

## The complaint

A company, which I'll refer to as E, complains that Barclays Bank UK PLC won't refund the money it's lost to a scam.

Mr and Mrs C, who are directors of E, bring the complaint on E's behalf.

## What's happened?

In July 2018, Mr C says he responded favourably to an advert about investments on a well-known social media platform. A few days later, he received a call from a company, which I'll refer to as 'C' throughout this decision. The caller asked if he'd be interested in investing money in cryptocurrency and sent him a brochure about C and the investment opportunity. Mr C did some research and found that C was listed on Companies House ('CH'), with a registered trading office in London. Social media platforms also gave Mr C the impression that C was genuine. So, he decided to go ahead and invest. Between August 2018 and February 2019, Mr C paid several amounts from E's account, as set out in the table below.

date	amount	payment method
13 August 2018	£5,000	online bank transfer
3 September 2018	£20,000	online bank transfer
10 October 2018	£75,000	CHAPS payment in a branch
13 November 2018	£100,000	CHAPS payment in a branch
5 February 2019	£49,999	online bank transfer
13 February 2019	£41,001	online bank transfer

During this time, Mr C says he had lots of communication with C via telephone and email. In addition, he was able to see that the investment portfolio was growing on C's website and C was sending him regular updates.

In late January 2019, Mr C received notification from CH that C had received a first Gazette notice for compulsory strike-off. Mr C says his suspicions were aroused that C may not be genuine, but he discussed his concerns with C and was reassured that there was no problem. So, he continued to invest. He eventually realised that C was operating fraudulently when he didn't receive a withdrawal of profits as requested, and he was no longer able to contact C.

On 20 February 2019, another company got in touch with Mr C. I'll refer to that company as 'T' throughout this decision. T said it was aware of C's demise and assured Mr C that it could

help reclaim E's money – it said it would be possible to have the money invested with C released before C was liquidated. Mr C says that T appeared genuine, so he paid several amounts to it from E's account for commission and tax, as set out in the table below.

date	amount	payment method
23 February 2019	£5,000	online bank transfer
27 February 2019	£49,999	online bank transfer
28 February 2019	£1,994.48	online bank transfer
7 March 2019	£70,086.29	CHAPS payment in a branch
14 March 2019	£31,000	online bank transfer
2 April 2019	£15,000	online bank transfer

Mr C became suspicious of T when it asked for payments of capital gains and corporation tax. He did some research and found that this type of tax would not ordinarily be payable in the circumstances. He challenged T but was ultimately persuaded that everything was above board, so he kept sending payments to T from E's account. Eventually Mr C attempted to visit T's registered address but there was no sign of T there, and he realised that T was also operating fraudulently.

Mr C reported the whole situation to Barclays, and some other institutions, on 8 April 2019.

Barclays tried to recover E's funds from the receiving banks unsuccessfully. Then it said that it wouldn't refund the money E had lost because there hadn't been a bank error on this occasion – all of the disputed transactions were executed correctly in line with the payment instructions it had received, and it had no reasonable grounds to prevent E from making the payments.

Mr C wasn't happy with Barclays' stance. He says that when he instructed the three CHAPS payments in-branch, he was told there would be a fraud check on them due to their high value. But he never received a call from Barclays to check if the payments were fraudulent. Mr C says the money lost through E's account came from his and Mrs C's personal retirement savings, releasing equity from their property, cashing in their life insurance policy and taking out lending. Only £4,762.75 of the money lost has been recovered. He and his wife are vulnerable, and the fraudulent activity has left them in severe financial difficulties.

Barclays says its staff can't recall any specific interactions they had with Mr C due to the passage of time, but they've said they wouldn't have told him fraud checks would be undertaken on the CHAPS payments as this isn't true. However, they would have advised that Mr C may receive a call from Barclays to check the payments were genuinely authorised.

#### What did our investigator say?

Our investigator thought that Barclays could've prevented the scam from 10 October 2018, and consequently E's loss from that date. So, he recommended that Barclays refund all the disputed transactions from this date, along with 8% simple interest. But he also thought that Mr and Mrs C could've done more to prevent E's loss by reaching out to an appropriate body

for help or advice rather than simply paying over more money to T from 23 February 2019. So, he said E should bear some responsibility for its loss from that date – at a rate of 20%.

### Barclays' offer

Barclays proposed a counter-offer. It said it would be willing to refund 50% of all the money E had lost to the scam – amounting to £232,000. It didn't offer to refund the full amount lost because it said its customer had not been duly diligent in this case, or approached it for assistance when it realised it had been scammed by C.

On behalf of E, Mr and Mrs C declined Barclays' counter-offer. And, as Barclays wasn't willing to increase its offer, the complaint was passed to me to decide.

### My provisional decision

I issued my provisional decision on 28 February 2022. I'll set out what I said below.

It's common ground that the disputed transactions were 'authorised'. Mr C says he made the payments from E's account and, even though he didn't intend the payments to go to a fraudster, the payments were 'authorised' under the Payment Services Regulations. Barclays had an obligation to follow the payment instructions it was given, and E is presumed liable for its loss in the first instance. But that's not the end of the story.

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider that Barclays should:

- Have been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.
- 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 (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- 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 its customers from the possibility of financial harm.

I've looked at E's account statements as far back as early 2018 and I don't think the first payment of £5,000 on 13 August 2018 was particularly unusual or out of character in consideration of the normal account activity. Payments of similar or slightly higher amounts were made from the account on a regular basis, albeit to consistently used destinations. But I consider the payment of £20,000 instructed on 3 September 2018 to be high value, and for significantly more than any other recent payments out of the account. The payment went to the same payee as the earlier £5,000 payment, so arguably to a known payee. But, considering the value of the £20,000 payment against the account activity in the same year, I still think it stood out as unusual and out of character and, overall, I think it's reasonable to expect Barclays to have asked some further questions about the payment.

It doesn't appear that Mr C was coached by the fraudsters, as is often the case with scams, so I think he would've spoken freely if Barclays had asked him some questions about the £20,000 payment.

The Financial Conduct Authority and Action Fraud published warnings about cryptocurrency scams in mid-2018. And investment scams in general were not uncommon at the time. So, I

think Barclays had or ought to have had some understanding of how this type of scam works and, with its industry knowledge, I think this means it ought to have asked Mr C some probing questions and given him information regarding the prevalence of scams. Mr C has said he had no concerns about investing with C because it was listed on CH, had a registered trading office in London, social media platforms gave the impression that it was a genuine company, he had regular contact with C and he could see the investment portfolio growing on C's website. That's what he may have said if Barclays had questioned him about the £20,000 payment. But I don't think the conversation should have stopped there. Barclays could've, for example, asked Mr C questions to get to the bottom of how he'd been contacted, whether the investment opportunity had been mentioned on social media, what type of investment this apparently was, and whether the rate of return on the investment was 'too good to be true'. These are typical features of cryptocurrency and investment scams.

If Barclays had done enough here, I think it would most likely have been obvious to the bank and Mr C that there was a risk of financial harm, and the scam would've unfolded without the £20,000 payment, or any subsequent payments being made. Of course, Barclays could also have declined to make the £20,000 payment (and any future payments of this nature) altogether based on the information it had received if Mr C still wanted to go ahead despite its warnings, and given the circumstances here, I think it would've been reasonable for it to do so.

I appreciate 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 and I wouldn't have expected it to interrogate Mr C. I also acknowledge that the main perpetrators here are the fraudsters. But overall, I think appropriate questions should reasonably have been asked in this case, and if they had been Mr C wouldn't have wanted to go ahead or, if he did, Barclays could've declined to follow his payment instructions. Either way, I think the scam could've been prevented from the £20,000 payment instructed on 3 September 2018, as could E's loss from this point.

Considering everything, I think the fair and reasonable outcome here is for Barclays to reimburse all disputed transactions that occurred from and including 3 September 2018.

In the circumstances, I don't need to go on to consider whether Barclays acted with care and urgency in trying to recover the money E lost from 3 September 2018. But I have considered whether it could have done more to recover the £5,000 payment instructed on 13 August 2018 and I don't think it could. Barclays contacted the receiving banks soon after the scam was reported to it on 8 April 2019 and received advice that no funds remained in the beneficiary accounts.

I've thought about whether E should bear some responsibility by way of contributory negligence. I've seen the brochure and other literature C sent to Mr C about the company and the investment opportunity, and I've looked at the written communication between them. I've also thought about the explanation Mr C has given about why he was persuaded that C was genuine and decided to go ahead and invest with it. Overall, I can see why Mr C was taken in, and I don't think it was unreasonable. But I've seen that Mr C received a first Gazette notice for compulsory strike-off in late January 2019, and he's said he became suspicious about C at this point. I think it would have been prudent for him to have done more to reassure himself that C was a genuine company offering a genuine investment opportunity here. By his own admission, he simply spoke to C for reassurance and then continued to send it money. In the face of the information he'd received from CH, I don't think this was a reasonable course of action. And I think Mr C should certainly have done more to protect E from financial harm when he discovered that C had been operating fraudulently in mid-February 2019. Again, by his own admission, he did not contact Barclays to report the fraud or request its assistance until 8 April 2019, after he had paid more money

to T from E's account in an attempt to recover the money lost to C. I don't think this was a reasonable course of action either. In the circumstances, I think that E should bear 50% of the loss it's incurred from 5 February 2019 – the point that it should've done more to protect itself.

For the reasons I've explained, I've provisionally decided to uphold this complaint in part.

Where I uphold a complaint, or uphold a complaint in part, I can award fair compensation to be paid by a financial business of up to £160,000, plus any interest that I consider appropriate. If I think that fair compensation is more than £160,000, I may recommend that the business pays the balance.

I think that fair compensation in this case should be calculated as follows:

- Barclays should refund all the disputed transactions instructed from and including the £20,000 payment on 3 September 2018.
- Barclays can deduct 50% for contributory negligence from all the disputed transactions from and including the £49,999 payment instructed on 5 February 2019.
- Barclays should pay 8% simple interest on each payment refund from the date of payment to the date of settlement.
- Barclays can deduct the £4,762.75 Mr C says E has already recovered from its total reward.

My provisional decision is that Barclays should pay E the amount produced by the calculation above – up to a maximum of £160,000, plus interest.

If the amount produced by the calculation of fair compensation is more than £160,000, I recommend that Barclays pays E the balance. I assume that Barclays will be willing to do this as it has already made a counter-offer in excess of £160,000, but this recommendation will not be part of my determination or award. Barclays does not have to do what I recommend, but I would be grateful if it could let me know whether it intends to do so in replying to my provisional decision.

#### Responses to my provisional decision

Mr and Mrs C told us again where the funds they'd lost had come from and reiterated the profound impact the fraud has had on their lives. They said that the scammers were unbelievably convincing, professional and knowledgeable – they were convinced that this sophisticated scam was a genuine investment opportunity. Finally, they expressed their hope that Barclays would pay compensation in line with the calculation of fair compensation I'd set out.

Barclays said it had no additional points to raise, and it confirmed its willingness to settle the complaint in full, in line with my recommendation, unrestricted by monetary limits.

#### **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.

Neither party has disagreed with my provisional decision. Nor have they given me any new information that I haven't already had the opportunity to consider, or that would change my mind. As such, I see no reason to depart from the conclusions set out in my provisional decision.

## **My final decision**

For the reasons I've explained, I've decided to uphold this complaint in part.

Where I uphold a complaint, or uphold a complaint in part, I can award fair compensation to be paid by a financial business of up to £160,000, plus any interest that I consider appropriate. If I think that fair compensation is more than £160,000, I may recommend that the business pays the balance.

I think that fair compensation in this case should be calculated as follows:

- Barclays Bank UK PLC should refund all the disputed transactions instructed from and including the £20,000 payment on 3 September 2018.
- Barclays Bank UK PLC can deduct 50% for contributory negligence from all the disputed transactions from and including the £49,999 payment instructed on 5 February 2019.
- Barclays Bank UK PLC should pay 8% simple interest on each payment refund from the date of payment to the date of settlement.
- Barclays Bank UK PLC can deduct the £4,762.75 Mr C says E has already recovered from its total reward.

My decision is that Barclays Bank UK PLC should pay E the amount produced by the calculation above – up to a maximum of £160,000, plus interest.

If the amount produced by the calculation of fair compensation is more than £160,000, I recommend that Barclays Bank UK PLC pays E the balance. This recommendation is not part of my determination or award. Barclays Bank UK PLC doesn't have to do what I recommend – but I hope that it will, having already indicated its willingness to do so. It's unlikely that E can accept my decision and go to court to ask for the balance. Mr and Mrs C may want to get independent legal advice before deciding whether to accept this decision on E's behalf.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 25 April 2022.

Kyley Hanson  
**Ombudsman**