

## **The complaint**

Mrs H is unhappy that Barclays Bank UK PLC ('Barclays') has decided not to refund the money she lost, to what she believed was an Authorised Push Payment ("APP") scam.

## **What happened**

The background to this complaint is well known to both parties. So, I won't repeat everything again in detail here, but in summary I understand it to be as follows.

Mrs H was looking to have some renovation work done. She enlisted the services of a builder whom I'll call "B". A price was agreed, with Mrs H paying a deposit of £1,500 on 11 December 2023.

There was a disagreement over the start date, with Mrs H, due to it being winter, needing the works to be started sooner than what B had in mind. Mrs H subsequently got another quote from another company that was lower than B's quote and that firm could start sooner than B. Mrs H was also unsatisfied as she hadn't received any formal written agreement from B about the works.

Mrs H asked B for a refund – and Mrs H and B communicated through text messages about the situation. In short, B advised he had purchased some of the materials - attempting to drop them off at Mrs H's property, the materials couldn't be returned as B had already 'cut them', he could start the job the following Monday as an emergency and would do the job for cheaper to help Mrs H out.

Mrs H used another firm – paying them on 14 December 2023.

Mrs H, unhappy that she wasn't refunded by B, raised the matter with Barclays. Mrs H felt she had been scammed by B. Barclays looked into the matter. And as Barclays was also the banking provider for B, it temporarily blocked B's bank account – requiring B to liaise with it over the matter. B's account was subsequently unblocked, with Barclays deeming the matter to be a civil dispute between the parties. Barclays informed Mrs H of this in a letter dated 22 December 2023.

B then wrote to Mrs H and explained that due to the inconvenience caused and lost hours and work, this would be deducted from any refund owed to Mrs H. B advised the amount to be deducted from the deposit would be £983. But sadly, as the relationship had broken down, Mrs H never received a refund from B.

Mrs H, unhappy with Barclay's response, raised a formal complaint. Barclays issued a final response to Mrs H on 2 January 2024 advising that its position remained the same – that it considered the matter was a civil dispute between her and B. So, it didn't consider it was liable to reimburse her for her loss.

Unhappy with Barclay's response, Mrs H brought her complaint to this service. One of our Investigators looked into it but didn't think the complaint should be upheld. In summary, it was our Investigator's view that, based on what he'd seen, he didn't think B had set out with intent to scam Mrs H – and it was a civil dispute between the two parties. So, he didn't think he could fairly ask Barclays to provide a refund to Mrs H.

Mrs H didn't agree with our Investigator's view and requested an ombudsman's review. So, as an agreement hasn't been reached, it has been passed to me for a final decision.

### **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.

Before I go on to explain my findings, I am aware that after bringing the complaint to our service, Mrs H raised additional concerns about the service she received when liaising with Barclays about the matter. Barclays reviewed Mrs H's further concerns about the service and issued a final response on that matter. That complaint aspect is now being dealt with under a separate complaint reference by our service. So, for clarity, this complaint solely focuses on the payment Mrs H made to B, that she considers was as a result of an APP scam and that she thinks Barclays should reimburse her for.

I'm aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

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.

The starting position in law is that Mrs H will generally be considered liable for authorised payments. It's accepted that she authorised the payment in dispute and so she is liable for it in the first instance. However, Barclays is a signatory to the Lending Standards Board's 'Contingent Reimbursement Model' (the CRM Code). Under the CRM Code, firms are expected to reimburse customers who fall victim to APP scams, subject to a number of exceptions.

However, the CRM Code is only relevant if I'm persuaded Mrs H did fall victim to an APP scam. The CRM Code specifically excludes certain types of disputes. It says:

*"DS2(2) This code does not apply to:*

*(b) 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;" \**

\*Subsections (a) and (c) have been omitted as they are not relevant to this complaint.

So, taking into consideration the above, I must first decide whether Mrs H has likely been the victim of an APP scam or not. And whether Barclays acted fairly, when concluding what had happened in the circumstances of this case amounted to a civil dispute and not an APP scam.

Having thought very carefully about Barclays' actions, I think it did act fairly in reaching this conclusion. I do appreciate how disappointing this will be for Mrs H and I don't underestimate her strength of feeling, but I don't think I can fairly say Barclays should reimburse her. I'll explain why.

In order to be persuaded on balance that Mrs H has been the victim of an APP scam I need to look to the definitions set out in the CRM code, which says;

*"DS1(2)*

*(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."*

Looking at the above definition, I firstly need to consider the purpose of the payment and whether Mrs H thought this purpose was legitimate. Which I'm satisfied she did. Mrs H has explained that she believed the payment she was making was for building work to be carried out on her porch. Then I need to consider the purpose the recipient (here that is B) had in mind, at the time of the payment, and whether this was broadly in line with what Mrs H understood to be the purpose of the payment.

In the circumstances of this case, having reviewed all the testimony, information and evidence provided by both parties, I can't fairly and reasonably conclude that it was more likely than not that B set out with intent to defraud Mrs H. I'm satisfied, on the balance of probabilities, that the intentions and purpose of the payment (the deposit) match here. Mrs H intended for work to be done, and B seemingly intended on fulfilling that purpose by carrying out the works – until things sadly went awry.

Obviously, I cannot know for sure what was in the mind of B at the time the deposit payment was received. So as a result, I must infer what B's intentions were, based on the available evidence that I have had access to.

First, I note Barclays has provided our service with some information / comments about B as it was the receiving bank account provider. And it has done so in confidence – to allow our service to discharge our investigatory functions. Barclays has provided this to further assist with the determination of this complaint. Due to data protection laws, our service can't share any information about the beneficiary or the receiving bank account. But from reviewing the information, I note that Barclays has advised that it hasn't had any other formal complaints about B, and that from reviewing B's statements, Barclays was satisfied that B purchased building materials also.

I have also reviewed the communication between Mrs H and B. From reviewing the text messages, I don't find them to show B was seeking to defraud Mrs H. I do accept that Mrs H wanted a formal agreement in place straight away – which should have been provided by B. And it seems B didn't operate with the efficiency Mrs H wanted, nor with the formality she expected. But I'm mindful that B advised materials had been purchased, it would write up the agreement for Mrs H, was prepared to bring the job forward as an emergency for Mrs H, would match the cost of the subsequent quote Mrs H had received and was also willing to extend the timeframe of when Mrs H had to pay by. I am also mindful that within the text messages, B advises Mrs H to be careful of the new builders she had subsequently hired – and to '*...check the work before you pay*'. Sadly, the new company Mrs H did hire, did scam her. However, I can see this was refunded by Barclays.

Overall, when I take into account B's communication with Mrs H, it isn't what you would expect from someone who's intent was to defraud someone from the outset. It just seems that Mrs H wanted things done far more urgently and then wanted a refund when this wasn't happening – as she had to pay the new builders she had hired. But B had seemingly committed to the project at this point – and as a result they sadly entered into a dispute between themselves about a refund of the deposit.

I also note that Mrs H provided the contact for a Trading Standards officer that she had been liaising with. And our Investigator contacted them for any additional information they might be able to provide. In short, Trading Standards advised our service that they haven't been informed of any other complaints about B from other customers. It explained B didn't provide cancellation rights as it should have done as B didn't provide Mrs H with a written agreement. And B's mailbox had also lapsed meaning B wasn't formally contactable should its customers wish to get in touch with it. But Trading Standards advised the mailbox had been reactivated – so it wrote to B with an 'advice' letter reminding it of the obligations expected of B in providing cancellation rights. It also advised it wasn't seeking to pursue B through any formal action such as through the courts and also considered that the matter was likely a civil dispute between both parties due to the disagreement over the refund.

While B seemingly wasn't operating at the standards required – it doesn't automatically mean that there was an intent by B to defraud Mrs H and take her money without having any intention of carrying out the work. It does seem that B, by not offering Mrs H written cancellation rights, may mean that Mrs H can take civil action herself and pursue B, if she feels it has breached its contractual obligations.

All things considered; I don't find B's actions were indicative of someone intent on defrauding Mrs H. While B may not have operated in such a way that should be expected of it – by providing Mrs H a formal agreement with cancellation rights and in a timely manner – I can't fairly say that its intentions were to dishonestly deceive or defraud Mrs H from the outset and that B never intended on carrying out the work.

Sadly, as the relationship broke down as a result – it turned into a dispute about the refund. Mrs H believed she should be refunded the deposit in full, citing her cancellation rights, but with B wanting to take into account loss of work, hours, the materials that had already been purchased and the inconvenience of having to liaise with Barclays over the matter of the blocked account. But just because the relationship broke down subsequently, it doesn't mean that B never intended on carrying out the work from the outset or fraudulently deceived Mrs H into paying for works.

I accept Mrs H has lost a significant amount of money as a result of what happened, and that she considers she has been let down by B. And the way B operated, led to her seeking out another building firm. But that in and of itself is not enough to say she's been the victim of an APP scam whereby Barclays would be liable to reimburse her. Overall, I'm satisfied that this scenario doesn't meet the CRM Code's definition of an APP scam.

As Barclays didn't need to consider this as an APP scam, then it didn't need to go on to seek the recovery of any funds from B. I'm also satisfied that there wasn't anything else Barclays could have done to prevent the loss here either, given the value and nature of the payment.

I'm sympathetic to the position Mrs H finds herself in and I am sorry to have to deliver this news to her. I can see she considers she has been let down by B and is now out of pocket as a result. But, for the reasons I have explained, I cannot fairly say that Barclays should fairly and reasonably be held responsible for refunding her the money she paid. I consider Barclays were fair in considering the matter a civil dispute which isn't covered by the CRM Code and is therefore something that needs to be resolved between the two parties through alternative methods.

### **My final decision**

For the reasons explained, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 6 March 2025.

Matthew Horner  
**Ombudsman**