

## **The complaint**

Mrs T and X complain that Barclays Bank UK PLC did not reimburse them the money they transferred to a fraudster after they paid in fraudulent foreign cheque.

X adds Barclays did not give him enough information when he deposited the cheque into his account.

To put things right Mrs T and X want Barclays to refund them the money they lost to the scammer.

## **What happened**

The detailed background of this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mrs T and X have a current account and savings account with Barclays.

In June 2022, X was selling a tandem bike online for £3,000. In October 2022, a buyer who I will refer to as Mr L, who was based in France and made contact to purchase this.

Mr L initially sent X a cheque for 3,000€ to buy the tandem.

X told Mr L that this was the wrong currency and Mr L then sent X a second cheque for 7,000€, equivalent of £5,954.36, which was twice the amount of the cost of the tandem. And asked X to send back the overpayment using money transfer services.

X instead decided to pay in the cheque he'd received from Mr L into his account on 14 October 2022.

When depositing a foreign cheques Barclays has explained that its customers are presented with the options' they have in order to collect the funds.

- Collection: The Bank waits until the cheque(s) has been cleared and the funds obtained from the drawee Bank, before crediting customer with the proceeds.
- Negotiation: The Bank credits the customer before the cheque(s) is cleared by the drawee Bank. In effect, the Bank is lending the customer the money until the cheque(s) is cleared.

It is up to the customer to fill in the form and confirm how they want to proceed. The form provided to the customer explains this and asks if the customer is happy to accept the terms and conditions of the service.

X has said he went to a branch, close to closing time and was handed a form to sign by bank staff, but he didn't have much time to check it before submitting the cheque. X said there was no information about the difference between 'collection' and 'notification' and he had never heard that there was a difference. X says he asked the staff for advice, but he didn't

understand their reply. And staff suggested the 'negotiation' option was best. So he ticked this on the form.

Mr L then contacted X to arrange transport of the tandem. After discussing and taking off courier costs Mr L asked X to send the excess funds to two different accounts based in France. X said he didn't want to do this as it was too much effort. Mr L then asked X to send the funds to a courier based in Ireland.

Mr L then emailed X and told him that he'd been involved in an accident and needed the extra money he'd paid for the tandem sent to his surgeon in Turkey. Believing that the cheque had cleared, and after contacting the police, on 17 October 2022, X made an international payment of just over £2,850 to Mr L.

The cheque then bounced because it was a fraudulent cheque, and Barclays were unable to collect the funds, so they were taken back from X's account on 25 October 2022.

X contacted Barclays and told them that he'd fallen victim to a scam that had been targeting the tandem community. X asked Barclays to try and get back the money he'd sent Mr L.

Barclays raised an international recall on 26 October 2022 but were unable to retrieve the funds. No response was received, and Barclays let X know that he would need to pursue things himself as a civil matter.

X complained. He said Barclays were at fault for not explaining the difference between collection and negotiation. So, he expects them to honour the cheque. He said if a cheque can be revoked after ten days it means there is no security in cheque payments whatsoever.

In response, Barclays said it hadn't done anything wrong and internal processes have been followed correctly. The bank said X chose the option for the cheque to be negotiated and the bank obliged by crediting the account and then trying to collect this.

Barclays said it was unfortunate that X had been the victim of a scam, but it had acted in line with its processes and the terms and conditions. Barclays said that the subsequent actions by X to transfer the remaining amount he thought was paid to him over the sale of the bike was negligent, as this should have raised flags with the X as to how the 'buyer' was behaving and what he was asking for.

Unhappy with this response, X brought his complaint to our service where one of our investigators looked into what had happened.

After looking at all the evidence, the investigator didn't uphold the complaint. In summary she said:

- X completed the foreign cheque form Barclays gave him which showed he'd ticked 'negotiation' and that it was reasonable to expect X to read the terms and conditions about the differences between 'collection' and 'negotiation'
- The payment X made to the fraudster wasn't so out of character that Barclays would have known X was at risk of financial harm or had any reasons to stop the payment and ask him more questions about the transaction
- Barclays didn't do anything wrong following X's payment instruction
- Barclays did enough to try and recall the money X sent to the scammer

X disagreed. In summary he said:

- The crux of the matter pertains to Barclays revoking the cheque he deposited in branch.
- When he went to the branch to deposit the cheque it was five minutes before closing time so he was put under pressure to complete the paperwork
- He was ushered to an automatic screen and handed a double sided A4 sheet to sign. He asked staff to explain the difference between 'collection' and 'notification' – most of the staff didn't know but a passing higher grade member of staff said 'notification' was best. So he selected this option.
- Ten days later, after the cheque was revoked, he went to investigate this at the bank. He asked the employee how long he needed to wait after a cheque is 'notified' before being confident that the cash is secure. X says the staff member replied that the period is open ended. And that she would never trust a cheque. X says such a disclaimer from a employee illustrates the insecurity of the whole process of using cheques.
- Barclays have announced that from the end of this month they will no longer honour foreign cheques. So they are admitting that the whole business of Notification and Collection for foreign cheques is beyond their control.
- The business of Notification and Collection of cheques is confusing not only to customers but to Barclays own staff.
- He was wrongly advised on how to complete the form to cash the cheque and the cheque was revoked after ten days which is an inordinate amount of time to have to wait before being confident that the deposit is secure. Therefore I suggest that Barclays should honour the cheque.
- Barclays failed to recover the money he sent to the fraudster.

As no agreement could be reached the matter has come 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.

I want to make it clear that I do have some sympathy for the situation X finds himself in as it does appear he's been the victim of a scam. But what I need to decide is whether Barclays has done anything wrong, and if it has, whether it needs to do anything to put that right.

#### *Cheque deposit*

Firstly, I need to explain that Barclays was carrying out a banking service for X, facilitating the banking of a foreign cheque.

X paid in the foreign cheque on 11 October 2022. X says he queried the difference between 'collection' and 'notification' with branch staff. He's said that the staff didn't know the difference, and in the end told him that 'notification' was the best option. X says he remembers being given a form to complete and sign but didn't have much time to check it before handing it over to the branch staff.

Barclays has explained that if a customer comes into branch to deposit a foreign cheque, they ask the customer if they were familiar with the process. If not, they would explain how it differs from paying in a domestic cheque (including collection/negotiation) and support them with filling out the form.

Barclays said it would also provide them with the general information pages that go with the form. And make sure that the cheque itself has all the relevant details and is payable to the customer depositing it. The customer would sign the form, which staff would then stamp and give the customer their copy. Barclays has provided copies of the form X completed when he deposited the cheque and the information pages.

Having looked at the deposit form I can see that X has placed an 'X' in the 'notification' box and signed the form. I can also see that the information pages provide the following explanation about 'collection' and 'negotiation':

'Collection – a service provided where we obtain payment for the cheque from the drawer's bank, before we credit your account.

Negotiation – a service provided where, subject to status we provide the value of a cheque, before we have received payment for the cheque from the drawer's bank.... We rely on the drawer's bank to clear the cheque and therefore we are providing funds to you before we receive them. We retain the right to debit your account in the event the cheque is dishonoured or returned unpaid. **Accordingly, funds should not be considered final, as the cheque may subsequently be returned unpaid.'**

I wouldn't necessarily expect a customer to understand the difference between funds being available and the cheque being cleared. And I can't comment on the conversation X had with the staff because I wasn't there. That said, based on the available evidence, I'm satisfied that X was given a copy of the terms and conditions for depositing foreign cheques and told his cheque would be sent for negotiation. This means the bank converts the value of the cheque into sterling and will either credit the account straight away or within a few days.

In the meantime, the cheque is sent to the paying bank for clearance. So, if the cheque is returned as unpaid the bank can re-debit the money from the customer's account and cheques can be returned at any time which is what happened here. I would expect a customer to be told of these risks when a cheque is sent for negotiation. And that should this happen, the amount may be debited from the customer's account. I'm satisfied the information on the information on the form clearly sets out the risks of cheques being returned unpaid. It also sets out what this might mean for a customer – the amount being re-debited from their account. It follows that I'm satisfied Barclays provided clear information to X about those risks and despite this he went ahead with the transfer to Mr L, for the additional amount he said he had sent to him.

Unfortunately, when Barclays sort settlement from the foreign bank, the cheque turned out to be fraudulent, and the tandem purchase turned out to be a scam. I don't think Barclays has done anything wrong when it allowed X to deposit the foreign cheque into his account. And I'm satisfied based on the evidence, that X would have still gone ahead and made the payment to the fraudster. And I'll explain why below.

### *Payment to fraudster*

It isn't in dispute here that X has been the victim of a scam and has lost money as a result. However, even when it is clear that a scam has taken place, and an individual has been tricked out of their money, it doesn't necessarily follow that a business will need to refund the money that was lost.

The starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. And I have taken that into account when looking into what is fair and reasonable in this case. But a bank also has to be on the lookout for, and help to prevent, payments that could involve fraud or be the result of a scam.

X authorised the payment in question here – so even though he was tricked into doing so and didn't intend for his money to end up in the hands of a scammer – he is presumed liable in the first instance.

But this isn't the end of the story. As a matter of good industry practice, Barclays should also have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam.

Taking into account the above, I consider Barclays should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- 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). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made 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.

In this case I need to decide whether Barclays acted fairly and reasonably in its dealings with X when he authorised the payment from his account, or whether it should have done more before processing the payment.

I'm not persuaded Barclays should have done anything more when X made the international transfer to Mr L. I say this because I don't consider the transaction was so unusual and out of character that Barclays should have had concerns and asked additional questions about it. The amount wasn't significantly high compared with normal account activity and left the account with a reasonable balance still. So, I don't consider the transaction would have stood out as being suspicious.

Whilst I'm sorry to hear about what's happened, I'm not persuaded X was unable to protect himself from this scam before transferring the funds. Based on the evidence I've seen I think X should have been aware his interactions with Mr L were more likely than not a scam. I say this because I think there were a number of red flags such as being paid with a foreign cheque, for an amount which was double the value of the tandem being sold. X was also provided with different requests about how to send the money and different stories from the scammer – including that he'd been involved in an accident and needed the money sent to a different country other than France. And that he had a number of items he needed to ship – hence the over payment.

X has provided copies of the email exchanges he had with the fraudster – from reading them it's clear to me that X also had his suspicions about the transaction – so much so that he reported the situation to the police for reassurance. Despite this X continued to make the payment towards the scam. This suggests to me that X was determined to make the payment, so I can't conclude Barclays could have done anything to stop him. I'm sorry to

disappoint X, as I know he has lost just under £3,000, but I'm not satisfied I can fairly ask Barclays to refund him based on the evidence available.

I've also considered whether Barclays could have done more to try to recover the money once it was told of the scam. This service expects a business to take reasonable steps to try to recover funds from the bank it was sent to. Barclays has shown that it contacted the bank that received X's funds on 27 October 2022, of the scam. But they didn't get a response. In the circumstances, I consider Barclays acted reasonably.

### **My final decision**

For the reasons I've explained, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and X to accept or reject my decision before 27 December 2024.

Sharon Kerrison  
**Ombudsman**