

## **The complaint**

Miss D complains that Barclays Bank UK Plc did not help recover the money she paid to a scam investment company.

## **What happened**

The circumstances of this complaint are well known to both parties, so I will not repeat them all again here in detail. But I will provide an overview of events below.

Miss D came across EuropeFX in an article in the Financial Times online. She contacted them to discuss the possibility of investing. Miss D was allocated an account manager and following a series of promises from them, decided to invest with EuropeFX.

From June 2019 to January 2020 – Miss D made payments totalling £192,133 to EuropeFX. She received credits totalling £66,975 from EuropeFX – which included a settlement offer following Miss D's complaint to them.

Miss D approached Barclays to help recover her money. It attempted some chargeback claims but decided not to take things further as some of the claims were out of time and it received information from EuropeFX that Miss D signed a legally binding settlement agreement with them. Miss D referred her complaint to this service and said amongst other things, Barclays ought to have flagged the payments as suspicious.

One of our investigators looked into things and didn't think Barclays had any chargeback rights and also didn't think the transactions were unusual given the normal way Miss D managed her account. Miss D disagreed, she felt based on her age and lack of financial experience, Barclays should have done more. She also explained the larger expenditure on her account was due to a recent house sale but prior to this she had modest earnings.

Miss D's complaint has been prioritised with our service given her personal circumstances, so it's been passed to me for determination.

## **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.

Banks and other Payment Services Providers ("PSPs") do have a duty to protect customers against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering. But when simply executing authorised payments, they do not have to protect customers against the risk of bad bargains or give investment advice – and the Financial Conduct Authority ("FCA") has confirmed that a fraud warning would not constitute unauthorised investment advice.

So, the first question to resolve is whether this particular trader was a fraudster.

*were the disputed payments fraudulent?*

Not every complaint referred to us and categorised as a high risk investment scam is in fact a scam. Some cases simply involve high-risk investments that resulted in disappointing returns or losses.

Certain high-risk investment traders may have promoted these products using sales methods that were arguably unethical and/or misleading. However, whilst customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud; i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself, or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

In simpler terms, some merchants may have used sales and promotional methods that could be seen to be unfair by consumers considering the losses they've incurred – but this does not always amount to *fraud*.

When considering this for Miss D's case, I've paid particular attention to the official organisations that publish warnings about merchants that operate in the UK and abroad. I've searched the Investor Alerts Portal of the International Organization of Securities Commissions ("IOSCO"), the international body that brings together the world's securities regulators. And the FCA (as the UK regulator) also has its own warning list, which is in place to share alerts and insight about merchants that have been identified as potentially being fraudulent.

Upon checking both of these, it's my understanding that EuropeFX had no adverse information reported about them at the time Miss D authorised her payments. What I have noted was that they were registered with the FCA at the time of Miss D's payments.

I have seen that the FCA cancelled EuropeFX's registration on 4 June 2020 and explained after this date, EuropeFX could no longer provide investment services to UK customers. But this information was not available at the time of Miss D's disputed payments.

I must therefore take into account that there's strong evidence here – particularly because there are no regulator warnings that were published at the material time that EuropeFX hadn't been identified as a fraudulent company when these payments were made.

I must follow the evidence and, essentially, I have no credible evidence to persuade me with any degree of certainty that EuropeFX was operating a scam and the evidence I have seen suggests that EuropeFX were indeed regulated at the time it offered services to Miss D. So, taking everything into consideration, I'm not persuaded that EuropeFX was in fact a fraudulent company.

### *Chargeback*

Chargeback is a voluntary scheme run by Visa whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed or be deemed a 'valid claim'. Our role in such cases is not to second-guess Visa's arbitration decisions or scheme rules, but to determine whether the regulated card issuer (i.e. Barclays) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder.

Having considered Visa's rules, the possible chargeback 'reason codes' did cover binary-options/investment trading at the time of Miss D's payments. Visa expanded its rules to

cover situations whereby binary options/investment traders prevented cardholders from withdrawing their available balances from 14 October 2017.

However, Reason Code 53 (later re-coded by Visa to 13.5) required Barclays to present dated evidence that Miss D had an available balance (in the form of a screenshot or confirmation from the merchant) and that she tried to withdraw sums equal to, or less than, her available balances on the same day. But it's clear by the time she realised something was wrong, she'd lost her money.

I also have to agree with Barclays that Miss D's settlement agreement with EuropeFX would have prevented it from successfully processing chargeback claims for her. That's because, if the claims were defended (as they were here), the nature of her settlement agreement with EuropeFX prevented her from taking any further action against them.

#### *unusual or uncharacteristic activity*

Barclays is aware of our general position on a PSPs' safeguarding and due-diligence duties to protect customers from the risk of financial harm due to fraud. We have published many decisions on our website setting out these principles and quoting the relevant rules and regulations. It is unnecessary to rehearse them again here in detail.

It is common ground that the disputed payments were 'authorised' by Miss D for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. This is because they were made by Miss D using the legitimate security credentials provided to her by Barclays. These must be regarded as 'authorised payments' even though Miss D feels she was the victim of a scam. So, although she did not intend the money to go to scammers, under the Regulations, and under the terms and conditions of her account, Miss D is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Barclays should fairly and reasonably:

- Have been monitoring accounts—and any payments made or received—to counter various risks, including anti-money-laundering, countering the financing of terrorism, and preventing fraud and scams;
- Have had systems in place to look out for unusual transactions or other signs that might indicate its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks and building societies are generally more familiar with than the average customer; and
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I do appreciate that Miss D states the higher expenditure in the months leading up to her payments to EuropeFX were the result of a property sale but I agree with our investigator's comments that the transactions to EuropeFX weren't unusual in relation to the recent way she was managing her account. I don't think the payments to EuropeFX stood out as particularly unusual.

But even if I did think the payments were unusual, as explained previously, the bank's duty is to guard against the risk of fraud and scams; it is not to give investment advice or protect

consumers from bad bargains. Ultimately, Miss D paid a legitimate company. To that end, I cannot safely conclude that the bank acted unfairly or unreasonably by not intervening to ask questions about the transactions before letting them all go.

### **My final decision**

For the reasons set out above, and despite my natural sympathies for Miss D's losses and her personal circumstances, I don't uphold her complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 7 January 2022.

Dolores Njemanze  
**Ombudsman**