

The complaint

Mrs C complains that Barclays Bank UK PLC (“Barclays”) failed to refund money she lost as part of a romance scam.

What happened

The details of this complaint are well known to both parties, so I will not repeat everything again here. In brief summary, Mrs C lost over £8000 to a romance scam in 2020. She had met the scammer on social media and began sending payments to him after being told he was a doctor for the US army based in Syria, and that she would need to pay the army for his early retirement in order for him to leave so they could get married.

Barclays refused to refund Mrs C’s loss under the Contingent Reimbursement Model (CRM) Code as it said she ignored an effective warning and also had no reasonable basis for believing the payee was legitimate.

Our investigator upheld the complaint. He didn’t think the warning provided by Barclays was impactful enough, and also considered that Mrs C had a reasonable basis for believing the payments were genuine as the scammer had sent her photos and had built trust with her. Barclays disagreed, so the matter was escalated to me to determine.

I issued my provisional decision on this complaint in July 2022, I said I was minded to uphold it, but on a different basis to the investigator, and set out the following reasoning:

When thinking about what is fair and reasonable in this case, I’ve considered whether Barclays should reimburse some or all of the money Mrs C lost in line with the provisions of the CRM Code it has signed up to and whether it ought to have done more to protect her from the possibility of financial harm from fraud.

There is no dispute that Mrs C has been the victim of a scam. She was tricked into making the payments after messaging someone who had gained her trust and was under the impression she would marry. But this isn’t enough in and of itself for Mrs C to receive a refund of all the money she lost from her account.

Under the provisions of the CRM Code, both the bank and its customer have obligations. If it can be shown that the customer has met their requisite level of care then they will receive full reimbursement. If the customer has not done this, then it is for the firm to show that it has met its obligations under the Code. The most relevant obligation for the firm is to provide an “Effective Warning”. If a firm has not met its obligations then it, subject to any liability by the bank which received the money, will be liable for 50% of the customer’s loss.

Having carefully considered the circumstances of this case, I don’t think Mrs C had a reasonable basis for believing the person/people she was paying were legitimate or were who they said they were. But neither do I think Barclays provided an ‘Effective Warning’ to her either. So, I’m currently minded to find the fair outcome is for Barclays to refund 50% of Mrs C’s losses. I’ll explain how I have reached this

conclusion below.

Did Mrs C meet her Requisite Level of Care under the CRM Code?

I have first considered whether Mrs C failed to take the requisite level of care required for Barclays to choose not to reimburse her under the terms of the CRM Code.

The CRM Code requires payment service providers to reimburse customers who have been the victims of authorised push payment (APP) scams like this, in all but limited circumstances. It is for Barclays to establish that a customer failed to meet a requisite level of care under one, or more, of the listed exceptions set out in the CRM Code.

The exceptions relevant to this case are:

- The customer ignored an Effective Warning in relation to the payment being made.*
- The customer made the payment without 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.*

So I need to consider whether these exceptions apply to Mrs C's case.

Did Mrs C ignore an Effective Warning?

The CRM Code says that where firms identify APP scam risks in a payment journey, they should provide Effective Warnings to their customers. I accept that Mrs C was shown a warning when she set up the new payee and that the warning displayed was generated after she had selected the purpose of sending money to family/friends. I don't think it was unreasonable for Mrs C to have picked this option in the circumstances of the romance scam.

The warning Mrs C was presented with stated:

"If somebody else has asked or pressured you to make this payment online, such as through a social media or dating site, then you should take time to think about it before sending the payment. We recommend that you speak to someone impartial as well".

I don't think this warning was impactful or went far enough to be effective. It only said that Mrs C should take time to think about the payment and talk to somebody impartial; it failed to ensure that she could reasonably understand the consequences of continuing with an irrevocable payment in such circumstances. So, I don't think it could have positively impacted her decision making. It also wasn't specific to the scam she was falling for and doesn't bring romance scams to life in general. So, I'm not persuaded Barclays provided an Effective Warning in line with the requirements set out by the CRM Code.

Did Mrs C have a reasonable basis for believing the payments she made were legitimate?

I've also thought about the steps Mrs C took to reassure herself about the legitimacy

of the transactions and whether it was reasonable for her to proceed with the payment. Having done so, I am not persuaded that she had a reasonable basis for believing that the payee was the person she was expecting to pay, the payment was for genuine goods or services and the person she transacted with were legitimate.

This is not a finding I have made lightly, and I have considered that the scammer was able to build trust and rapport with Mrs C over time with the promise of marrying her, and had also sent her pictures of the supposed work he was carrying out in Syria as part of the US army. However, there were several indications that she ought to have recognised meant that she wasn't dealing with a legitimate person. I say this because:

- She had not once spoken to the scammer by voice or video call. I understand she had been sent pictures and videos and was told he could not call, but the fact that she was not able to speak to the person who had promised to marry her should have led to a greater degree of checking on Mrs C's part before she agreed to send money.*
- The reasons given for her having to pay the money were also very unusual and unrealistic. She was told, for example, that the only way the scammer could marry Mrs C is if she paid for his retirement from the army, and that she would have to sort this with the army headquarters. It seems very implausible that anyone would have to pay for another person's retirement, or that the only way for someone in the US army to return home would be if they had a wife to return to or a person to marry.*
- Mrs C had been given a Gmail address to correspond with for the US army headquarters. It did not appear official or look like it had any links to the US army.*
- She was also told that she would have to pay around £19,000 in order to release a 43kg package containing the scammers belongings, which seems like a very large and implausible amount to have to pay in taxes in order for someone's personal effects and documents to be released by customs. I also cannot see that Mrs C researched any of the courier companies she was contacted by in order to check they were genuine.*
- It's clear that at some stages Mrs C also had doubts and asked the scammer about her concerns. But she relied on the scammers answers that it was all ok and didn't reasonably do enough to assuage those doubts.*

Overall, I think there was enough going on to have raised significant concerns about the transactions Mrs C was making from the start. And this ought reasonably to have led her to take a more cautious approach, as she rightly did when she eventually spoke to an independent third party who informed her she was being scammed. But she ought to have taken such steps at the outset in light of the suspicious circumstances presented, so I think further steps could and should have been taken in order for her to meet the required level of care under the CRM Code.

Did Barclays meet its standards as a firm under the CRM Code?

Even though I don't think Mrs C had a reasonable basis for belief when making the payments, she may still be entitled to a refund of 50% of the money she lost if Barclays didn't meet its obligations under the CRM Code, one of which is to provide Effective Warnings.

The CRM code says that, where firms identify APP scam risks, they should provide Effective Warnings to their customers. It 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. And it says that, as a minimum, an Effective Warning should be understandable, clear, impactful, timely and specific. Whilst Mrs C typically made payments around this size, Barclays is still required to provide an Effective Warning upon identification of a scam risk. In this case, Barclays did identify a scam risk and it provided a written warning to Mrs C as part of the payment journey when setting up a new payee.

Earlier in this decision I concluded Mrs C did not ignore an Effective Warning. I was not persuaded that Barclays' warning to her was impactful enough in the circumstances of this scam to meet the minimum requirements of an "Effective warning" under the CRM Code. It follows that I am not persuaded that Barclays has provided such a warning to Mrs C.

Mrs C is not an expert in scams and doesn't have the same level of knowledge or experience of this type of scam as the building society does. If Barclays' warning had given advice on how Mrs C could have protected herself from this type of scam, and prominently explained the potential consequences of making an irrevocable payment, then I think this would've been important contextual information that would have had a material impact and affected her decision to go ahead and send the money. I've not seen any evidence that persuades me it is more likely than not that Mrs C would have continued with the purchase regardless.

So, overall, as I don't think Mrs C met her requisite level of care, and also that Barclays could have done more to protect her, I think a 50% split of liability is a fair and reasonable outcome for her fraud claim under the CRM Code. There is no other reason why Barclays should be held further liable for the remainder of Mrs C's losses.

I invited further comments and arguments in response to my decision. Barclays responded and accepted my provisional findings. Mrs C said she had nothing further to add.

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.

Given that neither of the parties had any further evidence or arguments to put forwards, I see no reason to depart from the conclusions set out in my provisional decision above. It follows that I uphold this complaint in part.

My final decision

For the reasons given above, I uphold this complaint and direct Barclays Bank PLC to:

- Refund Mrs C 50% of the £8,833.57 she paid to the fraudster
- Pay 8% simple interest on that sum from the date Barclays declined her claim under the CRM Code until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 17 August 2022.

Jack Ferris
Ombudsman