

## The complaint

Mr M and Miss S complain that Barclays Bank UK Plc has not refunded the money they lost to what they believe was fraud.

## What happened

Mr M had been involved in a court case, which led to him allegedly owing a debt. Mr M disputed that this debt was owed and was willing to go to court to refute it. A financial adviser that Mr M and Miss S had known for many years suggested they contact a solicitor at a law firm he knew – I'll call this law firm P – to see if they could help.

In January 2021 Mr M was admitted to hospital, and remained there for an extended period. Mr M and Miss S say that, while Mr M was in hospital, P contacted Miss S and told her she needed to pay £500,000 or her and Mr M's home would be at risk. Miss S says she was put under extreme pressure to make payments to P and was told not to tell Mr M about what was going on. Over the course of nine days Miss S made six payments to P, from her sole account with another bank (N) and from her and Mr M's joint Barclays account. The payments were as follows:

Date	Amount	Sending bank
25/01/2021	£24,000	Barclays
26/01/2021	£100,000	N
27/01/2021	£20,000	N
02/02/2021	£20,000	N
03/02/2021	£10,500	N
03/02/2021	£20,000	Barclays

Mr M and Miss S say that both Barclays and N should have stepped in to challenge Miss S about these payments. They consider that P has acted fraudulently in taking this money and that it should be refunded to them by Barclays and N. Mr M and Miss S also say that there is other money missing which they cannot account for on their statements and that Barclays and N have both been unhelpful and discriminatory in how they have handled the fraud claim.

Barclays has said that the issue between Mr M, Miss S and P is a civil dispute, and so they are not entitled to a refund under the relevant regulations. They also say that they have been unable to identify any other payments to P from Mr M and Miss S' account.

Unhappy with Barclays' response, Mr M and Miss S brought their 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 Mr M and Miss S were not entitled to a refund of the payments made. The investigator also did not consider there was any evidence to show that further funds had gone missing from the Barclays account or that Barclays had provided Mr M and Miss S with poor service.

Mr M and Miss S remained unhappy, they say they are vulnerable, and that Barclays had a duty to prevent financial harm and so should have taken steps to protect them from what

they consider to be fraud. 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 Mr M and Miss S but, whilst I'm sorry to hear of what's happened, and appreciate the very significant impact this has had on them, I don't think I can fairly hold Barclays liable for their 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 understand that Mr M and Miss S feel they have been the victims of fraud, there is a high legal threshold or burden of proof for fraud and there are a number of potential reasons (other than fraud or a scam) for a dispute to exist between two parties.

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 the relevant payments were made. 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 Mr M and Miss S 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 what that payment was for).

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 Mr M and Miss S have 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 P set out with an intent to defraud Mr M and Miss S.

I say this for the following reasons:

- P is a legitimate law firm, which appears to have been operating successfully for a very long time.
- The individuals that Miss S dealt with at P are both qualified solicitors, regulated by the Solicitor's Regulation Authority, one of whom still works at P and one of whom has apparently moved on to work at another large legal firm.
- The payments Miss S made went to P's corporate account, I think this means it is fair to assume that P had oversight of these payments as they would form part of the auditable accounts for P.
- We do not have any information regarding the context behind why P asked Miss S to make these payments, so it is very possible that P believed it did have a legitimate reason for requesting these payments.
- While I can see that Mr M and Miss S have raised their concerns with the police, action fraud and the FCA, I've seen nothing to suggest that any of those parties have made any official finding that P was acting fraudulently.

All of this leads me to consider that P was more than likely operating as a legitimate business, and nothing I have seen suggests that it, or its employees, might have been acting fraudulently.

I appreciate that Miss S feels that she was coerced into making these payments, and I don't dispute that she felt she had no choice at the time, but that does not mean that P acted fraudulently or that what happened here was a scam. A business may act unprofessionally but still be carrying out legitimate business. And this service isn't in a position to forensically analyse P's actions here; we must consider the evidence that is before us. And, in doing so, I've not seen persuasive evidence that P set out to defraud Mr M and Miss S.

Mr M and Miss S have said that Barclays should have intervened in the payments, to protect them from financial harm, particularly given their vulnerabilities. Miss S made the relevant payments in branch, but it's not clear what, if any, discussions she had with Barclays about the payments at that time. However, given that I'm supportive of Barclays' decision to conclude this is a civil dispute, there isn't any basis upon which any intervention ought reasonably to have caused concern with the payments. So, I can't fairly criticise Barclays for not having done more in these circumstances.

Mr M and Miss S have also referred to additional funds they believe they have lost, but I've looked at the statements for their account for the relevant period and there is no evidence that those funds were lost from their Barclays account. I can assure Mr M and Miss S that if the funds had been sent to a third party from their Barclays account it would be evident on the account statements.

Lastly, Mr M and Miss S feel that Barclays has discriminated against them, and that it should take account of their particular vulnerabilities when considering their claim. And I don't doubt that they have been through a very difficult time. But it is only under the CRM Code that an individual's vulnerability would be taken into account when considering whether a refund is

due in a claim like this, and as explained above, the CRM Code does not apply in this case. I've also not seen anything to make me think that Barclays has discriminated against Mr M and Miss S, I'm satisfied it has acted fairly and reasonably in its handling of their complaint.

I know this will be a huge disappointment to Mr M and Miss S. I appreciate how strongly they feel about this case, and that they have lost a significant amount of money here. But for the reasons I've explained above, I do not consider that the payments in dispute here are covered under the CRM Code, or that it would be fair to hold Barclays responsible for the money lost under any of the other relevant regulations or guidance.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Miss S to accept or reject my decision before 31 December 2024.

Sophie Mitchell  
**Ombudsman**