

The complaint

Miss W is unhappy that Barclays Bank UK PLC decided not to refund her after she says she was the victim of a scam.

What happened

The details and background of the complaint are set out in detail in the investigators findings and these aren't in dispute. I'll summarise them briefly below and why Miss W believes she's been the victim of a scam.

- Miss W employed the services of a company – I'll name M. She made payments to M over the course seven months for a total of over £40,000 to provide and install windows, doors and other items.
- M had a social media presence, a website and reviews. It had also won awards and sponsored charitable causes. M had offices which Miss W visited and viewed sample products and she visited sites where M had completed work.
- When delays occurred M negotiated discounts for additional products and services which Miss W agreed to. After further delays Miss W contacted the manufacturer of these additional goods to find no order had been placed. Following this M agreed to refund Miss W for the additional goods and services it had offered.
- Miss W provided a detailed breakdown for the remainder of the goods and services that were contractually agreed. A number of the goods and services were received but not to a satisfactory standard and other goods were not received. When Miss W attempted to resolve the issues with M it was unreceptive.
- Miss W reported the matter to trading standards and the police. M's director was arrested on suspicion of fraud which is still being investigated by the police.
- Miss W maintained that although she received some goods and services, a large number of items were not provided. And this was M's intention all along - to provide incorrect or poorly fitted items to make consumers believe the contracts would be fulfilled to demand further payment.
- Miss W cites one example where she ordered triple glazing and double glazing was installed and when she contacted the manufacturer triple glazing had not been ordered by M – and this is evidence that M purposely defrauded her.
- Other consumers have received full refunds from their banks including customers of Barclays and Miss W doesn't believe she should be treated differently. And the ombudsman service has concluded in other cases that this was a scam. The number of consumers bringing claims shows that M was acting dishonestly.

Miss W raised a scam claim with Barclays, it decided not to refund her and said the matter wasn't covered by the Contingent Reimbursement Model (CRM) code as it was a civil dispute rather than an Authorised Push Payment (APP) scam. It said M was a legitimate company and failing to honour its agreement with Miss W was not the same as it being a scam.

One of our investigators looked into things and she said:

- Miss W received a vast number of the items ordered, whilst many of these were incorrect, fitted incorrectly or had parts missing, and some weren't delivered at all she was unable to conclude this was because M had intended to defraud Miss W.
- A failure to provide goods and services is not itself enough to show intent to defraud its customer.
- Although she carefully considered Miss W's additional commentary about the actions of M's director and the on-going police investigation, the receipt of the goods was a key factor here.
- She didn't think she could fairly say that Barclays ought to treat Miss W's claim as a scam.

Miss W didn't accept the investigators findings and asked for an ombudsman to review the complaint.

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; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Miss W has provided references for complaints resolved by our service. I can't divulge the details of those cases but can say that I am aware of other cases involving M. And other banks may have decided to refund consumers (for a variety of reasons). But here Barclays has decided not to. I've reviewed this complaint alongside the information we have about M, and I've looked at all the available evidence when deciding the outcome and the relevant considerations of the CRM code. Having carefully considered the evidence available at this point in time, I have set out my final decision below.

It isn't in dispute that Miss W authorised the payments that left her account. The starting position – in line with the Payment Services Regulations 2017 – is that she's liable for the transactions. But she says that she has been the victim of an APP scam and that M's intent from the start was to defraud her.

Barclays is a signatory to the voluntary CRM Code. This is a scheme through which victims of APP fraud can sometimes receive reimbursement from the banks involved. But the CRM code does not apply to *"private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier."*

It's important to note that I am not deciding a dispute between Miss W and M – I don't have the power to look into a complaint about M. My role is limited to deciding the dispute between Miss W and Barclays. So, I need to decide whether Barclays acted fairly, when concluding that this amounted to a civil dispute and not an APP scam. I'm satisfied that it did, and I'll explain why below.

In order to be persuaded on balance that Miss W has been the victim of an APP scam I need to look to the definitions set out in the CRM code. At

(a) APP Scam Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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.

And the FCA handbook glossary which says:

A transferred funds to B for what they believed were legitimate purposes but which were in fact fraudulent

Looking to these definitions I firstly need to consider the purpose of the payment and whether Miss W thought this purpose was legitimate. Which I'm satisfied she did. I have seen the contractual agreements for the payments Miss W made to M and I have no reason to conclude she didn't think this was a legitimate agreement between the two of them.

Next, I need to consider the purpose the recipient had in mind, at the time of the payments and whether this was broadly in line with what Miss W understood to be the purpose of the payments. Miss W's contract is for the supply and installation of windows, doors and other items. Miss W received the goods and services for at least some of these. From Miss W's evidence 25 items were contractually agreed, and of those 19 were provided and installed – albeit Miss W's says to unsatisfactory standard and with some parts missing. A further six items were not supplied at all, equating to approximately 75% of the contract being fulfilled (with issues over quality). This does not support a finding that M did not intend to provide goods and services it agreed to.

In addition to the above, there is evidence that M had been operating for some time and many customers received what they paid for. There will of course be limited information available to me regarding M's intended purpose of Miss W's funds I don't have access to the contracts M entered into or have the detail of how M was operating. As I said, I'm not investigating M and there is only certain information both I and the investigator have had access to in the course of this investigation. However, what I have seen is:

- I have reviewed the receiving account statements. Whilst I can't go into detail, for data protection purposes, I can see that multiple payments across an extended period of time, relate to the activity M claimed to be making. There's only so much weight I can place on this as I can't question M or interrogate M's actions, payments or contracts etc. But it doesn't persuade me that M took Miss W's payment with the intention to not provide the services promised, certainly when I consider this alongside the other evidence.
- M did provide goods and services to a number of customers over a significant period of time. Whilst some, or even many customers, may not have received all of those goods and services or they had issues with the quality of them, this doesn't in and of itself lead to a finding that this was an APP scam.
- The company's history, profile and presence does not support that it set out to scam customers from the start. I accept that a good business can go bad and that can be for reasons of fraud. But the evidence I have seen so far, does not persuade me that's the most likely explanation here.

- A business can stop trading or not provide goods and services for any number of reasons. One of which I accept could be that it was operating as a scam, but there are a number of other genuine reasons as well – for example falling into financial difficulties, cash flow or production problems, staffing issues, costs increases etc. In order to make a finding that Barclays is responsible for Miss W's losses here I'd have to be persuaded, that the most likely explanation was that M's purpose was to not provide the goods or services. The long-standing history of the company and the other evidence I have seen does not persuade me that is the most likely explanation.

Whilst Miss W is understandably unhappy with the items she receives and appears to have genuine dispute with M over the quality of those goods and their installation. That is primarily a civil and contractual dispute between two parties – for the quality of goods. Which is specifically excluded under the CRM.

Whilst I do not doubt that Miss W has not got what she paid for and she has suffered a loss that in and of itself is not enough to say she's been the victim of an APP scam. And she may have a contractual claim in law against M. But here I have to decide Miss W's claim with Barclays under the CRM code.

And that's not to say that with further evidence or when a Police investigation has concluded - which might provide new material evidence about M's actions and intentions, that the outcome here might be different. But I have to decide the case on the facts and information before me. And currently I'm not able to conclude there is convincing evidence that this Miss W has been the victim of an APP scam.

Miss W has mentioned the on-going police investigation would likely reveal M was committing a crime or carrying out fraud. In some instances that may be the case but there's no guarantee the police investigation would lead to a clear finding that Miss W was the victim of an APP scam. And here it's my understanding that no charges, at present, have been brought against M and its directors.

Whilst the conclusion of a police investigation would likely be helpful, I cannot keep the complaint open for an indefinite period of time, whilst M is investigated by the police. It's my role to review if Barclays considered Miss W's scam claim, correctly under the CRM code, at the point it was raised. And I'm satisfied that it did.

If new material information comes to light, at a later date, then Miss W can bring a new complaint to Barclays. But I'm satisfied, based on the available evidence to date, that I have seen and been presented with by all parties, that this is a civil dispute. And Barclay's decision under the CRM code was therefore correct.

As Barclays didn't need to consider this as an APP scam then it didn't need to go on to contact the recipient account provider. It didn't need to intervene with the payment either, and even if it had I don't think it would have made a difference given that M appeared to be a legitimate company and had many other customers, over a number of years with goods and services. So neither Miss W or Barclays would have reason to think this was likely to be a scam at the time payments were made.

I've seen no other reason to make an award for redress, and I'm satisfied that Barclays correctly considered Miss W's claim.

Miss W has said many others have received refunds from Barclays and other banks and this is an indication that the banks have deemed this as a scam. But banks make decisions to refund consumers for a variety of reasons, and this doesn't set a precedent in terms of our

consideration of this complaint. Barclays decision to refund in another instance has no bearing on the outcome of this complaint.

Each case is reviewed on its own merits and whilst other complaints may have been resolved informally, or at different stages, I've considered the information available to me, at this point in time, when reaching this conclusion.

My final decision

I don't uphold Miss W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 22 April 2024.

Sophia Smith
Ombudsman