

The complaint

Mr M complains that Barclays Bank UK PLC (Barclays) won't refund the 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 everything again here. In brief summary, Mr M was contacted by Tradefintech.com (TF), which he believed was an investment company. He says he was directed to download remote-access software so that TF could "trade" for him, and it told him it could double his investment. In April 2018, Mr M paid TF £2,000 from his Barclays credit card.

In mid-2019, Mr M contacted Barclays to report that TF was a scam. He thinks the trading platform was a fake. Barclays said there wasn't enough evidence to pursue a successful chargeback or Section 75 claim. So it wouldn't refund him.

Our investigator thought TF was likely a legitimate merchant, so didn't recommend that Barclays should refund Mr M. He disagreed, so the case was escalated to me to determine. I issued my provisional decision earlier this month explaining why I was minded to uphold this complaint. I invited both parties to provide further comments and evidence. Barclays has responded to accept my findings, and Mr M has confirmed he has nothing more to add. So I'm now proceeding to issue my 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.

As neither side has provided further comments or evidence, I see no reason to depart from my provisional findings. And so I make them final. I'm upholding the complaint for these reasons:

- It's not in dispute that, for the purposes of the Payment Services Regulations 2017, Mr M authorised this payment. So the starting position is that he's liable for it, as Barclays is expected to act on his instructions without undue delay.
- But there are some situations where we believe that banks—taking into account relevant rules, codes and best practice—ought to have identified a fraud risk, so should have looked at the wider circumstances surrounding the transaction before making the payment.
- That said, when simply executing authorised payments, banks don't have to protect their customers against the risk of bad bargains or give investment advice. So, I've first considered whether Tradefintech.com was a legitimate trader. For these reasons, I don't think it was:

- The Investor Alerts Portal of the International Organisation of Securities Commissions (IOSCO) publishes warnings about firms providing investment services without proper authorisation. It published a warning about TF in April 2017.
 - From January 2018, binary options, forex and CFD traders operating in the UK were required to be regulated by the Financial Conduct Authority (FCA). TF wasn't. The FCA also issued a warning about TF in May 2018, explaining it was targeting people in the UK without being regulated.
 - Although I place less weight on this, there's anecdotal information online suggesting TF was a scam. Weighing this up alongside the regulatory warnings I've found, which are indicators TF was operating with dishonest intentions, and what Mr M has told us about his dealings with TF (such as the control it had over his account and the returns it promised), I consider it likely this was a scam.
- I've therefore considered whether Barclays ought to have realised that Mr M might be at risk from fraud. I'd reasonably expect it to keep track of alerts issued by the FCA and IOSCO. As long ago as June 2012, the FCA's predecessor indicated—in its consultation paper *"Banks' Defences Against Investment Fraud: detecting perpetrators and protecting victims"*—that it was good industry practice for firms to build up an updated watch-list of types of scams and potential perpetrators; and regularly share *"timely and detailed intelligence"* about this.
 - An IOSCO alert had been issued about TF around one year prior to Mr M's payment. That doesn't prove TF was a scam, but I think it put Barclays on constructive notice that he might be at risk. So I think it ought to have looked into the payment further.
 - If Barclays had asked suitably probing questions about the payment, I'm persuaded it would have uncovered the scam and prevented Mr M's loss. I think he would have been concerned to find out about the alert. Barclays could also have directed him to check if TF was regulated in the UK – and again, I think he would have been concerned that it wasn't. I've also no reason to doubt that Mr M would have explained, if asked, that he'd been directed to use remote access software, and about the returns he was expecting. If Barclays, speaking from a position of expertise about financial services and scams, had warned Mr M that it sounded like a scam, I don't think he would have proceeded with the payment. So I'm satisfied Barclays can be held liable for the loss Mr M has suffered.
 - I've also considered contributory negligence. Mr M previously said he didn't receive a £250 withdrawal request in 2017. He's since clarified that he did – it just went to another account. At the time, this helped convince him TF was genuine. As a layperson who had an ongoing relationship with TF, I don't think Mr M reasonably foresaw the risk this was a scam. So I don't think he's partly to blame.
 - But for Barclays' error, the payment likely wouldn't have been made. So I don't need to consider whether the funds should have been recovered.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. Barclays Bank UK PLC should refund Mr M's £2,000 payment to Tradefintech.com. It should also pay 8% simple interest per year on this amount from the date of loss to the date of settlement. And it should put his credit card account in the position it would have been in had the disputed

transaction not taken place (including refunding all interest, fees and charges applied as a result of the disputed payment).

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

Rachel Loughlin
Ombudsman