

The complaint

Miss S is unhappy Barclays Bank UK PLC (“Barclays”) haven’t refunded her for the money she lost in a scam.

In bringing her complaint to this service, Miss S is being represented by solicitors. For ease, I will refer to Miss S throughout my decision, even where the submissions have been made on her behalf.

What happened

The details of this case have been clearly set out by our Investigator. As such, the facts are well-known to both parties, so I don’t need to repeat them at length here.

In summary:

- Miss S says she came across an opportunity where she could double her Student Finance due to the pandemic via a well-known messaging app. The post was shared by an influencer who said for those interested to get in touch. Miss S got in touch with the influencer and provided her contact details.
- Miss S told us she then received a call from someone she believed to be from Student Finance. She says the caller’s number came up as the Student Finance contact number she had saved in her phone. Unknown to Miss S at the time, she was in fact speaking with a fraudster. I understand that Miss S was told she’d need to send funds back to Student Finance in order for them to double and return money to her.
- Following this call, Miss S proceeded to make the following payments to the account details provided (table below). She says she was told the payee was the head of the department which was why the payments were being made to the account details given. She’s also said she was told to put the references shown in the table below – as these would enable the payments to be identified.

Date	Time	Method	Payee/ reference	Amount
9 February 2021	18:33	Mobile banking	Payee 1 - Loan	£1,000
9 February 2021	18:45	Mobile banking	Payee 2 – Car Loan	£1,000
10 February 2021	02:46	Mobile banking	Payee 2 – Car Loan	£1,000
10 February 2021	02:50	Mobile banking	Payee 2 – Car Loan	£1,000
10 February 2021	22:02	Mobile banking	Payee 2 – Car Loan	£1,000
11 February 2021	17:35	Mobile banking	Payee 3 – Student Loan	£500
			Total loss	£5,500

- When Miss S didn't receive the payment within the timeframe she was told, she says she realised she'd been the victim of a scam. She's told us the fraudsters kept reassuring her that the money would be received but when it wasn't, she contacted her bank.
- Miss S reported the scam to Barclays in May 2021.
- Barclays have told us it received a call in February 2021, from someone claiming to be Miss S, who said they didn't recognise the transactions in question. In this call, the bank says the caller who was claiming to be Miss S was told the payments had been made using her registered device and IP address. At this point, the caller said they'd check with those they lived with and would contact the bank if they wished to take things further.
- It adds it wasn't until May 2021, until Miss S contacted Barclays back. In this call, it says Miss S shared that a family member had impersonated her in the February 2021 call, as they'd told her that if she said the transactions weren't recognised she'd receive a refund.
- In light of the above, the scam claim wasn't raised until the call on 5 May 2021. At this time, Barclays contacted the receiving banks (the accounts used by the fraudsters) but unfortunately no funds remained.

The case was considered under the Contingent Reimbursement Model Code ("CRM Code"). This is a voluntary scheme Barclays has signed up to, designed to reimburse customers that have fallen victim to a scam. The starting position under the CRM Code requires firms to reimburse customers who have been the victims of 'authorised push payment' ("APP") scams like this in all but a limited number of circumstances.

The circumstances where a firm may choose not to reimburse include (so far as they might be relevant to this complaint) where the firm can establish that:

- the customer ignored an 'effective warning' by failing to take appropriate steps in response to that warning; or
- where in all the circumstances, 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 that the person or business with whom they transacted with was legitimate.

When assessing whether it can establish these things, the firm must consider whether they would have had a 'material effect on preventing the APP scam'.

I am also mindful that when Miss S 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.

Barclays considered that Miss S made the payments without a reasonable basis for belief that she was making payments for a genuine offer to Student Finance, nor does it think she did enough to satisfy herself that what she'd found was genuine. The bank also considered it had effective warnings in place at the time.

Unhappy with this, Miss S brought her complaint to us. One of our Investigator's looked into

things and she recommended the complaint be upheld in part. She didn't think Miss S had a reasonable basis for believing she was making legitimate payments to Student Finance. So, she thought Barclays had established one of the exceptions under the CRM Code. However, when looking at Miss S's previous account activity, she thought Barclays ought to have intervened when Miss S made the fifth payment. This was on the basis that by this point, she'd made multiple transactions within a short space of time and to new payees. As she didn't consider the initial four payments to be suspicious, our Investigator said she thought the bank only needed to provide an effective warning for payments five and six. When considering the warning Barclays says Miss S would've seen, our Investigator didn't find the warning to be impactful to Miss S's specific circumstances. So, it followed she didn't think Barclays had established she shouldn't be reimbursed on the basis that she ignored an effective warning. Overall, our Investigator recommended the bank refund Miss S 50% of payments five and six and that it should award interest on this amount (8% simple interest or account rate if the funds originated from a savings account), from the date payment five and six were made, up until the date of settlement.

Miss S replied to say she didn't agree with our Investigator's view. In brief, Miss S considered all the payments she made to be unusual and so Barclays should have provided a warning for all of the payments. Had the bank contacted her about the first payment, Miss S believed the scam would've been prevented.

Our Investigator, having considered Miss S comments sent a further view on the complaint. In summary, her view remained unchanged. She acknowledged that some of the previous larger payments out of Miss S's account were sent to another account in Miss S's name, however, she referred to two other payments out of her account which were larger in amount and went to external accounts. She reiterated that she didn't think the first payments Miss S sent ought to have triggered with the bank. She maintained that she didn't think the amounts of the initial payments ought to have made the bank suspicious and so she wouldn't have expected Barclays to intervene here. But she did think it ought to have intervened when Miss S made the fifth payment.

Miss S remained unhappy. Barclays also disagreed with our Investigator's view. It said it didn't think the payments were made in such quick succession that it ought to have triggered the bank to intervene. It considered the payments Miss S made as part of the scam to be similar to previous account activity.

As Miss S and Barclays disagreed, and as the matter hasn't been resolved, it was passed to me to decide.

I issued my provisional findings on the merits of Miss S's complaint on 14 March 2023. In my provisional findings, I explained why I intended to uphold Miss S's complaint in part. An extract of that decision is set out below and forms part of this final decision:

I've carefully considered Barclays' representations about the warnings it gave and whether Miss S had a reasonable basis for believing the payments were genuine. In brief, the representations do not persuade me to reach a different view to that of our Investigator. In particular, I'm not currently persuaded Barclays has demonstrated that it can choose not to reimburse Miss S under the terms of the CRM Code on the basis that she ignored an effective warning.

Barclays within its submissions to our service has said Miss S would've seen the following warning when making the payments:

'We're continuing to increase the protection we offer you, but it's also important for you to protect yourself. Once a transaction's gone through, it's difficult to recover your money. We'll

never ask you to move your money to a 'safe' account, nor will the police, HMRC or any trusted organisation.

Stay safe from scams

Have you actually met this person and how well do you know them? Speak to them directly to verify their details before going ahead.

Payment requests on social media, dating sites and claims of family crisis, can be fraudulent. Be cautious about transferring money for someone else, especially if you've received funds unexpectedly'.

Under the provisions of the CRM Code, as a minimum, an "effective warning" needs to be understandable, clear, timely, impactful and specific. It must also provide information that gives customers a better chance to protect themselves against being defrauded and should include appropriate actions for customers to take to protect themselves from APP scams. The CRM Code sets out minimum criteria that a warning must meet to be an 'effective warning'. In very broad terms, it requires that a warning will be capable of countering the typical features of the generic scam type identified during the payment journey.

Having carefully considered the warning Barclays say Miss S would have seen at the time of making the payments, I can't safely say the warning it gave was relevant to the type of scam Miss S fell victim to. I don't think it was impactful enough to affect her decision making in a manner whereby the likelihood of this scam succeeding was reduced. I recognise Barclays considers Miss S picked the wrong payment purpose when making the payments, but I'm commenting on the warning it says she did see. The warning Barclays say Miss S saw speaks about other scams such as safe account and HMRC scams, which was not relevant to the scam she was falling victim to. It also doesn't touch on telephone spoofing and how this works.

Overall, I don't currently find Barclays has been able to establish that Miss S should not be reimbursed on the basis she ignored an effective warning.

Did Miss S have a reasonable basis for belief when making the payments?

In this case, I'm persuaded that Barclays has demonstrated that it can choose not to reimburse Miss S under the terms of the CRM Code because she lacked a reasonable basis for belief when making the payments. I will now explain why:

- Based on what I've seen and been told, I'm not currently persuaded that the way in which Miss S came about the opportunity or what she was told about doubling her Student Finance was plausible in the circumstances. I say this because, Miss S has said the influencer who posted the opportunity on the known messaging app was someone she knew as she followed them on another social media platform in relation to their profession – as a hairdresser. I think this ought to have given Miss S pause for thought – as to how an influencer she followed for a different profession was able to advertise an opportunity to double her Student Finance. I currently think this ought to have prompted Miss S to proceed more cautiously.*
- I recognised Miss S told us the call she received was from the number for Student Finance that was saved on her phone. I accept that this phone spoofing would've been an element that added to the believability that she was in contact with Student Finance. But I think there were other red flags which she ought fairly and reasonably to have recognised/questioned. Miss S thought she was making the payments, which would then be returned to her along with the additional amount so that her funds were doubled. I think Miss S ought to have questioned why she was being asked to*

make payments which were to be returned to her in order to receive the additional amount. This to me, does not appear consistent with how I would reasonably expect the legitimate Student Finance to operate. And in the absence of any plausible reasons being given to Miss S, as to why she needed to make payments, before she could receive the additional funds into her account, I think this ought to have caused her concern.

- *Miss S explained she was told the payments she was making were being sent to the Head of the department. Yet I've not seen anything which sets out why Miss S thought she was having to make these payments to three different payees. And while I acknowledge she was told to put the references as 'Loan' and 'Car Loan' so that the payments could be identified in the accounts – if the payments were being sent to the account for the Head of Department at Student Finance, I think this ought to have given Miss S pause for thought. This again doesn't appear consistent with how a legitimate company would operate. I don't find the reason given for identifying the payments is convincing enough not to question the arrangement or why the payments were not being sent to an account for the organisation.*

I'm mindful that, taking any of the individual factors above in isolation, they may not have been enough to have prevented Miss S 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 Miss S ought reasonably to have taken further steps to protect herself.

All things considered, I don't currently think Miss S had a reasonable basis for belief (from the outset) for believing the payments she was making was for a genuine opportunity or that they were legitimate.

Should Barclays have done anything else to protect Miss S and prevent the fraud

I'm mindful that when Miss S made these payments, Barclays should fairly and reasonably 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).

Our Investigator didn't consider the first four payments Miss S made to be out of character for her account. However, she thought by the fifth payment, the transactions started to look out of character. This was on the basis that at the time of the fifth payment there had been multiple transactions within a relatively short space of time, to several new payees and the balance on the account started to deplete to almost zero. So, at this point, she thought Barclays ought to have intervened and she thought it should have suspended the fifth and sixth payments until it had spoken to Miss S. Had it done so, she thought the scam would've been revealed.

I note both Barclays and Miss S disagree with our Investigator's position on this point. As I've said above, Barclays doesn't consider the payments Miss S made were unusual or out of character to the previous account activity, whereas, Miss S thinks all the payments ought to have appeared suspicious to the bank.

I've thought carefully about this. Having reviewed the previous account activity, I can see Miss S had made a payment to a new payee on 8 February 2021 for £1,500. There was also a payment for £1,000 made in March 2020. Taking this into account, I don't think the initial three payments ought to have appeared so suspicious to Barclays that it ought to fairly and reasonably have intervened before allowing the payments to be processed. This said, I consider the bank ought to have been concerned about the payments Miss S was asking to make from payment four – not five as identified by our Investigator.

Whilst I consider an earlier payment ought to have triggered on the banks fraud systems, my reasons for reaching this finding is for largely the same reasons as our Investigator. At the time Miss S asked to make the fourth payment of £1,000, there was a pattern emerging which was indicative of fraud. Miss S was making payments in reasonably quick succession and it was the second day of her making several payments to a new payee.

Whilst the banks need to strike a balance between the extent to which it intervenes in payment to try to prevent fraud and/or financial harm, against the risk of unnecessarily inconveniencing or delaying legitimate transactions, I think there was enough going on here by payment four that the bank ought to have got in touch with Miss S. Had it done so, I think the scam would've likely unravelled rather quickly. Miss S doesn't appear to have been given a cover story and I think the bank more than likely would've had concerns once Miss S shared the platform on which she found the opportunity and what she'd been told.

For completeness, Miss S told us she was vulnerable at the time. I'd like to assure Miss S that I have carefully considered the background circumstances she has told us about in relation to her mental health and financial situation. I've thought about whether this made her more vulnerable to the scam she fell victim to. While I recognise that there are aspects of what Miss S has told us that will have more likely than not enticed her into proceeding with what the fraudster was offering, I'm not persuaded based on what I've been told Miss S can be considered as vulnerable under the CRM Code.

Finally, I've considered whether Barclays did all it could to try and recover the money Miss S lost, once she had reported the scam to it. From the evidence I've seen, Barclays did contact the receiving banks when she raised the matter as a scam in May 2021, but unfortunately no funds remained. On balance, given the time between Miss S making the payments and her reporting the scam, I think it is very unlikely Barclays would've been able to successfully recover her funds. So I think Barclays has done what could reasonably have been expected of it to try to recover the money.

My provisional decision

For the reasons I've explained above, my provisional decision is that I uphold this complaint in part.

I require Barclays Bank UK PLC to do the following:

- *Reimburse Miss S 50% of payments four, five and six made as a result of the scam*
- *Miss S has told us the money originated from her savings account, which came from her student loan with Student Finance. In light of this, Barclays should add interest at the savings account rate from the date payments four, five and six were made to the date the 50% reimbursement is paid to Miss S.*

I invited both sides to provide any further arguments or information by 28 March 2023, after which point, I said I would issue my final decision on the matter.

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.

Responses to my provisional decision

Barclays' replied accepting my provisional findings.

Miss S replied with further comments. In summary, but not limited to, Miss S acknowledged the previous payment she'd made on 8 February 2021, but said the payment referred to in March 2020 was a cash withdrawal. She provided her recollections of the process for making a cash withdrawal and reiterated that she didn't consider the payments she made as part of the scam to be usual when taking into account her previous account activity. Miss S also said she knew the person who advertised the opportunity on the well-known messaging app. She's added that she followed this person on other social media platforms and that whilst her profession is a hairdresser this didn't mean that it was impossible for them to promote an 'opportunity' and that this person vouched for the person they were promoting. She also provided further information about her mental health. Miss S has said anxiety and depression can result in her not thinking clearly, which she said was the case during the scam and, that this combined with her financial situation encouraged her into the opportunity and wanting to be financially stable.

As Barclays' have accepted my provision findings, I will focus on addressing Miss S's further comments.

I'd like to assure Miss S that I've carefully considered the submission she has made. While I acknowledge what she has said about one of the payments referred to within the provisional decision as being a cash withdrawal, I don't find this changes my position on this point. I can see Miss S made a payment to a new payee on 8 February 2021 for £1,500. I accept Miss S considers this to be a one-off payment and therefore, she doesn't think the payments she made as part of the scam can be considered as usual for her account activity. As I explained in my provisional decision, when looking at the previous account activity, such as the payment for £1,500, I didn't think the initial three payments ought to have appeared so suspicious to Barclays that it ought to fairly and reasonably have intervened before allowing the payments to be processed. However, I did think the bank ought to have been concerned about the payments Miss S was asking to make from payment four. For the reasons outlined above, my position and findings on this aspect remain unchanged.

I've also thought carefully about the additional information Miss S has provided about the person she says she was friends with who promoted the 'opportunity' over the messaging app. I accept Miss S's comments that just because someones profession is a hairdresser, it doesn't mean it's impossible for them to promote an opportunity. But when taking the individual factors I set out in my provisional findings in the round - together with the plausibility of what she was being told – doubling her Student Finance, I'm persuaded there was enough going on and sufficient red flags that ought fairly and reasonably to have caused Miss S concern and led her to have taken further steps to protect herself.

Miss S has kindly provided more information about her mental health. Having carefully considered what I've seen and been told, I'm not persuaded Miss S meets the CRM Code's definition of vulnerability. In summary, the CRM Code defines vulnerability as circumstances where the victim couldn't reasonably have been expected to protect themselves from the scam.

For the reasons I've explained, I don't think the steps Miss S took were sufficient for her to have had a reasonable basis for believing she was sending the payment to a legitimate person or business or that the payment was for a genuine goods or service. And having thought very carefully about it, I also don't find it more likely than not that Miss S was vulnerable to the extent that it wouldn't have been reasonable to expect her to have protected herself.

I want to emphasise though that this is not to diminish the circumstances she was in at the time, or the subsequent impact the scam has had on her. It is simply that I don't find the

evidence would justify a finding that Miss S was unable to have taken further steps to protect herself here.

In light of this, I see no reason to depart from the findings and the resolution I proposed in my provisional decision as quoted above, and for the further reasons I've set out here.

My final decision

For the reasons set out in my provisional decision and above, I uphold this complaint in part.

I direct Barclays Bank UK PLC to do the following:

- Reimburse Miss S 50% of payments four, five and six made as a result of the scam.
- Miss S has told us the money originated from her savings account, which came from her student loan with Student Finance. In light of this, Barclays should add interest at the savings account rate from the date payments four, five and six were made to the date the 50% reimbursement is paid to Miss S.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 27 April 2023.

Staci Rowland
Ombudsman