

The complaint

Miss M complains that Barclays Bank UK Plc won't refund the money she says she lost to a scam.

What happened

In April 2024 Miss M was looking for a room to rent, and contacted a property rental company – which I'll call 'D' – on the recommendation of a friend. Miss M corresponded with the director of D (Mr A) and with his wife (Mrs A). Mrs A said D had a room available to rent from June 2024 and, after visiting the property, Miss M agreed to go ahead with the rental. Miss M was provided with a contract, setting out that this was a short term let, and paid a deposit of £800. Miss M also negotiated a reduction in the rent which D was happy with as long as Miss M paid the rent in advance. Miss M made this second payment, for £600, a few days after paying the deposit.

As Miss M's agreed move-in date approached, she began to have issues with D. Specifically, it transpired that Mr and Mrs A would also be living at the property, and that they were unable to arrange for Miss M's room to be cleaned before she moved in due to apparent financial difficulties. Miss M then began to have difficulties contacting Mr and Mrs A, and so she asked for her deposit and initial rent payment to be refunded.

Mrs A initially agreed to this, but no refund was forthcoming. And when Miss M visited the property again, she was told that Mr and Mrs A were tenants at the property, and had been subletting it. Miss M says the landlord of the property told her that Mr and Mrs A were being asked to vacate the property. Miss M challenged Mrs A about this, but ultimately Mr and Mrs A stopped replying to her messages, and she still did not receive a refund of her deposit or the advance rent she had paid.

Miss M reported the payments to Barclays as a scam. But Barclays said Miss M wasn't eligible for a refund under the relevant regulations as it didn't think she had been the victim of a scam. It said it thought this was more likely a private civil dispute between Miss M and D.

Unhappy with Barclays' response, Miss M brought her complaint to this service and one of our investigators looked into things. But they agreed with Barclays that this was most likely a civil dispute, and so Miss M was not entitled to a refund of the payments she had made. Miss M remains unhappy, she maintains that D scammed her.

As the case could not be resolved informally, it's been passed to me for a 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.

Having done so and having thought very carefully about Barclays' actions, I agree with the findings set out by our investigator. I do appreciate how disappointing this will be for Miss M

but, whilst I'm sorry to hear of what's happened, I don't think I can fairly hold Barclays liable for her loss.

This is because not all cases where individuals have lost sums of money are in fact fraudulent and/or a scam. So, whilst I can quite understand why Miss M feels that she has been scammed, there is a high legal threshold or burden of proof for fraud and there are a number of potential reasons (other than a scam) for the breakdown in a relationship between two parties and for a dispute to exist.

When considering what is fair and reasonable in this case, I've thought about the Contingent Reimbursement Model Code (the CRM Code) which Barclays has signed up to and which was in force at the time Miss M made these payments.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam. So, I've thought about whether the CRM code applies in the circumstances of this complaint, and whether Barclays therefore ought to reimburse Miss M under the provisions of the CRM Code.

The CRM Code only applies in very specific circumstances – where the customer has been the victim of an APP (authorised push payment) scam. Under the CRM Code, an APP scam is defined as:

“...a transfer of funds...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 CRM Code is also quite explicit that it doesn't apply to all push payments. 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.”

Fraudulent isn't defined in the CRM Code, but as the CRM Code specifically excludes civil disputes, I think I need to consider, as a first step, whether this was a scam (where a scammer takes money from a customer for no legitimate purpose) or a civil dispute (where a payment is made to a legitimate trading company or business, but there is some dispute about the goods or services that should have been supplied).

If this was a scam, or fraud – then banks (including Barclays) must follow industry and regulatory guidance, including the CRM Code, to check certain payments and in some circumstances, protect customers by stopping the payments and contacting customers about them. And where banks haven't followed the guidance, they can be asked to refund them. But where payments are made to a legitimate business for a legitimate reason, then such principles don't apply. This is then classed as a civil dispute, and for which banks normally have no liability.

Having thought very carefully about all that Miss M has said, and about the evidence provided by all parties to this complaint, I'm not persuaded that I can safely say with any certainty, based on what I know and what the evidence shows, that D set out with an intent to defraud her.

I say this for the following reasons:

- D's records on Companies House show that, while it has now been dissolved, it apparently ran successfully for several years.
- Those records also show that it was set up for the purpose of holiday accommodation and letting of real estate. And it is clear from Miss M's contract with D that what she had agreed was a short-term let, so this is in line with D's stated business.
- Miss M visited the property in person, and it is clear that Mr and Mrs A were linked to the property. This is not what we would usually expect to see in a property rental scam.
- While I cannot share the detail of what I have seen, D's account statements do suggest it was carrying out transactions in line with its stated business, and do not show any clear signs of misuse of funds.
- D's bank has said it has had no scam reports relating to D's account, other than Miss M's claim. I appreciate Miss M says that others have also been scammed by D, but I have seen no clear evidence to support that.

All of this leads me to consider that D was more than likely attempting to operate legitimately at the time these payments were made. I acknowledge that D ultimately did not provide the services agreed, nor did it provide the promised refunds, but there are many reasons, other than fraud, why a legitimate business may be unable to provide the services they have promised or refund a deposit. A business may act unprofessionally but still be carrying out legitimate business, or it may get into financial trouble (or personal difficulties) and be unable to meet its obligations to customers. And this service isn't in a position to forensically analyse D's actions here; we must consider the evidence that is before us. And, in doing so, I've not seen persuasive evidence that D set out to defraud Miss M.

I know this will be a huge disappointment to Miss M. I appreciate how strongly she feels about this case, and that she has lost a significant amount of money here. And this is not to say that there is no issue at all between Miss M and D, clearly there is. But all things considered, the evidence indicates that it's more likely than not that this is a civil matter, rather than an act where D intended to defraud Miss M.

As it's more likely than not that Miss M hasn't been a victim of fraud, it wouldn't be fair or reasonable to expect the bank to reimburse her loss under any of the considerations I've given above. In such circumstances, Miss M may have a civil claim for damages from breach of contract against D – and I understand she has already started this process - but it wouldn't entitle her to have her losses reimbursed by the bank under the CRM Code.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 22 May 2025.

Sophie Mitchell
Ombudsman