

The complaint

Mr A is unhappy that Barclays Bank UK PLC (“Barclays”) didn’t do more to help him when he was the victim of a scam.

What happened

Mr A has an account with Barclays. In May 2020, he decided to invest his money using the services of an individual who had approached him on a social media platform. I understand they had contacted Mr A in the past, but he had opted to not respond. However, on this occasion he was persuaded that it would be worth investing his money.

Unfortunately, the individual that had contacted Mr A wasn’t a legitimate investment manager but a fraudster. Mr A made several transfers to this individual on the understanding that he was making a short-term but high-yielding investment speculating on movements in foreign exchange. Some of those transfers (but not all) were made from his Barclays account. In total, he transferred just under £3,000 from his Barclays account.

Once he realised that he’d been the victim of a scam, he contacted Barclays to let it know. It investigated his concerns but said it wouldn’t pay him a refund. In its response, it said:

“Before proceeding with any payments, customers must take steps to satisfy themselves that the person or business they are paying is legitimate and who they think it is.

[...]

Unfortunately, our investigation indicates that you did not take these steps. When making the payment, we made you aware about the risk of scams and gave you relevant warning messages. You confirmed that you were happy to continue with the payment and by choosing to proceed, it unfortunately resulted in the scam taking place.”

Mr A was unhappy with this response and so he referred a complaint to this service. It was looked at by an Investigator who didn’t uphold it. The Investigator considered whether it was fair and reasonable for Barclays to have declined Mr A’s claim under a specific voluntary code of practice – the Contingent Reimbursement Model (“CRM”) Code.

This code sets out the circumstances under which a firm should pay a refund to a customer and where it can choose to not do so. The Investigator noted that a firm could opt to not pay a refund if (amongst other reasons) it was satisfied that its customer made the payment without a reasonable basis for believing that the person they were paying was legitimate.

The Investigator concluded that there were several factors that ought to have made Mr A realise that it was unlikely he was dealing with a legitimate investment manager. Mr A was unhappy with the investigator’s conclusion and so the complaint has been passed to me to consider and reach a final 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. There's no dispute here that Mr A authorised these payments.

However, under the CRM code, a firm is expected to reimburse a customer who is the victim of an Authorised Push Payment ("APP") scam, like Mr A. There are a limited set of circumstances set out in the code in which a firm can choose not to reimburse its customer. One such circumstance (and the most relevant in this case) is where it can be demonstrated that the customer made the payments without having a reasonable basis for believing that:

- The payee was the person the Customer was expecting to pay;
- The payment was for genuine goods or services; and/or
- The person or business with whom they transacted was legitimate.

Barclays says it won't refund Mr A's losses because it doesn't think he had a reasonable basis of belief and I agree with that conclusion. I say that because:

- He was promised an unrealistically generous return on his investment – he was told that he should expect to double his investment within 24 hours and that such a generous return could be achieved without any risk to his investment or paying a fee for the services of the investment manager. I think Mr A ought to have treated this promise with more scepticism.
- Mr A was asked to make payments to private individuals that, on the face of it, were not connected with the company that was supposedly managing his investment. None of the payments he made were to a company bank account or to any individual connected with that company. I think this would've been reasonable grounds for suspicion, but as far as I can see, Mr A didn't question this with the scammer.
- There were no formalities in terms of the agreement he'd reached with the scammer – he hadn't seen or agreed to a contract or received any literature explaining the terms on which the investment was being offered.
- When Mr A was told that he'd need to pay fees in order to access the return on his investment, this came as a surprise to him. From what he's said, there had been no conversation with the scammer about the likelihood of his investment attracting future fees. When the scammer asked Mr A to pay surprise fees, I think

he ought to have been concerned about the obvious informality of the arrangement.

- I've looked at screenshots of the communications Mr A had with the scammer. The tone of these messages is unusually blunt and confrontational. I think most customers would be shocked to receive any of these communications from a legitimate business and so I think Mr A ought to have recognised this as a warning sign.
- Mr A says he did carry out checks on the investment provider – they told him they were a duly registered company in the UK and that he could check their registration at Companies House. When he did this, he found a company that was actively trading but that appeared to operate in an entirely unconnected field. I wouldn't have expected Mr A to carry out checks on the investment provider with forensic detail – but I don't think there was much to the data on the Companies' House website that should've reassured him, particularly in the light of the clear warning signs I've described above.
- Mr A continued to use his Barclays account to make payments, even after he'd told another bank that he suspected he'd been scammed. He told us that he thought he needed to make those payments to get his money back and that he was incredibly anxious about the situation he'd found himself in. However, I don't think I can say that he had a reasonable basis for believing that the person he was paying was genuine when he'd recently told a separate financial business that he was worried they might not be.

Should Barclays have done anything else to prevent the scam?

Good industry practice requires that regulated firms such as Barclays engage in monitoring of customer accounts and to be on the lookout for suspicious or out of character transactions with an aim of preventing fraud and protecting customers from financial harm. And under the CRM Code, where it identified a risk of a customer falling victim to an APP scam, it was required to provide that customer with an "effective warning".

We now know with the benefit of hindsight, that Mr A was falling victim to a scam. But based on the information that was available to it at the time, I don't think Barclays would've had any reasonable basis for coming to that conclusion. The payments wouldn't have appeared out of character or unusual and they weren't so large that they ought to have attracted closer scrutiny on the part of Barclays. For those reasons, I don't think the CRM Code required that Barclays display a fraud warning as part of the payment process and I'm not persuaded it would've had any grounds for intervening to question the payment with Mr A before allowing it to be processed.

Finally, I'm satisfied Barclays did what it could to recover Mr A's money once he notified it that he'd fallen victim to a scam. Unfortunately, by that time, Mr A's money had been moved on from the receiving account.

My final decision

For the reasons I've explained above, I don't uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 23 November 2021.

James Kimmitt

Ombudsman