payment fee and legal costs from the date of payment to the date of settlement

Mr H accepted my provisional decision, but Barclays did not. In summary, it said:

- As the payment request had come unexpectedly, Mr H ought to have checked all three emails he received, rather than just the last two.
- Had all three emails been opened and reviewed, Mr H would have seen the genuine solicitor's suggestion he call to confirm the account details. He would have also been able to compare the fraudulent and genuine emails, which would have likely led to the scam being uncovered.
- Mr H failed to contact the genuine solicitor to find out why the account he was being asked to pay was not in their name.
- It remains of the opinion that the fraudulent emails were sufficiently different to the genuine emails that Mr H ought to have realised they hadn't come from the solicitor.

Consequently, Barclays maintained that Mr H hadn't carried out sufficient due diligence before making the payment.

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 satisfied that my provisional decision already explains why I think Mr H had a reasonable basis of belief in making the payment, despite the differences between the genuine and fraudulent emails. I've also already addressed why it was reasonable for him to accept the explanation for the account name being different, rather than contact the solicitor. So, I won't be commenting on those points further.

In relation to the other points raised in response to my provisional decision, it's first important to say that the payment request was only unexpected in the sense that Mr H hadn't realised the balance would be due that day. To be clear, the balance was due that day and the genuine solicitor had requested the payment during a phone call that morning. Mr H requested the account details – first during that phone call and later by email. So, at the point the payment was made, he was expecting to receive the account details and make the payment.

There's also no suggestion that Mr H saw all three emails and only chose to open two. I agree with Barclays that events might have unfolded differently had he read the genuine email, but I'm persuaded he didn't. The question I've had to consider is whether Mr H acted unreasonably by not checking whether a third email had been received. And, as Mr H would have had no reason to think that an earlier email had been received, I can't agree that he acted unreasonably by not looking for one.

I've considered the further points raised by Barclays, but my decision remains the same.

Putting things right

For the reasons outlined above, I've decided it is fair and reasonable to uphold this complaint about Barclays Bank UK PLC – and I therefore require the bank to pay Mr H:

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- Legal costs totalling £172.53
- A total of £400 compensation for the material distress and inconvenience Mr H has experienced
- Interest at 8% on the amount of the transaction, the payment fee and legal costs from the date of payment to the date of settlement.

My final decision

My final decision is that I uphold this complaint against Barclays Bank UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 2 July 2021.

Stephen Wise
Ombudsman