

## **The complaint**

Mr and Mrs R complain that Barclays Bank UK PLC ('Barclays') won't refund the money they paid to a rogue builder.

## **What happened**

In 2022, Mr and Mrs R were looking to have a loft conversion completed on their home. They searched online and found a company I'll refer to as L. Mr and Mrs R say they also had referrals of building firms from friends, but they were looking for something a little different with their loft conversion and chose to go with L.

Mr and Mrs R did checks on L before agreeing to use their services. They searched online and say L had a good presence on social media and had five star ratings on review websites. L gave Mr and Mrs R the contact information of a previous client as a reference. Mr and Mrs R contacted the client and say they shared photos of the work L had completed on their property and gave a positive review. Mr and Mrs R were also shown other work that L said they'd completed on multiple properties with references.

Mr and Mrs R say they now believe that the client who recommended L may've been paid to provide the recommendation, that a lot of the positive reviews online were fake, and that L used photos of work completed by other companies which they claimed as their own.

While work for the loft was being completed Mr and Mrs R talked to L about an extension they were interested in having completed on their property. They signed an agreement for the extension work with L.

Mr and Mrs R say they paid L over £95,000 from their Barclays account, as well as over £90,000 in cash for the work to be completed. However, shortly after they paid the money for the extension work, work at their property slowed down.

Mr and Mrs R say L completed the loft conversion, but to a poor standard, and didn't complete the extension. Mr and Mrs R say they were left with only one habitable room on the first floor and two habitable rooms on the second floor.

Mr and Mrs R raised a fraud claim with Barclays in February 2024, asking that they refund their payments of £95,008. Barclays declined to refund Mr and Mrs R, saying they have a civil dispute with L.

Mr and Mrs R weren't happy with Barclays' response, so they brought a complaint to our service.

An investigator looked into Mr and Mrs R's complaint but didn't uphold it. The investigator agreed that Mr and Mrs R have a civil dispute with L, and that Barclays aren't liable for their loss.

Mr and Mrs R disagreed with the investigator's opinion and provided a very detailed response, including:

- The contracts they signed with L were assessed by a Quantity Surveyor who says they won't stand up in court and don't follow the standard template of a building contract.
- The loft was completed to a very poor standard and L intentionally omitted insulation, sealants and mesh on cladding. L cut costs to make it appear it was finished.
- The extension was nowhere near completed even though L took most of the money for the job.
- L didn't follow the approved plans. The local authority said a wall was in the wrong place and Mr and Mrs R were told that all building work had to stop.
- Mr and Mrs R wrote to J (their contact at L) setting out their issues and received abusive threatening calls in response, requiring Mr and Mrs R to contact the police.
- There isn't enough evidence L was a legitimate builder.
- L told Mr and Mrs R they had years of experience, but they were only incorporated as a company a few months before they agreed to do the work.
- Positive reviews posted online about L and work it had completed were fake.
- Testimony from two local councillors who visited their property.
- The payments on their account were unusual and out of character and Barclays should've intervened and offered advice during the time they were making payments.
- A video of their home and the state that it was left in by L.

As the case couldn't be resolved informally, it was passed to me to review.

### **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'm sorry to hear about the difficulties that Mr and Mrs R have faced as a result of the building work that L completed on their home. Mr and Mrs R say the situation has caused them ill health as well as financial difficulties and has seriously impacted on the wellbeing of their family.

Mr and Mrs R have provided extensive evidence in relation to the work completed, the concerns they have and the reasons why they think they should be refunded by Barclays. I haven't addressed these points individually, but I would like to reassure Mr and Mrs R that I have considered all the points they've raised in reaching an answer on their complaint.

In broad terms, the starting position in law is that Barclays are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations (PSR's).

#### *Are Mr and Mrs R entitled to a refund under the CRM Code?*

Barclays are a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

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. The CRM Code defines what is considered an APP scam as, "where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent".

In order to decide whether the circumstances under which Mr and Mrs R made their payments meets the definition of an APP scam, I need to consider:

- The purpose of the payments and whether Mr and Mrs R thought this purpose was legitimate.
- The purpose the recipient (L) had in mind at the time of the payments and whether this was broadly in line with what Mr and Mrs R understood the purpose to be.
- And, if I decide there was a significant difference in these purposes, whether I'm satisfied that was as a result of dishonest deception.

Mr and Mrs R were making payments to L for building work to be completed at their property and there isn't anything to suggest Mr and Mrs R didn't think this was a legitimate purpose.

So, I've gone on to consider what purpose L had in mind and whether it was in line with what Mr and Mrs R thought.

In reaching an answer on what purpose L had in mind, I've considered the wider circumstances surrounding L and J. The key information is:

- L was a UK incorporated company since December 2021. There was an action to strike off in 2023, however this was suspended the following year. I haven't seen any evidence that L wasn't operating legitimately when Mr and Mrs R made their payments.
- L gave Mr and Mrs R a reference of a previous client they completed work for. Mr and Mrs R talked to this client who spoke positively about the work L had completed. Mr and Mrs R think the reference might've been paid for to give a positive review, however there is no evidence to support that claim.
- We've received third party information from the receiving bank, which I can't disclose due to data protection laws. However, that information doesn't allow me to safely conclude that the funds weren't used by L for their intended purpose.
- I haven't seen any evidence from other organisations that L took Mr and Mrs R's payments with a different purpose in mind or through dishonest deception. For example, evidence from Trading Standards or the Police following an investigation.
- Poor business practices or misrepresentation of skills or qualifications to do the job, doesn't mean that the payments Mr and Mrs R made meet the definition of an APP scam.

Having considered all of the evidence available, I'm not satisfied that I can fairly conclude that L took Mr and Mrs R's payments with a different purpose in mind.

For the reasons given, I'm not satisfied the circumstances under which Mr and Mrs R made their payments meets the definition of an APP scam under the CRM Code. So, I can't hold Barclays liable for Mr and Mrs R's loss under the Code.

*Is there any other reason I can fairly ask Barclays to refund Mr and Mrs R?*

I've also thought about whether Barclays could've prevented Mr and Mrs R's loss when they made the payments, as there is an obligation on Barclays to be on the lookout for, and to protect its customers from, potentially falling victim to fraud or scams. This includes monitoring accounts and identifying suspicious activity that appears out of character. In situations where potential fraud is identified, I would expect Barclays to intervene and attempt to prevent losses for the customer.

However, even if I think Barclays should've intervened and asked Mr and Mrs R questions about the payments, I'm not satisfied that it would've prevented their loss.

I say this because there wasn't any information that Mr and Mrs R would've given Barclays that might've suggested they were at risk of financial harm. Mr and Mrs R had references from a previous client (who they had talked to), they'd seen positive reviews for L online as well as photographs of work they believed L had completed for other customers. So, I don't think a discussion with Mr and Mrs R about the payments, would've prevented the payments from being made or prevented their loss.

Mr and Mrs R feel that Barclays should've intervened, and provided them with advice, at various points over the 12 months they were making payments to L. Mr and Mrs R refer to going into a local branch to take out cash to give to J.

But, I would only expect Barclays to intervene when it had or should have identified a potential risk of financial harm, which would've been on the first or second payment. At that point, all of the information that Mr and Mrs R would've given them, is unlikely to have suggested Mr and Mrs R were making the payment as part of a scam.

I wouldn't expect further intervention after that point as none of the subsequent payments were significantly larger than the second payment and they were going to an existing payee. I appreciate that in January 2023, Mr and Mrs R made payments to different payees, but I'm not satisfied that these payments were sufficiently unusual or out of character that I would've expected Barclays to step in.

Also, while things may have been going wrong with the builder in the later stages of the payments, I'm not satisfied that I could fairly say that Barclays would've or should've known that. Or, that I would expect them to identify issues with the building work unless Mr and Mrs R let them know they were concerned that it might've been a scam.

I don't think any of the information Mr and Mrs R had or would've given Barclays about the work, would've warranted Barclays refusing to allow Mr and Mrs R to make payments. Barclays aren't expected to have expert knowledge about building work or building projects, and for the reasons given, I don't think they missed an opportunity to prevent Mr and Mrs R's loss.

*Additional points raised by Mr and Mrs R*

I understand that Mr and Mrs R are adamant that L not completing the work, other customers of L having the same issues, and their home being left in an uninhabitable state, are evidence they were the victims of a scam. They've also referred to the threats they received from J and the need to involve the police.

But most of this evidence points to dissatisfaction with quality of the work completed, potential mismanagement or poor management of a business and serious issues around the behaviour of J. It doesn't satisfactorily show that J/L took Mr and Mrs R's money with a

different purpose in mind for the funds, or that Mr and Mrs R's funds weren't used for the intended purpose.

I have carefully considered the testimonies that Mr and Mrs R have provided along with the extensive evidence in relation to what state their home was left in. I'm really sorry that they have been left in such a dire situation with an uninhabitable house and the serious impact this is having on their whole family. I understand their want for justice and am in no way saying that the work completed by J or L is satisfactory or acceptable or that Mr and Mrs R haven't experienced a loss.

The type of evidence that we would need to see is more likely to come following an investigation by trading standards or the police who are able to engage expert witnesses, complete forensic investigation of J and L's finances and interview all parties involved.

If there are charges or convictions against J or L, it's possible the outcome would be different as it may show intent at the time Mr and Mrs R made their payments.

I would like to stress that if material new information comes to light at a later date, for example from a police investigation or from trading standards, Mr and Mrs R can ask Barclays to reconsider their fraud claim.

I'm really sorry to disappoint Mr and Mrs R, but I'm not satisfied that I can fairly hold Barclays liable for their loss or ask Barclays to refund them.

### **My final decision**

My final decision is that I don't uphold this complaint against Barclays Bank UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs R to accept or reject my decision before 30 December 2024.

Lisa Lowe  
**Ombudsman**