

The complaint

Miss I is unhappy that Barclays Bank UK PLC hasn't agreed to refund the money she's lost to a scam.

What's happened?

Miss I says that she was introduced to an investment broker ('the broker') in Spring/Summer 2016 by a related person that had done some work on her property. That person was aware that she was due to receive an inheritance and the connection was suggested to obtain investment advice.

Miss I transferred several amounts to the broker, as set out below, for different trades:

amount	date
£20,000	21 November 2016
£2,000	29 November 2016
£5,000	30 April 2017
£4,000	9 August 2017
£50,000	1 November 2017
£2,500	19 December 2018

Miss I has since found out that although the broker was providing her with some small 'returns', her money was never invested. She believes that the 'returns' were part of the scam – a way to avoid raising her suspicions and keep her investing more money.

Barclays declined to reimburse Miss I because it felt that this may be a dispute between a buyer and a seller. It said, in summary, that:

- there is no evidence that a scam has taken place.
- there has been an exchange of goods and services because of the 'returns' Miss I received.
- Miss I knew the broker well, went on holiday with him regularly, and had already bought a property through him.

What did our investigator say?

Our investigator didn't uphold the complaint. She was satisfied that Miss I authorised the payments, and that Barclays couldn't reasonably have prevented the scam.

Miss I's representative asked for an ombudsman's decision, so the complaint was passed to me to decide.

My initial thoughts

I wrote to Barclays and Miss I's representative on 13 September 2021, to explain my initial thoughts on this case. I've set out what I said to them below.

During the course of our investigations, we have established that Miss I's money does not appear to have been invested – the broker ran simulator accounts which allowed him to trade with fake money, but no real money was ever paid into the accounts. I understand that the broker has now been charged for fraud.

So, I don't think there's any question that Miss I has been scammed, and this is not a buyer/seller dispute. Having carefully considered all of the evidence we've received; I think that Barclays should reimburse Miss I in the circumstances.

It's common ground that Miss I authorised the relevant transactions. In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. But as a matter of good industry practice, when these events transpired, I consider that Barclays should've been taking proactive steps to identify and help prevent transactions – particularly unusual or out of character transactions – that could involve fraud or be the result of a scam.

I've looked at the statements Barclays has provided, and I think the first payment of £20,000 that Miss I made ('the payment') was large and unusual in consideration of her prior account activity. She'd made relatively small payments from the account in the months leading up to the scam – the highest being £1,806. The day before she made the payment, she received a large sum of money into her account (her inheritance I presume). Overall, I think it's reasonable to expect Barclays to have asked some questions about the payment. But Miss I says it didn't, nor did it attempt to educate her about fraud and scams. And Barclays hasn't provided any evidence which persuades me otherwise, or satisfies me that if it did, its questions went far enough.

Arguably, if Barclays had asked Miss I some basic questions, she would've said she was making the payment to a broker who she had been in contact with for a number of months and she was looking to invest some of her inheritance in line with his advice. She may also have said that she had already invested in a holiday home with the same broker – and she'd visited the country in which the home was located to this end a number of months prior. Please note that this is the 'holiday' Barclays has referred to in its reasons for declining a refund in this case – Miss I says it was a trip to look at the property and was not a holiday between friends, they flew separately and met up at the property briefly. She's also said that the property investment was a scam and the money she paid to the broker was not used to purchase the property.

So, on the face of it, it might have looked like there was an established relationship or some degree of trust between Miss I and the broker. But banks are aware of the prevalence of this type of scam and the tactics that fraudsters use to convince their victims to part with their money. So, although I wouldn't expect Barclays to interrogate its customers about unusual payments, I would expect to see that it had used probing questions to get into the detail and test the purpose of the payment. If it had done so or educated Miss I on the right type of scam, then it seems likely that she or Barclays would have realised something was amiss before it was too late.

I appreciate that Barclays needs to strike a balance in the extent to which it intervenes in payments, against the risk of unduly inconveniencing or delaying legitimate payment requests. But from what I've seen, aside from the payment being unusual and out of character, there were several red flags that Barclays could've explored. The payment was supposedly for an investment opportunity, but it had been sent with the reference '*sailing boat*', at the request of the broker. It doesn't appear that the broker was regulated. And Miss I's son has told us that:

- the broker was an estate agent claiming he could trade stocks with no proof of any investment experience.
- Miss I was not provided with any contracts or paperwork for the supposed investments.
- the payment was transferred to the broker's personal account, not a business account.

Miss I has said she would've been truthful if she'd been asked questions, as she had nothing to hide. And from what I've seen, she was quite taken in by the fraudster and genuinely believed he was helping her to invest her money, so I don't doubt that. Overall, I think that if Barclays had challenged Miss I about the payment, in an appropriate and sensitive way, in order to satisfy itself that she wasn't falling victim to a scam, then it's likely the scam would've been exposed, and Miss I wouldn't have made the payment or any subsequent payments to the broker.

I have considered whether Miss I should bear some responsibility by way of contributory negligence. It doesn't appear that she took any precautions here, but I don't think that's unreasonable in the circumstances. I understand that Miss I was vulnerable at the time, having recently lost her mother. And it is clear to me that up to and including the time of authorising the payments, she was totally in the dark and simply did not appreciate what she was doing or the consequences of her actions. It doesn't appear that Barclays educated her on the type of fraud she was falling victim to. Overall, I am satisfied that there was no contributory negligence on this occasion. Miss I was a vulnerable layperson – an unwitting and blameless victim of a cruel and sophisticated fraudster.

Looking at everything, I think it would be fair and reasonable for Barclays to refund all the money Miss I lost to this scam along with 8% simple interest per annum from the dates the payments were made to the date of settlement. I also think it would be appropriate for Barclays to pay £300 for the trouble and upset Miss I has experienced in this matter. I am mindful that her loss was ultimately caused by the callous acts of a fraudster, but I think Barclays could have prevented the payments being made and consequently, reduced the impact on Miss I.

Responses to my initial thoughts

Neither Miss I nor her representative responded to my correspondence of 13 September 2021.

In summary, Barclays said:

- it still thinks this is a buyer/seller dispute.
- the broker returned a total of £9,150 to Miss I, and these aren't the actions of a scammer.
- the evidence demonstrates a relationship between Miss I and the broker.
- text messages between Miss I and the broker mention a "*boat fund*", so my comment about the payment being sent with the reference '*sailing boat*' rather than investment opportunity is not relevant.
- it appreciates that the broker was not an experienced investor, but why didn't Miss I check this and why did she continue to send him large sums of money when she hadn't received any investment paperwork.
- the broker banks with Barclays and it has no concerns about the beneficiary account, nor has it received any other scam reports against the account.

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.

As I explained on 13 September 2021, I don't think there's any question that Miss I has been scammed. I do appreciate that Miss I received some 'returns'. She believes they were provided as a ploy to avoid raising her suspicions and keep her investing more money, and I don't think this is implausible. But whatever the reason for the 'returns', I'm not persuaded that this complaint arises from a dispute between a buyer and a seller. And I still think that Barclays should reimburse Miss I in the circumstances.

As I've previously set out, it's common ground that Miss I authorised the payments to the broker, and Barclays was expected to process them in line with her instructions. But Barclays should've been looking out for unusual or out of character transactions. And I think the payment was large and unusual in consideration of Miss I's prior account activity. So, it's reasonable to expect Barclays to have asked some questions about the payment.

Barclays has pointed to an ongoing relationship between the broker and Miss I, and I accept that if it had asked Miss I some basic questions about the payment, she may well have given answers that suggested she had an established relationship with the broker, or there was some degree of trust between them. But, as I have said before, banks are aware of the prevalence of investment scams and the tactics that fraudsters use to convince their victims to part with their money. So, although I wouldn't expect to see that Barclays had interrogated Miss I, I would expect to see that it had asked her probing questions to get into the details and test the purpose of the payment. If it had done so and/or educated Miss I on investment scams, then it still seems likely that she or Barclays would've realised something was amiss and the scam would have unravelled.

Setting aside the payment's reference of '*sailing boat*', I still think there were several red flags that Barclays, with its industry knowledge of this type of scam, can reasonably be expected to have picked up on if it had spoken to Miss I about the payment in appropriate detail. For example, it doesn't appear that the broker was regulated, and Miss I's representative has told us that:

- the broker was an estate agent claiming he could trade stocks with no proof of any investment experience.
- Miss I was not provided with any contracts or paperwork for the supposed investments.
- the payment was transferred to the broker's personal account, not a business

account.

From what I've seen, I think Miss I was quite taken in by the fraudster. In the circumstances, I can understand why she didn't check whether the broker was regulated or challenge him when she didn't receive any investment paperwork. However, with its knowledge of investment scams, I think that these red flags would've become obvious to Barclays, and consequently Miss I, if it had questioned her about the payment in an appropriate manner and/or sought to educate her on investment scams.

Overall, I still think that if Barclays had questioned Miss I about the payment, in an appropriate and sensitive way, in order to satisfy itself that she wasn't falling victim to a scam, then it's likely the scam would've been exposed, and Miss I wouldn't have made the payment or any subsequent payments to the broker. So, I still think it would be fair and reasonable for Barclays to refund all the money Miss I has lost to this scam along with 8% simple interest per annum from the dates the payments were made to the date of settlement. I also still think it's fair for Barclays to pay Miss I £300 for the trouble and upset she has experienced in this matter, for the reasons I set out on 13 September 2021.

Barclays has said that it has no concerns about the beneficiary account, and there haven't been any other scam reports against it. But I don't think this should make a difference to the outcome of this case in the circumstances.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint and instruct Barclays Bank UK PLC to:

- refund all the money that Miss I has lost to this scam along with 8% simple interest per annum from the dates the payments were made to the date of settlement*. Barclays can deduct any 'returns' Miss I received from the broker from the settlement amount.
- Pay Miss I £300 for her trouble and upset.

*If Barclays considers it's required by HM Revenue & Customs to take off income tax from the interest, it should tell Miss I how much it's taken off. It should also give her a certificate showing this, if she asks for one, so that she can reclaim the tax from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss I to accept or reject my decision before 23 February 2022.

Kyley Hanson
Ombudsman