

## **The complaint**

Ms M and Mr R are unhappy that Barclays Bank UK PLC hasn't refunded them in full for the money they lost when they fell victims to a scam.

## **What happened**

In July 2020, Ms M and Mr R fell victims to a scam where they were contacted by fraudsters, who had intercepted emails from their genuine solicitor, regarding the payment for a house purchase. As a result, Ms M and Mr R unknowingly sent the money to a fraudster.

Ms M and Mr R were in regular contact with their genuine solicitor in the weeks leading up to the transfer, by phone and email, and all parties had agreed to exchange contracts shortly.

Mr R received an email, on 29 July 2020 as anticipated, with new account details attached to send the £150,000 to. Ms M and Mr R had previously paid £400 to the genuine solicitor (for initial fees) the previous month, but this payment was made to different account details. Unknown to them at the time, Ms M and Mr R sent four payments, totalling £150,000 to an account that was controlled by fraudsters, who had intercepted email communications between Mr R and their solicitor.

Ms M and Mr R said they didn't question the different account details and a different account name as they believed the emails to be genuine, they hadn't been warned of scams of this nature, and they were under a lot of stress at the time of the payments. And the scammers had presented the different account details as a "client care account" for the house deposit funds.

Mr R used mobile banking to send the four payments totalling £150,000. Three on 31 July 2020 (one amount of £40,000 and two amounts of £50,000) and a fourth payment of £10,000 on 1 August 2020. The fourth payment was picked up by Barclays' fraud detection systems and identified as requiring further checks. Its records show Mr R called and spoke with a member of staff about the payment, and following this call, the bank released it to the beneficiary. (I'll refer back to this call later in the decision, but Barclays later acknowledge it ought to have done more during this call to have identified and prevented the scam.)

At the time of the payments Barclays says Mr R was presented with the following warnings

### ***'Buying Goods***

*Could this be a scam?*

*Make sure you give yourself time to think about the goods you are buying and whether they are genuine, or if the deal sounds too good to be true.*

*Remember that payment by bank transfer won't give you the same protections as using your debit or credit card.'*

and

***'House or large purchase***

*Could this be a scam?*

*Fraudsters know how to intercept emails and messages and alter account details. For example, if you have previously paid your solicitor, make sure the account details haven't changed.*

*We recommend that you check the details of where you're sending the money in person.'*

We asked Mr R what he thought about the warnings. He said, now looking back and trying to remember the payments he doesn't recall the warnings.

Ms M and Mr R discovered they'd been the victim of a scam when Mr R had a conversation over the telephone with their genuine solicitor, a few weeks later, when the solicitor hadn't heard from them. Mr R contacted Barclays the same day to explain what had happened and asked it to refund the £150,000.

Barclays didn't think it was responsible for their loss. It considered Ms M and Mr R's fraud claim under the Lending Standards Board Contingent Reimbursement Model ('CRM') Code, of which it is a signatory. This code requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. In response to Ms M and Mr R's complaint, Barclays said it didn't think it was responsible for refunding the full £150,000 under the terms of the CRM code. It said the following:

- Before proceeding with any payments, Ms M and Mr R must take steps to satisfy the person they are paying is genuine (a requirement under the Code). Its investigation indicated that Ms M and Mr R didn't do so on this occasion.
- When making the mobile payments, it provided relevant warnings to Mr R, but he was still happy to proceed with the payments (the bank providing effective warnings is another requirement under the Code).
- When it discovered that Ms M and Mr R had been the victim of a scam, it contacted the beneficiary bank straight away, to see if any of the money remained in the beneficiary account. Unfortunately, it had all been removed by the fraudster.
- It was willing to refund Ms M and Mr R 50% of the fraudulent transfers under the CRM, and £75,000 was paid back to them on 16 December 2020. Barclays didn't provide detailed reasons at the time for this decision.
- Its customer service fell below its expectations and it wasn't able to manage Ms M and Mr R's affairs in a professional and efficient manner. It paid £350 compensation as an apology for this.

Ms M and Mr R didn't accept Barclays's conclusions and referred their complaint to our service where it was considered by one of our investigators.

The investigator was persuaded that Barclays should refund Ms M and Mr R the remaining £75,000, plus interest. She said the bank hadn't provided Mr R with an effective warning that was impactful in the specific circumstances. And, she believed that Ms M and Mr R had made the payments with a reasonable basis for believing that they were dealing with their genuine solicitor. She noted that Mr R had spoken with them a few days before making the payment, and that the intercepted emails were identical in format and tone to those of the genuine emails.

Barclays disagreed with our investigator. It said, in summary:

- It accepted the warnings, provided to Mr R when he made the payments, did not explain the consequences of what would happen by making the payments, but the rest of the warning was effective and highly specific to the circumstances which Mr R chose not to take into consideration.
- Therefore, it questioned whether Mr R would've taken any wording, regarding the consequences, into account as well.

Barclays's response didn't persuade our investigator to change her opinion. So as an agreement couldn't be reached, the case has been passed to me for a final 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'm upholding it and for broadly the same reasons as the investigator.

There's no dispute that Ms M and Mr R fell victims to an email intercept scam. They've lost a large amount of money when making their first house purchase together. Such a key purchase should be a positive time in anyone's life, and I was sorry to hear that instead, Ms M and Mr R were targeted by fraudsters. This can't have been easy for them at all.

### **Warnings**

I've started by considering that the CRM code says that, where firms identify APP scam risks, they should provide effective warnings to their customers. The code also says that the assessment of whether a firm has met this standard or not should include consideration of whether compliance with that standard would have had a material effect on preventing the scam. The CRM code sets out that an effective warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. As a minimum, the CRM code sets out that an effective warning should be understandable, clear, impactful, timely and specific.

The evidence of warnings Barclays provided to Ms M and Mr R at the time of making the payments is limited. But the bank says Mr R selected the payment options of 'Buying Goods' as well as 'House or large purchase' when making the four payments using Barclays' mobile banking.

Barclays hasn't been clear about which warnings were presented at each transaction, so I've considered both. And I don't find that these warnings meet the Code's standards for firms, which sets out what an effective warning should look like.

If presented with the 'Buying goods' warning - then I'm not satisfied this meets the requirements of firms to provide an effective warning. It isn't specific to Ms M and Mr R's circumstances, they aren't buying goods where they need to be sure they are genuine and making payment by other means wasn't option for them here. So, I don't think it would've been unreasonable for Mr R to have continued with the payment having seen this warning. It also doesn't meet all the requirements for an effective warning, including the risks of proceeding, which Barclays appear to have recognised.

If presented with the 'House or large purchase' wording I accept that the warning does give some advice on what Mr R might have done to avoid the scam. Barclays has said that whilst the warning doesn't explain the consequences of making the payment, the rest of it is highly specific in the circumstances. I've thought carefully about this, and I appreciate that the warning does explain about emails being intercepted. But I don't think the warning goes far enough to make the risk really obvious to customers. It doesn't bring to life what this type of scam looks like, nor does it talk about the prevalence of this type of scam or explain how sophisticated the scams can be. For example – it doesn't explain that fraudster's emails appear to come from the same address as the account they've hacked, that they can communicate with their victim on a genuine chain of emails, that fraudulent emails are usually received when a payment request is expected or that fraudster's emails can seem genuine and look the same or very similar to the person's they're impersonating. The warning also doesn't clearly set out the consequences of not taking the suggested steps in the warning. For example, setting out that the transaction will be irrevocable, and that if it proves not to be legitimate this will likely mean the funds cannot be recovered. And whilst the warning says to check the details in person it doesn't explain how to do this or that emails with the details can't always be trusted for this purpose either.

Mr R had paid the solicitors £400 the previous month for initial fees, which is relevant here as the warning does say to check the account details haven't changed as well. But, I think Ms M and Mr R were reasonable in their belief that they were dealing with their genuine solicitor, and whilst the warning does highlight the possibility of emails being intercepted, I don't think it's impactful enough here to make Mr R believe that this is what had happened to the emails he'd received. This is taking into consideration the identical format and tone of the emails, with only one very small discrepancy.

And when questioned by our investigator as to why he didn't question the change in account details, Mr R said he was persuaded by the scammers email that said they would forward the account details to him for the 'client care account' for the funds to be deposited on exchange. Considering that previously, he'd only paid his solicitor for initial fees, and the disputed payments weren't for a service but for the actual purchase deposit, I can see why Mr R was persuaded by the explanation as to why different payment details and payee name had been provided.

And, I've given weight to the fact that Ms M and Mr R were first time buyers, who hadn't been through the process of purchasing a house before so their knowledge around fees and payment would have been understandably limited. This process involves paying various payees for a number of reasons, and so on that basis, I can see why Mr R didn't question the fact the account details were different – as the warning suggests.

The warning also doesn't explain how to go about checking the account details. So even if Mr R had checked the account details, by emailing back the scammer (thinking it was the genuine solicitor), in my experience it's very likely the scammer would have provided a convincing reason for the different account details and account name. And they had already been told they were paying funds to a "client care" account which sounded plausible in the circumstances.

Taking all the above into account I don't agree that Barclays can say a more detailed warning wouldn't have made a difference to Mr R's actions in the moment. Although Mr R doesn't now recall the warning, I'm not persuaded that there is enough to say he wouldn't have proceeded with caution (given the value and type of transaction he was making) if the consequences of making the payment and more detail about how to protect himself from scams, had been presented to him.

So overall, I'm not satisfied Barclays' warning met the requisite criteria here. Overall, I don't consider the warning given was an effective warning as defined by the CRM Code. It follows that Barclays has not established it can fairly apply the exception to reimbursement relating to 'ignoring an effective warning'.

### **Did Mr R have a reasonable basis of belief when making the payments?**

I've no doubt that at the time of making the payments, Mr R believed that he was paying his genuine solicitor. I'm not satisfied he would've gone ahead if this wasn't the case. However, I need to consider whether that belief was reasonable, taking into account all of the circumstances.

Ms M and Mr R have sent us copies of the correspondence they received from the fraudster impersonating their solicitor. I agree with our investigator that the emails were identical in format and tone to those of the genuine emails, the scammers even continue to discuss the details of the house purchase in a manner which implies detailed knowledge of the events and Ms M and Mr R's circumstances. There is one small difference - the email address was missing one letter from the name of the solicitor's firm. With everything else being so similar, I can see why Ms M and Mr R wouldn't have noticed this small discrepancy. I don't think the difference is enough that it ought to have aroused any suspicions that anything untoward was happening. Mr R also says that he received and viewed the emails on his mobile and this didn't show the full details of the email, making it harder to spot the difference in email address.

Ms M and Mr R were expecting to receive an email from their genuine solicitors at around the time that the scam email was sent to them. Therefore, I think the timing of the email plays into Ms M and Mr R's basis for believing the email was genuine. I also understand Mr R was in communication with their solicitor by telephone days before the email was received, and had been told that the exchange date was imminent, and he'd receive a request for payment by email. So, taking all of this into consideration, I'm satisfied, Ms M and Mr R were reasonable in their belief that they were making payment to their genuine solicitors when they received the email with the instructions to make the payment.

And I've also already covered why I think it was reasonable for Mr R to proceed with the payment even when presented with different account details and account name.

With all of the above in mind, in light of all the circumstances here, and in line with the requirements of the CRM Code, I'm not satisfied Barclays has been able to establish that when Ms M and Mr R sent the payments they did so without a reasonable basis for belief.

### **Barclays intervention with the fourth payment**

I've found it difficult to follow exactly why Barclays made the decision that it did to refund half of Ms M and Mr R's losses. But Barclays appears to have agreed to refund £75,000 to Ms M and Mr R as its fraud detection systems picked up on the fourth payment Mr R made to the scammers for £10,000 and prevented it from going through. Mr R then called Barclays the following day to confirm the payment was genuine and it was released. Barclays says it failed to question Mr R about the purpose of the payment and therefore missed an opportunity to prevent Mr R from falling further victim to the scam. As such, it refunded 50% of Ms M and Mr R's overall loss. Barclays later added that it also wasn't willing to refund anything further as it thinks an effective warning wouldn't have made a difference to Mr R's actions and that Mr R didn't have a reasonable basis of belief for making the payments (points I have addressed above).

I'll also refer now back to the call Barclays had with Mr R when he made the fourth payment of £10,000. Mr R explains the purpose of the payment and the previous payments he'd made as part of the house purchase. Mr R is asked if he had made payments to this payee before and Mr R explains the three previous payments he'd made (as part of the deposit for the house). The Barclays call handler asks if he's happy with that company and if he'd checked them out. Mr R says he is. No further questions are asked about how Mr R has obtained the account details etc. Mr R thinks the payment is stopped because of the daily transfer amount. The Barclays call handler confirms the payment was stopped and then reads a scam script covering safe account and goods and service scams. The call handler asks if the house exists and if Mr R is happy with it. Finally the call handler checks that Mr R knows the bank the account is held at.

Having listened to this call I'm persuaded further and tailored questioning would've resulted in Mr R explaining the events surrounding the payments and the context of the emails and new account details. So having thought about this call and the taking into account good industry practice at the time I think Barclays ought to have taken further steps and asked more detailed questions and if it had I think more likely than not it would have prevented the scam.

But I think the first transaction was one that ought to have given Barclays concern that Ms M and Mr R might be at risk of financial harm, given its size and that it was to a new payee. So I think Barclays ought to have intervened at this point rather than at the point of the fourth transaction. But as I'm upholding this complaint under the provisions of the CRM code this additional finding only impacts the date interest should be awarded from, which I have set out below.

### **Customer service**

Barclays recognised that its customer service fell below its expected standards when dealing with Ms M and Mr R's fraud claim. It took longer for its fraud team to review the claim and provide its answer, and paid £350 by way of an apology for this.

I appreciate that Ms M and Mr R would've been very upset to discover that they'd been the victim of a scam at such an important time in their lives. They've told us about their personal circumstances that I accept would've heightened their overall stress levels, and delays from Barclays in relation to their fraud claim would've only increased this.

But overall, I think the £350 Barclays has already offered to cover the trouble and upset caused by its delays with Ms M and Mr R's fraud claim is fair and reasonable, and I won't be asking it to increase this award.

### **Putting things right**

To put things right, Barclays should:

- Pay Ms M and Mr R the remaining £75,000 of their losses,
- Pay Ms M and Mr R 8% simple interest on the above amount, from the date of each payment to the date of settlement.
- Pay Ms M and Mr R 8% simple interest on the original £75,000 it refunded from the date those funds were paid to the date the settlement was made.
- Barclays has already paid £350 compensation to Ms M and Mr R. I think this is fair and reasonable and I won't be asking Barclays to increase this amount.

**My final decision**

It's my final decision that I uphold Ms M and Mr R's complaint against Barclays Bank UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M and Mr R to accept or reject my decision before 15 July 2022.

Sophia Smith  
**Ombudsman**