

The complaint

Mr R complains that Barclays Bank UK PLC (“Barclays”) didn’t help recover money he lost to an investment scam.

What happened

The details of this complaint are well known to both parties, so I won’t repeat them in detail again here. Instead, I’ll focus on giving my reasons for my decision.

In summary, between October 2018 and February 2019, Mr R made a number of payments to a binary options and Contracts for Difference (“CFD”) broker. For the purposes of this decision, I’ll refer to this firm as “M”. Mr R sent just under £38,000 to M during that period.

In the middle of February 2019, Mr R contacted Barclays and asked for its assistance in recovering his money as he believed he had been scammed. He said that he hadn’t authorised these payments. Given what Mr R had said about the payments, Barclays treated these as fraudulent transactions. Following an investigation, it declined to offer a refund. It didn’t present a chargeback and said this was because it didn’t receive sufficient information from Mr R to consider it. Barclays paid £50 compensation for the service provided during its review.

Mr R referred his complaint to our service. While it was awaiting a review, M directly offered a partial refund which Mr R accepted. Our investigator initially upheld the complaint as he thought that Barclays ought to have attempted a chargeback which would most likely have gone in Mr R’s favour. Barclays didn’t agree and the investigator reconsidered the complaint following further clarification regarding the chargeback process. He ultimately concluded that Barclays didn’t act unfairly by not attempting to recover the payments through the chargeback scheme. And the investigator didn’t think that Barclays should reasonably have been expected to prevent the payments from being made in the first instance.

Mr R didn’t agree, so the matter has been escalated to me for review and 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.

The chargeback scheme is a voluntary scheme run by card issuers – in this case Visa – whereby Visa will ultimately arbitrate on a dispute between a merchant and a customer if it cannot be resolved between them. There are rules to the scheme – set by Visa – which means there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. Our role isn’t to second-guess Visa’s decisions or rules, but to determine whether the card issuer, acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder.

Visa does give chargeback rights in relation to investments, but those rights are very narrow. Reason Code 13.5 (previously 53) allows claims for misrepresentation for investments where the merchant refuses to allow the cardholder to withdraw available balances. But Visa requires very specific evidence – a copy of the cardholder’s investment account showing the date, the withdrawal amount, and the available balance at the time of the withdrawal request.

From the information I’ve seen, it doesn’t appear as though Mr R was in possession of this information when he contacted Barclays. Or, that he would have been able to provide all the required evidence if it had been requested at the time. Also, I understand that Mr R was subsequently able to make a successful withdrawal from his trading account with M. As such if Barclays had raised a chargeback claim on his behalf, it’s unlikely to have been considered valid. In the circumstances, I’m not persuaded Barclays was acting unfairly or unreasonably by declining to raise a chargeback that likely had no reasonable prospect of success.

I’ve also considered whether Barclays ought to have intervened before allowing the disputed transactions to proceed.

Not every complaint referred to us and categorised as a binary-options or CFD scam is in fact a scam. Some complaints simply involve high-risk investments that resulted in disappointing returns or losses. Some traders may have promoted these products using sales methods that were arguably unethical or misleading. But that doesn’t always amount to fraud or mean that customers have been scammed.

Banks and other payment services providers have duties 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 don’t have to protect customers against the risk of bad bargains or give investment advice.

In reviewing Mr R’s case, I’ve considered the official organisations that publish warnings about investment merchants that operate in the UK and elsewhere. I’ve searched the Investors Alerts Portal of the International Organization of Securities Commissions (“IOSCO”), the international body that brings together the world’s securities regulators. And the Financial Conduct Authority (“FCA”) also has its own warning list, which is in place to share alerts and insights about merchants that have been identified as potentially being fraudulent.

Upon checking both of these, it’s my understanding that M didn’t have adverse information reported about it at the time Mr R authorised the payments he disputes. What I have noted is that M was regulated in another jurisdiction and was able to ‘passport’ into the UK and offer its services here. Illegitimate or illegal firms set up with the intention of scamming customers are highly unlikely to submit themselves to regulatory oversight.

I’ve seen that the FCA cancelled M’s registration in June 2020 and explained that it could no longer provide investment services to UK customers. But this information was not available at the time of Mr R’s disputed payments. I must follow the evidence and, essentially, I’ve no credible evidence to persuade me with any degree of certainty that M was operating a scam. And the evidence I’ve seen suggests that it was indeed regulated at the time it offered services to Mr R.

So, taking everything into consideration, I’m satisfied there’s strong evidence M wasn’t operating a scam.

As I’ve found that the payments Mr R made to M weren’t fraudulent, the bank’s duty to intervene was not triggered here – Mr R wasn’t at risk of financial loss due to fraud. As I’ve explained, banks and other payment service providers aren’t required to protect customers

from the risk of financial loss due to poor investment advice or bad bargains. Barclays is required to guard against money laundering and other financial crime. I accept that in some circumstances, undertaking normal due diligence for this reason might – inadvertently and incidentally – prevent a customer from financial loss due to a bad bargain or poor investment advice. But if a firm has failed to meet its statutory or regulatory requirements, that is a matter for the FCA as regulator – and the omission does not in itself fix the firm with liability to customers for losses that are unconnected with the real ‘mischief’ which the regulations were designed to combat, i.e. financial crime or fraud.

I know that Mr R will be disappointed with this outcome. But it’s important that I mention the respondent business here is Barclays, not M. I can’t consider whether M has acted fairly and reasonably in its dealing with him. I understand that Mr R has already complained to M’s regulator and has been informed that it doesn’t respond to individual complaints from customers. Mr R may wish to contact the ombudsman scheme in that jurisdiction to check if it is able to investigate his complaint about M. He should note though that time limits may apply.

I’m sorry to hear that Mr R has lost so much money and I understand he feels strongly about the matter. But for the reasons given, I’m not going to tell Barclays to do anything further to resolve this complaint.

My final decision

For the reasons given, my final decision is that I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr R to accept or reject my decision before 27 April 2022.

Gagandeep Singh
Ombudsman