

The complaint

Mr W is seeking to recover approximately £59,000 from Barclays Bank Plc ("Barclays"), which was stolen from his current account as a result of a third-party scam.

What happened

I issued a provisional decision in June 2021 to explain why I thought Mr M's complaint should not be upheld. And I said I'd consider anything else anyone wanted to give me. This is an extract from my provisional decision:

"In January and February 2018 Mr W sent three payments totalling £58,754.02 to an account he believed was associated with a legitimate investment firm. He told us he had previously made some legitimate investments with an investment firm, which I'll call 'business A', through a man, who I'll refer to as 'Mr A'. He explained that Mr A put him in touch with another man, who I'll call 'Mr B'. He received calls and emails from Mr B purporting to be able to help him invest his money through his investment firm, which I'll refer to as 'business B'. Mr W said he was subsequently bombarded with calls and emails from Mr B who put enormous pressure on him to invest. He explained that when he made all three payments he was in branch, but he wasn't questioned on the nature of the payments or given any advice on how to recognise this as a scam.

Mr W has told us that he was vulnerable due to severe mental ill-health, and that the bank should have been on notice of this and done more to protect him.

Mr W realised he had been scammed when he made numerous requests to withdraw money from his 'investment' and the person he was speaking to either made excuses or ignored these requests.

When Mr W complained to Barclays they refused to refund the transactions. They said Mr W had made the transactions himself and they'd followed the correct procedure in branch. They said that Mr W hadn't shown appropriate levels of care or conducted due diligence and pointed to the fact that the scammer had sent the emails from a personal email address.

Mr W remained unhappy so he came to our service. Our investigator reviewed what happened and recommended that Mr W's complaint be upheld. She said this because whilst she accepted Mr W had made the payments, she didn't think that Barclays had met the standard required in their obligation to protect Mr W from fraud or financial harm.

Barclays reviewed our investigator's opinion. They agreed that they would refund Mr W's losses from the scam. But they felt the payments to and from business A were part of the same scam. This included payments out of £25,000 in September 2017, and payments into the account in January and February 2018 which amounted to £70,520.96. They said this because:

- £25,000 was sent to business A in September 2017 and returns of £70,520.96 were paid into Mr W's account in January and February 2018 – Barclays said this would have been an impossible rate of return given the climate at the time;

- *The payments made to business A were debit card payments – but the fourth return was paid via a bank transfer. This could only be a refund or a partial refund from an bank transfer payment sent from Mr W's account – which is the method used to pay business B. So Barclays say this shows the link between business A/Mr A, and business B/Mr B.*
- *They suggested that Mr A had sent this money to make Mr W believe he was dealing with a genuine investment firm.*

So, they felt that the money sent and received in relation to Mr A and Mr B should be considered when calculating the total loss to Mr W, and the subsequent redress they would pay. They offered to refund £13,233.37 plus 8% interest and to pay £400 in recognition of the distress and inconvenience they had caused to Mr W. Mr W maintained that the payments into his account were legitimate returns on his investments with business A, and so were his funds and should not be considered when calculating his loss. Our investigator also didn't agree with what Barclays had said, so it has come to me to decide.

my provisional findings

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, I am minded to reach a different conclusion to the one already set out by our investigator. I'll explain why.

I do not doubt that Mr W was the victim of a sophisticated and cruel fraud. I was very sorry to read of the circumstances Mr W found himself in, particularly given that he was already struggling with severe mental ill-health at the time of the scam. But the question that I must consider here is the extent to which Barclays can be considered liable for the loss.

I do agree with our investigator that Barclays should have done more to prevent Mr W from making the payments on his account. In doing so, I believe they could have recognised the scam and prevented Mr W from making the payments in January and February 2017. From my reading of Barclays response, I think they have broadly agreed by offering to refund some of the money and so I don't intend to go into this point in depth again as part of this provisional decision. The matter that does remain in dispute is whether the credits into Mr W's account in January and February were part of the same or a linked scam, or whether they were his genuine returns from an unconnected successful investment – and what this means for the redress to be paid by Barclays.

This has not been a straight forward matter to consider. Mr W explained that the £25,000 paid out of his account to business A was to a legitimate investment firm, and that the £70,520.96 coming into his account were the returns on those investments. According to the FCA database, business A are a genuine investment firm. However, they were known to have been 'cloned' prior to 2017 – meaning fraudsters were using the name and details to appear that they were working for business A in order to get money from members of the public. So I have to consider whether I think that the payments to and from business A were to the legitimate firm, or to a fraudster as part of the same scam that Mr B was conducting. Having done so, I do think the payments were part of the same or a linked scam rather than relating to a legitimate investment, I say this because:

- *The fourth payment into Mr W's account was a refund made by bank transfer – and I can see that the payments to business A were made by direct debit. But the payments to business B were made by bank transfer payment – so the fourth payment in was most likely made as a refund or partial refund to one of the payments made from Mr W to business B. I cannot see how this would be the case if business A and business B were not linked. And I don't think a genuine investment firm would*

be linked to a scam investment firm in this way.

- *Mr A has provided a series of emails from Mr A, and the email address he sent these from does not appear on the list of spoof email addresses contained within the FCA warning about the cloned firm. Having considered this, I cannot say whether its more likely than not that these were sent from the legitimate firm as a sophisticated scammer can falsify email addresses or hack into genuine ones – which could be what has happened here.*
- *I also agree with Barclays that this does seem to be a highly unlikely rate of return on his investments with business A. In Mr W's initial call to us he said he'd received some returns after his first payment, but that he had now realised this was 'bait' to entice him to send further payments. And I think this is more likely what happened here.*
- *I've not seen evidence that Mr W did have genuine investments with business A. Prior to reaching my final decision I would ask Mr W to provide any such evidence, and we will try and ascertain with the legitimate business A as to whether Mr W was ever a customer of theirs.*

Having considered all of this, I am minded to say that the specified payments in and out of Mr W's account from September 2017 to February 2018 are related to the same scam. And so I think it is fair for Barclays to deduct the money that was paid to Mr W, from his overall losses. I say this because he received significant sums of money into his account as part of the scam and so I don't think it would be fair for him to end up in a position where he has profited from the complaint.

I've also considered the offer of a payment in recognition of the distress and inconvenience caused to Mr W by Barclays. There is no amount of money that can undo what has happened to Mr W. And I do appreciate that not having this money for this prolonged period of time has caused Mr W great anguish. Whilst most of this is the fault of the scammers, I do think that Barclays could have done more to help Mr W – and when considering this I think the offer of £400 is fair in the circumstances.

Having considered all of this, I am currently minded to say that Barclays offer is fair and reasonable in the circumstances.

I want to stress that I feel considerable sympathy for what Mr W went through here. But unfortunately, whilst I'm sorry to have to disappoint him, I'm not persuaded that the money paid into his account was returns from a legitimate investment.

my provisional decision

For the reasons explained above, I am currently minded to say that Barclays offer is fair and reasonable, and so if nothing changes I will be asking Barclays to pay Mr W:

- *£13,233.37 plus 8% interest; and*
- *£400 in recognition of the distress and inconvenience caused"*

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.

Mr W got in touch and provided more evidence and testimony including:

- Information showing that the contact details he had for Mr A, and that these weren't detailed on the FCA warning for company A. He explained that this man was a legitimate employee of company A, but had conspired with the other man to defraud him.
- Photos of emails and information from when he set up his account with company A, including login details for a platform to view his investments.
- Mr W emailed company A and left an online review. He has provided a photo of a phone screen which appears to contain a response from company A to this. It appears to say following reading his post and email that they wanted more details after he'd notified them that he'd sought to withdraw £50,000 and £20,520.96 and had not received the funds.
- Mr W explained that whilst company A had been cloned, this was back in 2013 and he was adamant he dealt with the genuine firm. He pointed to the fact a scam company would most likely have taken the £25,000 immediately from him, and not then put more substantial funds into his account.
- A chart showing that the type of cryptocurrency he was investing in had spiked around the time he was selling it, explaining the high rate of returns he had managed to receive despite the short time he had invested;
- A detailed chronology of events – which covered his first contact with company A, contact with Barclays to sell some shares to fund his new investment, his contact with company A, the payments out from company A, details of how the man from company A put him in touch with the man from company B, and how he was persuaded to send money to him.
- Mr W explained that the man at company A, the scammer and Barclays were all aware of his severe mental ill-health and the fact he had tried to take his own life, and preyed on him due to his vulnerability and confusion. He explained that he didn't have the ability to reason at the time.

I invited Barclays to review the additional evidence Mr W had submitted in order to provide any additional comments. They said that they took on board that the crypto currency Mr W was or thought he was investing in fluctuates to a high amount, but they felt this still didn't explain why the company would have paid Mr W in two different methods. They showed again that the first three payments purporting to be from business A were debit card payments, but the final payment was made by bank transfer as the payments to company B were. They explained that this fourth payment could not be related to the debit card payments to company A as it would have been paid by debit card like the other "profits" – and was most likely a refund or partial refund from payments to company B. They said this difference in payment methods would not be the practice of a legitimate firm and so they still felt that company A and company B were both part of the same scam.

Barclays also said that whilst they accepted that Mr A's details were not listed on the FCA warning list, the list was not exhaustive and it was possible that the scammer had spoofed a genuine number and email. They felt it was clear that company A had been targeted by fraudsters attempting to clone the company for financial gain. Barclays said it considered my provisional decision was the fair and reasonable outcome to this case still, even after they had reviewed the new evidence Mr W provided.

I also asked our investigator to make contact with the genuine company A to verify whether Mr W had been a customer of theirs, but our investigator was unable to do so despite making attempts to.

Having considered all the additional evidence and testimony, I am afraid to say that my mind hasn't significantly changed from when I wrote my provisional decision regarding Mr W's complaint. I'll explain why.

I'll turn first to the evidence Mr W has provided in support of his assertion that he was dealing with the legitimate company A. Mr W is correct that the contact details he used to correspond with Mr A are not listed on the FCA warning. I had considered this within my provisional decision and I remain of the opinion that this detail doesn't mean he was dealing with the legitimate company A. I also am not persuaded that Mr W was dealing with the legitimate company A by the email with the login details for a platform. Whilst I accept these look quite professional, unfortunately sophisticated scammers are able to spoof email addresses, create platforms to log in to and appear to work for legitimate firms. This is why these types of scams are unfortunately so successful. So whilst I appreciate these details do make it appear that Mr W was dealing with the legitimate company A, they are not enough to convince me that this was the case. Similarly, the response to his email and online review for what appears to be the legitimate company A do not provide me with conclusive evidence that he was their customer. It appears they asked for his account number and I can't see that Mr W had provided this – so it may be that the genuine company replied but it doesn't show that he was their customer.

I do accept that the cryptocurrency spiked in value around the time that Mr W tried to sell it. I saw within the emails with Mr A that this is what led Mr W to be adamant that he wished to withdraw the funds from that particular investment. Mr A did try and dissuade him from doing so, but Mr W had seen the increased value so wanted to get his money out. So the substantial deposits were made into Mr W's account. Which brings me to the reason that I don't think Mr W was dealing with the legitimate company A. As I outlined in my provisional decision, and Barclays pointed out in their submission following my provisional decision - the final payment was made via bank transfer, unlike the payments to company A and the first three payments into his account. And I see no reason for a legitimate firm to pay in different ways. Further to this it appears that the fourth payment was linked to the second set of payments to company B – and was a refund or partial refund of one of the payments made to the second account. As I explained in my provisional decision, I see no reason for a genuine investment firm to be linked to a scam firm in this way. So I think it is most likely that the payments all formed part of the same scam.

I agree that it was somewhat unusual that the scammers would pay such significant amounts into his account. I can't say exactly why they would have done this – though I have considered it carefully. As Mr W himself has pointed out, Mr A and Mr B were aware of how vulnerable he was and preyed on the fact he was struggling with his mental health and ability to reason. I think it is likely they were confident in their ability to manipulate him, and so they were willing to send this money to him as they felt satisfied that they could get it back. It is also possible that this served an ulterior purpose such as laundering the funds through another account. So, whilst I do think it was unusual – unfortunately this is not enough to persuade me that these payments weren't part of the same scam.

I would like to reiterate that I am sorry to read about everything that Mr W has been through. I know that this decision will come as a disappointment to him after all that he has gone through because of the cruel and callous fraudsters. But my final decision remains that Barclays' offer is fair and reasonable in the circumstances of this case.

My final decision

My final decision is that Barclays' offer is fair and reasonable, and so I am asking them to pay Mr W:

- £13,233.37 plus 8% interest from the time of the loss to the payment; and
- £400 in recognition of the distress and inconvenience caused

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 28 October 2021.

Katherine Jones
Ombudsman