

## **The complaint**

Mr and Mrs T complain that Barclays Bank UK PLC (Barclays) has refunded only half of the amount they lost in an investment scam.

## **What happened**

Mr and Mrs T have a joint personal account with Barclays. I'll mainly refer in this decision to Mr T, as he was the one that made the payments as part of a scam.

### *What Mr and Mrs T say*

Mr T says he saw an investment opportunity on a social media platform and left his contact details for the company, that I'll refer to as K, to contact him. He then received a call from someone saying he was from K who offered Mr T a one-year fixed rate bond with a 5% interest rate. The bond was with a different company, but Mr T says he was told K was loaning money to that other company so had created bond opportunities. Mr T says he'd invested for fixed terms previously. After a number of calls Mr T said his funds were tied up elsewhere but the representative of K agreed to call him at a later date, at which point he told Mr T the bond deadline was in two days, so he needed to act quickly.

Mr T decided to go ahead with the investment but says that there was a daily investment limit, so he initially transferred £50,000 of the £65,000 he intended to invest. He believed the payments were being made to a holding company for K. In error, Mr T then transferred £15,000 from his business account rather than the joint personal account. As he couldn't see the debit on his personal account transaction history, he then made a further payment of £15,000 from the joint account he held with Mrs T. When Mr T realised his error, he asked K to return £15,000 but was told this would take some time so Mr T decided to invest the additional sum, meaning his total investment was £80,000.

It was only when Mr T later saw a television programme and tried to contact K that he realised he was the victim of a scam. K was in fact a clone of a genuine investment company. He contacted Barclays on 18 October 2019 to report the scam. Barclays was unable to recover any funds but refunded 50% of Mr and Mrs T's total loss. Mr and Mrs T would like Barclays to refund the rest.

### *What Barclays say*

Barclays said it could have done more to protect Mr and Mrs T. It notes that it deferred the £50,000 payment but can't find any evidence that it had a conversation with Mr or Mrs T at the time. But Barclays has held Mr and Mrs T responsible too because it says Mr T didn't complete any checks before he made the payments. In addition to this, Mr T saw the advert on a social media platform and there was a Financial Conduct Authority (FCA) warning about K in May 2019 which specifically mentioned cloned firms and how they were trying to scam people.

### *Our investigation so far*

The investigator who considered this complaint recommended that Barclays refund the payments from Mr and Mrs T's joint account in full. She said this because:

- Mr T was required to follow a normal application process and provide identification.

- The scammers sounded professional and knowledgeable and provided genuine looking documents that included an FCA number, so Mr T didn't think he also needed to check the register. The email address used by the scammer also looked genuine and so did the website. Mr T didn't know a genuine investment company had been cloned.
- Barclays should have completed further checks before making a £50,000 payment to a new payee and, had it done so, the scam would have been uncovered.

The investigator didn't consider the £15,000 payment that in error was sent from a business account as the company is no longer trading.

Barclays didn't agree with the investigator and asked for a final decision, so the complaint has been passed to me. In summary, Barclays made the following points:

- The investigator believes Mr T had a reasonable basis for believing he was making a genuine investment because of the amount of literature he received and the fact it had the FCA number on it. But Barclays thinks that given Mr T's profession he should have known about the importance of checking the FCA register and completed further checks before investing such large sums of money.
- The fact that a website looks legitimate doesn't mean it is.
- A month before the payments were made a clone warning appeared on the FCA register so if Mr T had checked before making the payments he wouldn't have gone ahead with the payments.
- Barclays referred the first payment of £50,000 but didn't speak to Mr or Mrs T about it and for this reason agreed to pay half their loss. Barclays considers it odd that after this Mr T went ahead and made a £15,000 payment from his business account rather than calling to see why the payment was declined.

Barclays is a signatory of the Lending Standards Board Contingent Reimbursement Model CRM Code which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. Barclays say one or more of those exceptions applies in this case. It says Mr T made the payments without having a reasonable basis for believing that:

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

There are further exceptions within the CRM Code, but they do not apply in this case.

I am also mindful that when Mr T made these payments, Barclays should fairly and reasonably also have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). 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.

### **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.

Having done so, I am satisfied that:

- Under the terms of the CRM Code, Barclays should have refunded the money Mr and Mrs T lost. I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case.
- Barclays should in any event have intervened when the first payment was made as it was unusual and out of character for Mr and Mrs T and if it had done so, I'm satisfied the fraud would have come to light and the loss prevented.
- In the circumstances Barclays should fairly and reasonably refund all the money Mr and Mrs T lost from their joint account.
- The money was taken from the Mr and Mrs T's current account. It's not clear how they would have used the money if Barclays had refunded it when it should have done, so Barclays should also pay interest on the money it should have refunded at 8% simple per year from the date of each payment to the date of settlement.

Like the investigator, I haven't considered the £15,000 transferred from Mr T's business account in error because Mr T has explained the business was dissolved in 2017 so is no longer a legal entity. This means that Mr T's business isn't an eligible complainant under our rules and can't bring a complaint to our service.

I have carefully considered Barclays' representations about whether Mr and Mrs T had a reasonable basis for believing the transactions to be genuine. But they do not persuade me to reach a different view. In particular, I'm not persuaded that Mr T failed to take the requisite level of care required for Barclays to choose not to reimburse under the terms of the CRM Code. I'm also not persuaded Barclays met its obligation to protect Mr and Mrs T from fraud.

*Did Mr and Mrs T have a reasonable basis for belief in making the payments?*

I'm satisfied that Barclays has not shown that Mr and Mrs T lacked a reasonable basis of belief because:

- This was a sophisticated fraud which involved a cloned financial services firm. Mr T found the details online and genuinely believed he was interacting with the genuine firm. He wasn't cold-called but received a call after leaving his contact details. Mr T has explained that he spoke to the fraudsters on the telephone a few times before deciding to invest. I consider this to be a powerful interaction which builds trust and confidence. Mr T was also taken through an application process and was required to provide identification documents before his investment could be accepted. Cloning a genuine firm and mirroring its processes like this gives the interaction legitimacy. I think it's reasonable that this went undetected by Mr T.
- From what I have seen, the correspondence Mr T received is in line with what he would have expected to receive in connection with a genuine investment of this type. Mr T received an introduction email that contained information that was lifted from the website of the genuine investment company, a brochure and terms and conditions. The emails he received appeared to be genuine and also included disclaimers. So I can understand why Mr T thought he was dealing with a genuine company.
- Barclays is particularly concerned that Mr T didn't search the FCA register to find and verify information about K. But I don't agree it was unreasonable for Mr T not to have done so in the circumstances of this complaint. At the time, Mr T fully believed he was in contact with a genuine firm he had heard of. The emails and other documentation he received showed the registration number of the genuine firm and Mr T relied on this. Barclays thinks that because of Mr T's profession before he retired, he should have known about cloned investment companies and of the importance of checking the FCA register but I disagree. I'm not persuaded that the skills needed for Mr T's profession included knowledge of how to protect himself from scams and, in particular, cloned investment firms that give the appearance of being

legitimate.

- I'm also mindful that Mr T would probably not have known exactly what information he should verify on the FCA register unless he was given guidance about the significance of that additional search. Mr T wasn't provided with any form of warning about the prevalence of cloned investment companies or what to look out for.
- Barclays says that after it referred the first payment of £50,000 and Mr T should have contacted it about this before making a further payment. I've not seen any evidence of any contact with Mr or Mrs T about the £50,000 payment so can't see how either of them would have known that Barclays had any concerns at that stage.

*Should Barclays have done more to protect Mr and Mrs T from financial harm from fraud?*

I've also concluded that Barclays could've prevented all the payments from being made. The first payment request was for £50,000 to a new payee. This was significantly out of character and unusual activity for Mr and Mrs T and I think there was enough going on here to have caused Barclays concern they might be at risk of financial harm. I note that Barclays flagged the payment but hasn't been able to produce any evidence to show it had a conversation with Mr or Mrs T to satisfy itself they weren't at risk of harm.

I've no reason to believe that Mr and Mrs T wouldn't have answered Barclays' questions honestly and in response to their answers, ought fairly and reasonably to have explained that cloned investment firms can pose as genuine investment firms for the purpose of scamming people. I believe Barclays should also have explained how they could protect themselves from such a scam and the importance of checking the FCA register.

I don't think it would have been difficult to persuade Mr and Mrs T to carry out some additional checks before going ahead with the first substantial payment. A bank employee could, for example, have recommended that Mr T call the business he thought he was dealing with, ideally using the contact number on the entry on the FCA Register. If that had happened, the scam would've unravelled quite quickly, and Mr and Mrs T wouldn't have made any payments to the fraudster.

The impact of my finding that Barclays should have prevented the loss is that interest should be paid from the date of Mr and Mrs T's loss rather than the date Barclays chose not to provide a full refund under the CRM Code.

*Did Barclays do enough to try and recover Mr and Mrs T's money once it was aware of the fraud?*

I've seen evidence that shows that Barclays contacted the bank that received Mr and Mrs T's funds within minutes of Mr T's call to report the scam. The receiving bank confirmed that no funds remained. In the circumstances, I consider Barclays acted reasonably and promptly to try to recover Mr and Mrs T's funds.

Overall, I'm satisfied Mr T made the payments with a reasonable basis for believing that they were for a legitimate investment. I also believe that Barclays could have prevented Mr and Mrs T from falling victim to the scam in the first place.

## **My final decision**

I uphold this complaint against Barclays Bank UK PLC.

I've found that Mr and Mrs T ought to have been fully refunded the payments from their joint account and that it is fair and reasonable that Barclays reimburse them now.

I therefore require Barclays Bank UK PLC to:

- Pay Mr and Mrs T the remaining 50% of the money they lost from their personal joint account – £32,500;
- Pay 8% simple interest per annum on that amount, calculated from the date of loss to the date of settlement - less any tax lawfully deductible. Barclays should send Mr and Mrs T a tax deduction certificate if asked for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and Mrs T to accept or reject my decision before 25 March 2022.

Jay Hadfield  
**Ombudsman**