

complaint

Mrs T complains that Barclays Bank Plc won't return money she sent to one of its customers, although the bank accepts she's fallen victim to a scam.

background

Mrs T sent a payment to a third party, A, to secure what she believed was a holiday home booking. Sadly, A turned out to be a fraudster. The booking didn't exist. Like several other people, Mrs T was left out of pocket. Barclays has been able to retrieve some of the money sent to A's account. But says it can't return all of Mrs T's transfer. It says that according to established law, most of the remaining money belongs to people who made later transfers.

Barclays says Mrs T is entitled to around £300. She transferred over £2,100. Although the bank's retrieved significantly more than this, it says it must make provision for potential claims from those other people. It accepts that to date, there are no other outstanding claims.

Our adjudicator didn't think this was particularly fair. It meant if nobody claimed the rest of the money Mrs T would still be out of pocket, while Barclays would benefit from the money. He proposed the bank reimburse Mrs T in full. Barclays disagreed. It said it was making active efforts to contact potential claimants, to ensure fair distribution of any refunds.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

It's not in dispute that Mrs T has fallen victim to a scam. It would seem she wasn't alone in doing so. It looks like a number of transfers were made to A's account under similar circumstances. When Barclays became aware of what had happened, it made efforts to seize the money still in the account. But by then, A had already removed some of the money. So there's not enough left to fully reimburse everyone who transferred money to A.

The principle to which Barclays has referred is long standing. It's commonly known as the rule in 'Clayton's case'. Its purpose is to enable the drawing of a legal distinction over ownership of combined funds that can't otherwise be easily identified. The situation can easily arise on a current account where, over time, there are multiple deposits and withdrawals. In simple terms, the rule states that if an account is in credit, the first amount deposited will also be the first withdrawn.

I can see why Barclays has taken this approach here. But the rule in Clayton's case isn't absolute. It's more of a legal convenience, and circumstances can sometimes dictate that it wouldn't be appropriate to apply it. I think that's what should happen here. There's effectively a 'pot' of money Barclays has set aside to returning to victims of this particular scam. The bank has settled claims from other victims. As far as I'm aware, it has no outstanding claims on the money other than Mrs T's. I think the fair thing to do in these circumstances is for Barclays to return Mrs T's money in full.

That may mean Barclays is unable to refund other people, who might yet make a claim. I can understand why the bank's concerned about the risk it would face if any later claims arise. But it's quite possible some of the other victims of this scam might already have taken other

steps in recovery, perhaps against their sending bank or even against A. I don't think it's right that Barclays hold on to the remaining money indefinitely simply because other people *might* make a claim on it. If the bank was applying the rule in response to being asked to decide on competing claims, the position might be different.

my final decision

My final decision is that I uphold this complaint. In full and final settlement of it, Barclays Bank Plc should return Mrs T's transfer – £2,169.78 – in full. If the remaining unclaimed funds total less than this amount, Barclays should return this lesser sum, providing evidence of the reduced balance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 30 April 2015.

Niall Taylor
ombudsman