

## **The complaint**

Mr G is unhappy Barclays Bank UK Plc (“Barclays”) did not reimburse him all of the money he lost when he fell victim to a scam.

## **What happened**

Mr G was looking to invest some of his money with the aim of increasing his retirement fund. He entered his details into a number of websites online and received a call from someone who purported to be calling from “Company L”.

The genuine Company L are a well-known financial services provider who do offer investments, and in this case, they appeared to be offering Mr G a range of fixed-rate bonds. However, unbeknown to Mr G, he was actually speaking with fraudsters who were operating as a “clone” of the legitimate company and who were using all of their genuine literature and documentation.

Mr G spoke with the fraudsters at length about what would be the most suitable investment for him. Ultimately, it was agreed this would be a two-year fixed-rate bond at a rate of 3.5%. Mr G was told that he would need to complete various checks before proceeding to make payment and he completed a detailed application form and had a lengthy compliance telephone conversation too. Mr G was then sent lots of information and literature about the bond he was intending to invest in. This documentation was branded with the logo of Company L and contained all of the types of things you would expect to see from a genuine investment firm. The documentation was sent from an email address that appeared to have an abbreviation of Company L in the domain name. Mr G said all of the above persuaded him that he was dealing with the genuine Company L.

Mr G decided to invest and made two payments: one for £50,000, and a further payment the following day for £15,000.

Mr G was told to make the payments to an account that wasn’t in the name of Company L. He was told this was because the payments would first go to a ‘holding account’ before being placed in his account. Mr G was told this was for ‘insurance purposes’ so he didn’t think to question the name of the account further. It’s worth noting now that the account in question appears to be held by a foreign exchange company.

Finally, Mr G was told that he had passed all of the various security checks and the money had been allocated to his account which he could monitor using personal login details.

Sometime later, Mr G decided to pay some further funds into his investment and when he couldn’t get in touch with the person he had spoken to previously he contacted the legitimate Company L – thinking it was this company he had been dealing with all along. It was at this point that Mr G was told that Company L no longer offered the type of bond Mr G was referring to and that he had likely been scammed.

Mr G reported the scam to Barclays. Barclays looked into what had happened and agreed to refund 50% of Mr G's losses under the Contingent Reimbursement Model Code ("the CRM Code"). Barclays held Mr G liable for the remainder of his loss as it believed he should have done further checks to ensure the company he was dealing with was the legitimate Company L before he agreed to proceed with the payments. For example, it said Mr G should have checked for fraud warnings about cloned companies on the FCA website or reviewed the potential investment with a financial advisor. Barclays said that it prompted Mr G to do so when he processed the payments online but Mr G had gone on to process the payments without taking heed of Barclays' warnings.

Mr G was unhappy with Barclays' response and so he brought a complaint to this service. The investigator who considered it asked Barclays to refund Mr G's losses in full. She said she thought Mr G had a reasonable basis for believing the payee he was paying was the person he expected to pay, and that he was dealing with the genuine Company L. This was because the fraudsters had taken Mr G through what appeared to be a genuine verification process, they had provided all of the documentation you would expect to find for this type of investment and all of this documentation contained the logo and branding of the well-known company Mr G thought he had been dealing with. She went on to say that the bond being discussed had previously been offered by the genuine Company L and the rate of return wasn't out of line with what you would expect from this type of investment either. She also thought Mr G had been provided with a reasonable explanation as to why he appeared to be paying an intermediary account.

She pointed out that she hadn't seen a copy of the warning Barclays had said it had shown to Mr G at the time of making the payment and so she couldn't say whether it was enough for Barclays to have met its obligations under the code - but based on ones she had seen from around the same time, she thought this unlikely.

Barclays disagreed with our investigators findings and provided the warning it says Mr G would have seen at the time. I have included the body of this warning below:

**"Could this be a scam?"**

*Have you checked that the company you're paying is genuine? You should be extra careful, as we've seen an increase in cloned websites of financial institutions. You can check the FCA website to see if there are any warning messages about the company you're looking to invest in.*

*You should also check that any investment you're considering is through a FCA-regulated firm, and that the spelling is exactly the same as the company you're in contact with. Be aware that fraudsters often provide an initial return on an investment to encourage you to provide larger amounts of money. They might also use current news topics, like COVID-19, to ask you to move your current investment, or invest in new accounts in the UK or overseas. It's best to talk to someone you trust or a financial adviser before investing your money and you should reject unexpected offers."*

Barclays stressed that the warning prompted Mr G to check that he was dealing with a genuine firm as investment firms were being 'cloned' and that it prompted him to check the FCA website to see if there were any warnings about the company he thought he was dealing with. Barclays said that had Mr G followed its advice, he would have seen a warning on the FCA website about the genuine Company L having been cloned and the names and contact details Mr G had been corresponding with were those of the fraudsters, not the genuine firm, and the scam would've been prevented. For these reasons Barclays maintained that its offer of a 50% refund was fair and reasonable.

Our investigator didn't agree. She said she didn't think the warning provided to Mr G could be considered an 'effective warning' under the CRM code and so she thought it was reasonable for Mr G to move past it without thinking it applied to him. She also said that she didn't think the warning would've undermined Mr G's belief that he was dealing with the genuine Company L - Mr G said he didn't remember seeing the warning at all. She went on to say that she thought Barclays could've prevented the scam from the outset, before the funds even left Mr G's account as the transactions were of high value and should've prompted further questioning from Barclays before they were processed. And had this taken place, Barclays could've prevented the scam. But Barclays didn't contact Mr G or ask him any further questions about the payments before it allowed them to leave his account.

Barclays disagreed and as an agreement could not be reached, the case has been passed to me for 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.

Having done so, I'm minded to reach the same outcome as our investigator - for largely the same reasons. I'll explain why.

The circumstances where a firm may choose not to reimburse a customer under the CRM Code are limited. And it is for the firm to establish that a customer failed to meet their requisite level of care, as set out in the code. Barclays has said that one or more of the exceptions to reimbursement applies in Mr G's case. The relevant exceptions to reimbursement are, broadly:

- where it can be demonstrated that a customer ignored an effective warning given by the bank
- where the customer made payments without having a reasonable basis for belief that they were dealing with the person they thought they were

#### *Did Barclays present Mr G with an effective warning?*

I'm not persuaded that the warning given by Barclays does meet the definition of an 'effective warning' under The CRM Code. The requirements for this are set out in the Code under the standards for firms. And the warning that was presented doesn't meet all those requirements.

In summary, it doesn't make it clear that any money sent as a result of a scam would be lost and likely irrecoverable. And whilst I acknowledge that it does highlight '*an increase in cloned websites*', it doesn't explain what cloning means in this context or provide an example of a cloning scam. In this case, the majority of conversations surrounding the investment were taking place over the telephone and I'm not persuaded that Mr G really knew what cloning meant, especially in a scam context, he's told us he didn't. And if he didn't know what it meant and what it could potentially mean for him; he wouldn't have understood why this warning may be relevant to him either - to the point that he should need to conduct further research.

I also acknowledge what Barclays have said about the warning saying '*you can check the FCA website*' but it doesn't say Mr G must check the FCA website, or provide the consequences around not doing so and continuing with the payment. And so I'm not

persuaded that it was unreasonable for Mr G to continue with the payment especially given that he thought he was dealing with a well-known and long-established firm.

I'm also not persuaded that the warning should've interrupted Mr G's reasonable basis for believing he was dealing with the genuine Company L or that him reviewing this warning meant he proceeded without a reasonable basis for this belief – I will expand on this further later on.

In summary, I'm not persuaded Barclays can rely on the 'effective warnings' exception in order to not fully reimburse Mr G in this particular case. And this would normally mean that the bank is responsible for covering at least 50% of Mr G's loss. But here, Barclays has already refunded that amount. And this award will only be increased if it could be said that Mr G had a reasonable basis of belief when making the payments. I'll address that next.

*Did Mr G make the payments with a reasonable basis of belief?*

I've seen at least some of the correspondence between Mr G and the fraudsters. And I've seen the bond literature that Mr G was sent too. There's no doubt that this was a convincing scam. The fraudsters have used carefully tailored email addresses that look as though they could belong to genuine employees of Company L. They have used stolen and copied bond information. And there appears to have been a detailed and convincing on-boarding and customer verification process too. These are all elements that made the investment and the people Mr G was dealing with seem legitimate. I can certainly see how Mr G was drawn in by the scammers here.

Having said the above, I also find that the warning provided by Barclays to be a good attempt at trying to warn customers about this particular type of scam. The warning is relevant to my considerations concerning whether Mr G had a reasonable basis of belief; it isn't only considered as part of the 'effective warning' exception. That's because it does still form part of the wider circumstances as to what was happening as the scam unfolded. However, in the particular circumstances of this case, I am not persuaded that this warning should have wholly undermined Mr G's reasonable basis for believing that he was paying the genuine Company L or that Mr G would have thought the warning so relevant to his circumstances that he should've completed further checks – which could've ultimately uncovered the scam. I'll explain why.

Mr G has told us that he can't remember seeing the warning at all. But he's told us that even if he had, he didn't really know what cloning meant and he wasn't really sure of the role of the FCA either – he thought they potentially guaranteed reimbursement should an investment company fail. And by the point Mr G would've seen this warning, he had already completed a detailed application form and been through a lengthy on-boarding process. He'd also been sent detailed and branded documentation. He thought he was dealing with a well-known firm and the documentation and process he'd been through was persuasive. As I've said above, the warning doesn't give an example of what a 'clone' means and so based on what Mr G has told us, it's reasonable to presume that he wasn't aware that fraudsters could steal genuine documentation and literature and use it as their own. I also asked Barclays if it could provide me with any electronic records that would show how long the warning appeared on screen so I could understand what had happened during the payment process but Barclays has been unable to provide me with this information. And so, overall, and in the particular circumstances of this case, I'm not persuaded that seeing this warning should've reasonably undermined Mr G's belief that he was dealing with the genuine Company L, to the point that failing to complete any further checks means he made the payments without a reasonable basis for belief.

In summary, I am not persuaded that Mr G failed to take the requisite level of care required for Barclays to choose not to reimburse him in full under the terms of the CRM Code. I think it ought to have fully refunded Mr G under the provisions of the CRM Code and so it should fairly and reasonably refund the remainder of his loss now.

*Is there anything else Barclays ought to have fairly and reasonably done?*

Barclays ought to have done more to question the payments Mr G was making, particularly the first one. He was sending a large sum of money to a new payee. And so, the bank ought to have questioned Mr G directly, either on the phone or in branch. At this point, Barclays could have talked Mr G through the common characteristics of this type of scam and why it was so important to check the FCA website. It could've also told him that there was no genuine and legitimate reason for him paying a third-party account. And so I'm also persuaded that Barclays could've prevented the scam from the outset.

### **My final decision**

My final decision is that I uphold Mr G's complaint against Barclays Bank UK Plc.

Barclays should now:

- Refund Mr G the remainder of his loss
- Pay Mr G 8% simple interest from the date the payments left his account to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 21 June 2022.

Emly Hanley

**Ombudsman**