

The complaint

Mrs B has complained about the actions of Barclays Bank UK PLC after she fell victim to an authorised push payment (APP) scam. Mrs B is unhappy Barclays won't refund all the money she lost as part of the scam.

What happened

Mrs B had been using a dating website for many years when began speaking to the scammer at the beginning of March 2017. The scammer had told Mrs B that he lived in America and was a chief engineer. He said he had two houses in England and planned to return to England to live with her. Mrs B mainly communicated through text messages and emails.

In April 2017, the scammer told Mrs B that he was at sea on his ship and needed money in order to fix parts of the ship. But he was unable to pay for the parts himself due to network issues. He gave her his online banking details and she saw that he had a balance of \$2 million in his account. So, Mrs B felt assured to send him the funds via international transfer. On 5 April 2021, she transferred £4,950 and on 7 April 2017 she transferred £4,750. A third payment of £4,750 was also sent but was returned unpaid. These payments were all sent to accounts the scammer directed her to.

The scammer then told Mrs B his daughter had been involved in an accident and he needed to pay for her medical bills. On 24 April 2017, Mrs B transferred £4,500 and on 3 May 2017 she transferred a further £8,000. Mrs B believed she was transferring the money directly to the scammer's daughter's account.

Mrs B was contacted by Barclays in regard to the final payment where she explained to the advisor the money was for one of her relatives who had no insurance. Mrs B realised the scammer was asking for more and more money and then realised he had been reported on the dating website as acting fraudulently. However, she was embarrassed she had fallen victim of a scam, so didn't report it to Barclays straight away. She also deleted all the conversations between her and the scammer.

Barclays has said that it agrees it failed to identify payments as out of character and provide an effective warning and acknowledges that it only intervened on one occasion where it requested the purpose of payments. The bank acknowledged that it didn't go on to question further which could have helped it to identify it was a scam.

However, Barclays went on to say Mrs B completely trusted the scammer and didn't conduct any checks on how legitimate he was. It said in the short period of time between meeting the scammer online and the scammer requesting funds there was a lack of due diligence conducted by Mrs B. Consequently, Barclays agreed to accept 50% liability of Mrs B's total loss and refund £11,100. It also added compensatory interest at a rate of 8% interest, minus 20% tax deductible (equating to £4,016.11). This was paid to Mrs B in December 2022.

Mrs B's representative didn't feel a 50% refund was fair. It said it didn't agree that Mrs B didn't conduct any due diligence. It said, to Mrs B at least, the scam was very convincing.

She searched the scammer's name online but was unable to find anything. They spoke regularly over a few months to build up trust, occasionally speaking over the phone and regularly over messages. She had been given access to his account and saw he had \$2million in his account, so was satisfied he had the funds to repay her. The representative felt that the scammer played on Mrs B's vulnerabilities and as Barclays were the fraud experts it ought to have picked up on the unusual payments and questioned Mrs B further. So, the representative referred the complaint to our service.

Our investigator looked into the complaint and felt the offer Barclays made was fair. Mrs B's representative didn't agree and asked for the case to be referred to me to consider.

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 agree with the investigator's findings for broadly the same reasons, which I will go on to explain. Before I do so, I want to acknowledge that I understand my decision will be disappointing to Mrs B. But based on the evidence, I am persuaded the offer Barclays has made is fair in the circumstances. I will explain why.

It's not in dispute that Mrs B authorised the payments in question. She sent five (one returned) international payments to the scammer. While I understand that Mrs B didn't intend for her money to go to a scammer, under the Payment Service Regulations 2009 Mrs B is presumed liable for the loss in the first instance as the payments were authorised by her. This remains the position unless there is sufficient evidence that Barclays should fairly and reasonably have done more to protect her, e.g. by failing to act on clear triggers of unusual or uncharacteristic activity on the account.

To put it another way, Barclays has a responsibility to monitor accounts and payments, and one of the reasons for this is to prevent fraud and scams. Barclays needs to have systems in place to look out for unusual transactions or other signs that might indicate its consumers are at risk of fraud (amongst other things). With that in mind, I've considered whether Barclays should have considered these payments as being so unusual or uncharacteristic that it ought to have given the bank sufficient grounds for suspecting fraud. Barclays has recognised that it failed to identify payments as out of character and provide an effective warning. It accepts it could have done more to protect Mrs B and missed an opportunity to do so. But it also thought that Mrs B failed to complete *"due diligence and as such is partially liable."*

However, it's also important to note that Mrs B's representative has explained that the reason there is no supplementary evidence to corroborate Mrs B's testimony is due to the fact when she found out she had been sending money to a scammer she was extremely embarrassed and as such deleted the corresponding evidence. Also, the representative has said the scammer had built Mrs B's trust and when Barclays did ask Mrs B what the transfer was for (£8,000 sent to the scammers 'daughter') Mrs B explained she was sending the money to her relative (which we know not to be true). Accordingly, I have considered the likelihood of Mrs B providing Barclays with the correct details for it to enact the appropriate intervention strategies. In other words, it becomes increasingly difficult for bank staff to pursue an effective line of questioning if it is not given accurate answers. With all this in mind, the key issue for me is to decide whether it was fair to refund Mrs B 50% of what she lost on the basis that Barclays says she was partially liable. As our investigator explained, it's Barclays view that Mrs B didn't do her due diligence prior to transferring the funds. This is otherwise known as contributory negligence.

There's no doubt that this was a cruel and sophisticated scam and I certainly wouldn't be placing blame on Mrs B for this. Nonetheless, I am obliged to consider contributory negligence, and in doing so, the starting point is to think about what a *reasonable* person would be expected to do in the circumstances – and whether Mrs B's actions fell below that.

Having reviewed the circumstances of the scam, I think there were some red flags. And when considering the accumulation of these warning signs I think it's fair to conclude that Mrs B ought reasonably to have known something was wrong.

Mrs B's representative has explained that she met the scammer on a dating platform and the representative said she had been using the site on and off for many years. The representative also confirmed that Mrs B completed her own checks to verify the scammer by completing an internet search on his name (but couldn't see anything listed about him), received multiple pictures and spoke on the phone occasionally. However, the representative also said once the scammer started asking for more money and Mrs B's savings had been depleted, she saw that the scammer had been reported on the dating site. Given the fact Mrs B was familiar with the dating site it's reasonable to conclude that as part of the checks she carried out when trying to verify the scammer, she ought to have also checked the dating site. And if this had been done originally, it's fair to conclude it would have prevented further payments being sent to the scammer as the scammer had been reported on the site.

Secondly, prior to Mrs B making the payment, the scammer sent Mrs B his account details (albeit, a fake account) showing her that he had \$2 million or so in his account. Mrs B was obviously unaware that this was a fake account. I appreciate this assured Mrs B that the scammer had enough funds in his account to repay her. But given the fact Mrs B has the scammer's details, I find it fair to say that most people would question whether it was safer (or at least easier and more logical) to simply proceed with the intended payment directly from the scammer's account, considering it was for the purchase of goods for his own business. Especially given the fact she could see the scammers balance; he had enough money to make the payment and the reason he confirmed he couldn't make the payment was due to network failures. Yet, it was known to Mrs B at the time that he was still able to correspond with her via email and text messages (which also require an internet connection). So, I think it's reasonable this ought to have raised concerns for Mrs B.

I appreciate Mrs B's representative has defended this position by explaining "*if our client had tried to make a payment as you suggested it would have not worked as this was obviously not a real bank account*" and the representee went on to say they shouldn't be held responsible for not sending money from an account which didn't exist. However, I don't agree with this position. If Mrs B had attempted to make the payment, from the fake account, knowing she had good network connections, and the payment didn't go through (due to it being a fake account), I think this would more likely than not have raised suspicions on why the payment couldn't be made. And with that in mind, would have naturally cast doubt in Mrs B's mind, whether that be regarding the funds available or the legitimacy of the account.

Thirdly, I have considered the second reason the scammer provided in order for Mrs B to transfer funds. The scammer told Mrs B that his daughter had been in an accident, and as a result suffered a brain injury. The funds were required to pay her medical fees as she had no medical insurance in place. Mrs B was told to send the funds direct to his daughter's account – which she did. Again, Mrs B had access to the scammers 'account' so could have attempted to make the payment directly from his account to his daughter's, the scammer had said his daughter has suffered a serious brain injury, as such it seems reasonable to have questioned how his daughter would be able to pay the hospital considering the injuries she had sustained. Especially, considering the serious nature of the injuries that the scammer

required urgent medical attention. Again, I think this ought reasonably to have raised some concerns regarding the scammers story and validity.

I accept that the scammer had spoken to Mrs B consistently over the four-week period prior to her making the first transfer. And I appreciate that this would have built a level of familiarity and to some extent trust. That said, Mrs B hadn't frequently spoken to him over the phone, hadn't met him in person and after researching him hadn't found information about him (to confirm he existed). So, this would be considered a relatively new relationship. And while I accept that Mrs B's representative has said that "*she believed she was the closest person to him*", given the fact she was an unlinked individual to the ship, most people would question why they were the most suitable person to organise payment to fix parts of a ship, over the insurer or other crew members. I think it's reasonable to assume that in such a new relationship, why there wasn't other people more suitable closer to him or other members of the crew who could assist.

Mrs B's representative has said Mrs B was vulnerable and referred to the FCA's guidance for firms treating vulnerable consumers fairly. I have considered that Mrs B had lost her husband in 1997, her age and the fact she was lonely. Firstly, I would like to say I am sorry for Mrs B's loss, I appreciate this would have been tough for her and I don't dispute that Mrs B was in fact lonely.

That said, I have considered the combination of factors raised by the representative and having done so, I'm not persuaded this would have impacted Mrs B's capacity to think clearly about the scam, combined with the lack of evidence to demonstrate the business were aware of any other vulnerability Mrs B had. I say this because, while Mrs B had lost her husband, some 20 years had passed when she made the transfer. And while I agree that time passed doesn't necessarily ease a bereavement, or the fact she was lonely, Mrs B has made this service aware that she was continuing to go about her day to day duties with the capacity to think clearly.

Finally, I have considered the fact there were four separate payments, spread over a period of time, which would have allowed Mrs B the time to reflect. And taking into consideration the accumulation of warning signs I conclude that a reasonable person would have started to doubt the plausibility of the scammer's story. So, I think she could've done more to protect herself.

So, it follows that, in the circumstances of this case, I'm satisfied that Barclays' offer to accept 50% liability is fair and reasonable.

Putting things right

Barclays Bank UK PLC has already accepted 50% liability and paid Mrs B £11,100 and statutory interest of 8% to settle the complaint: I find this is fair and reasonable for the reasons I have explained above.

My final decision

My final decision is that I uphold this complaint but don't require Barclays Bank UK PLC to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 14 July 2023.

Jade Rowe

Ombudsman