

The complaint

Mr N complains that Barclays Bank UK PLC ('Barclays') won't reimburse the money he lost when he was the victim of a scam.

What happened

What Mr N says

It's difficult to follow exactly what happened in this case. In this section I'll set out some of the detail Mr N provided on the complaint form he sent to this service.

Mr N explained that he used to be friends with two people I'll refer to as F and A. F has been a friend from when Mr N was a baby and Mr N had played PS4 with A in early 2022. In a text exchange F said he had a PS5, and Mr N asked how he got it as they were hard to get hold of. F explained that a friend of A's could get hold of them and could sell one to him for £350. A friend of Mr N's also wanted one. Mr N paid £445 to A on 14 November 2022 and £150 to F on 23 November and was due to pay the rest when he got the two PS5s. It seems that the payment to F included delivery.

A was going abroad but asked someone else to handle things for him, but this person wasn't responding to Mr N. F then told Mr N that the person who was handling matters for A had sold the PS5s to other people for higher amounts. F said he'd refund Mr N or get hold of more PS5s, but this didn't happen.

Mr N says he reported what had happened to Barclays on 17 January 2023 thinking that no action would be taken in respect of the accounts he'd paid until it had completed an investigation. He says that when he reported what had happened to Barclays, he was trying to get his money back from A, but he may have phrased it incorrectly and made it sound like F was involved. Mr N also says that he asked Barclays if he could retract the claim if A came back from abroad and sorted things out.

F advised Mr N that A wanted his account unblocked before he would provide the PS5s or a refund, so Mr N asked Barclays to stop the fraud claim the day after he first reported it. But Mr N hasn't received the PS5s, or a refund, and A won't respond to messages from F.

Mr N said F may be involved in the scam because he says he has a new phone and can't provide evidence of the messages he exchanged with A. Mr N says F returned £150 to him so his loss is £445.

What Barclays say

Barclays told Mr N he has a dispute with the seller. When Barclays sent its file to this service though it accepted Mr N was the victim of a scam but said it wasn't liable. This was because it provided a warning in respect of the payment reason given by Mr N – paying friends and family, and Mr N didn't complete any due diligence before making the purchase. Barclays also noted the payments weren't so unusual or out of character that Barclays should have intervened to ask questions about them, and Mr N received two credits from an individual before making the transfers he is asking Barclays to refund. Finally, Mr N sought to cancel his fraud claim the day after it was raised.

Our investigation so far

The investigator who considered this complaint didn't think it was covered by the CRM Code but noted that even if it was, she wouldn't recommend that Mr N receive a refund. This was because Mr N's version of events was inconsistent, and he knew that the seller obtained a refund of the cost of the PS5 from the retailer he bought it from after saying that it wasn't delivered.

Mr N didn't agree with the investigator's findings. In summary, he said:

- He thought he was getting the PS5 from A but in fact it was from a friend of A's. Mr N says he was lied to about this.
- He has found out more information over time and this is why his story might not be consistent.
- He never said to the investigator that A illegally obtained the PS5s, it was just a possibility.

The complaint has been passed to me to decide.

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.

In deciding what's fair and reasonable, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

The Lending Standards Board Contingent Reimbursement Model Code ('CRM Code') applies to certain faster payments where:

- i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or
- ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.

The first point doesn't apply here as Mr N wasn't deceived into transferring funds to somebody different. I have some concerns about whether Mr N believed he was transferring funds for legitimate purposes, but which turned out to be fraudulent. Mr N was buying PS5s from someone who may not have come to have them legitimately.

I'm also not satisfied all the funds Mr N lost were his. He has explained he was buying two PS5s; one for him and one for a friend. There's clear evidence on his statement that a third party credited his account at the time he made the payments.

These would be issues I'd need to resolve if I reached the conclusion that Mr N should be reimbursed under the CRM Code, but on balance I don't think he should be.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that:

- The customer made payments without having 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

There are further exceptions outlined in the CRM Code that do not apply to this case.

Taking into account all of the circumstances of this case, I think the concerns Barclays has raised about the legitimacy of the transactions Mr N made are enough to support its position that it can rely on an exception to reimbursement set out in the CRM Code. I don't think he had a reasonable basis for believing that the person he transacted with was legitimate. I say this because:

- Mr N found out about the possibility of buying PS5s through a friend of a friend on social media. This isn't a normal way to buy goods of this nature and Mr N had no reason to trust that someone he had never met (A) would provide the goods he was expecting.
- There was no evidence that the seller actually had PS5s to sell. Whilst Mr N says he saw a video of a PS5 this doesn't prove A owned it.
- It is questionable whether the person selling the PS5s obtained them legitimately. Mr N didn't enquire about their provenance or seek to understand whether the seller had obtained them legally. He has given differing accounts of how A had PS5s to sell including that he was a PS5 reseller who wanted to sell them off before he went abroad, and that A had ordered them from a merchant and told the merchant they didn't arrive, so he got a refund but retained them.
- At the time PS5s were retailing for £479.99 but Mr N was buying two for £350 each. I asked Mr N what he thought about the low price, and he said F told him it was because they were being sold to friends. But Mr N told Barclays he wasn't friends with A and hadn't met him so this doesn't seem plausible.
- When Mr N chose the paying friends and family payment reason when he was buying goods, meaning Barclays didn't have the opportunity to provide him with a tailored warning.

Barclays has an obligation under the CRM Code to provide an effective warning if it identifies an APP scam risk in a payment journey. In this case, I don't think Barclays should have provided Mr N with an effective warning when he made the payments or taken any other steps to prevent them from being made. Although I appreciate the loss of the funds has had a significant impact on Mr N, the value of each transfer was relatively small and there was nothing obviously concerning about them.

I would normally expect a bank to try to recover funds lost in a scam. In this case, Mr N cancelled his fraud claim the day after raising it. I've listened to the call he had with a member of staff at Barclays who made it clear to Mr N that if he withdrew the claim the likelihood of getting his money back would be very slim, and he needed to consider whether he could trust the word of the person who had told him he would get what he paid for. Mr N said he wanted to withdraw the claim and was told again that Barclays would struggle to raise a scam claim again, and Mr N needed to understand the effect of that. In the circumstances, I consider Barclays acted reasonably.

I appreciate that Mr N was young and possibly naïve at the time. I also understand the loss of his funds has had a significant impact on him. But I can't reasonably ask Barclays to refund him.

My final decision

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 4 March 2024.

Jay Hadfield
Ombudsman