

The complaint

Mr S complains that Barclays Bank UK PLC hasn't refunded him after he fell victim to an investment scam and lost £75,000.

What happened

I issued a provisional decision on this case on 10 March 2022 and both parties have had an opportunity to respond. Barclays hasn't said anything more. Mr S disagreed with my findings. I've copied the provisional decision below in *italics*, before going on to summarise Mr S' response.

I've discussed this complaint in detail with both Barclays and Mr S, prior to my issuing of this provisional decision. That being the case I won't go into extensive detail about the circumstances of what happened, as the facts are well-known to both parties. In summary:

- *Mr S was searching online for an investment that suited his needs. He found a site and entered his details. He was then contacted by someone posing as a broker that I'll refer to as B. But B, and all those that claimed to work there, were scammers.*
- *B discussed Mr S' investment needs and passed his details on to what Mr S thought was a well-known investment bank which I'll refer to as C. Mr S was then contacted by what appeared to be staff from C. But it was still the scammers that were speaking to Mr S.*
- *C sent Mr S convincing literature and directed him to its website. Mr S has explained how all of what he was shown was very professional, as were the members of staff he dealt with.*
- *C asked Mr S to submit his details along with identification documents. Some of what he sent was rejected for not having been issued within three months. But ultimately Mr S provided C with all it needed, and it said he could proceed with the investment.*
- *Mr S has said how he did all the checks he could to make sure all was above board, including checking the FCA website for details of both B and C.*
- *Mr S decided to go ahead with an investment into a bond and made two payments: one for £50,000 on 7 February 2020 and another for £25,000 on 10 February 2020, both using a reference supplied by the scammers.*
- *When making the first payment Mr S was presented with the following warning:*

If 'Investment' selected, display:

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 a return on an initial investment to encourage you to provide larger amounts of money. It's best to talk to someone you trust or a financial adviser before investing your money.

- *Mr S has explained that he is sure that he would have read the warning and taken heed of it. He's said he was very conscious of being careful given he was sending so much money.*
- *The payments went through successfully, and Mr S was unaware anything was wrong until a month later. He was alerted to the scam when his wife tried to make a similar investment in March 2020 and her bank flagged the payment as suspicious.*
- *Mr S got in touch with Barclays to report the scam. He's explained how he was questioned as to whether he was sure he had been the victim of a scam as the bank could see his money had been transferred to one of its long-standing corporate clients. Mr S insisted the bank investigate.*
- *It took a long time for Mr S to get an answer from Barclays, despite speaking to it on numerous occasions. It seemed the bank was taking a long time to investigate the receiving account, which Mr S thought must have been set up by the scammers.
Mr S was told at one stage, several weeks after reporting the scam, that recovery action hadn't even begun.*
- *Whilst the bank looked into what had happened Mr S was contacted by the scammers who claimed his money hadn't been received. They told him to contact Barclays to ask it to return the money so that he could then send it on again. So Mr S believes that Barclays have held the funds somewhere and they ought to be available to him.*
- *Barclays wrote to Mr S with its final response in July 2020. It said it hadn't been able to recover any of his money and that it couldn't share the details of the recipient account holder. It recognised that its communication with Mr S had been poor and that it had taken too long to investigate his scam claim. And so it said it would pay him £300 in compensation.*
- *Barclays considered whether it was required to refund Mr S' scam loss under the Lending Standards Board's Contingent Reimbursement Model (CRM) Code, of which it is a signatory. It declined to do so as it believed it had presented Mr S with an effective warning at the point he made the first payment. And it said Mr S hadn't performed the required level of due diligence.*

- *Barclays, in its final response, specifically referred to warnings about C on the FCA website. The warning confirmed the genuine C had been 'cloned' and that scammers were impersonating it in order to defraud people.*
- *Mr S had already referred his complaint to this service by the time of Barclays' final response as it had already exceeded the time allowed to consider the complaint. And as Mr S was unhappy with the bank's answer we began to investigate.*
- *Barclays contacted Mr S again directly whilst we were investigating. This was in September 2020 and it said that it had reviewed his complaint and would be refunding half of his loss – £37,500 – along with any applicable interest and charges. It didn't give detail as to why it was refunding that amount, only saying its earlier decision had been wrong. Mr S asked the bank for further explanation but received no reply.*
- *One of our investigators considered all that had happened and recommended the complaint be upheld, with Mr S being refunded in full. She felt the bank's warning wasn't an effective one as per the requirements of the CRM Code. And she thought Mr S had made the payments with a reasonable basis for believing they were for a legitimate investment, noting the sophistication of the scam and the cloning elements as being particularly convincing.*
- *Barclays disagreed and asked that an ombudsman review the case. It reiterated that its warning ought to have led to Mr S checking the FCA website where he ought to have found a cloned firm warning about C. It also questioned why Mr S was happy to deal with C, when he knew he had been dealing with B. And it also pointed out there was an FCA warning about B being an unregulated firm. The case was passed to me for an independent review.*
- *I've since corresponded with both Barclays and Mr S. I've explained to both parties that I believe the refund and compensation already paid by Barclays represents a fair and reasonable settlement of the complaint. As Mr S didn't agree, I'm issuing this decision to confirm my intended findings.*

What I've provisionally 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.

I'm sorry to disappoint Mr S but I intend to keep my findings the same as I've already explained to him, and I'm not telling the bank to do anything more. I know this will come as a huge disappointment. I don't underestimate the significant impact this loss has had – or will continue to have – on him and his family. Such a cruel crime has lasting financial ramifications as well as having a significant mental and emotional impact. But having considered all the available evidence and information, I don't find it fair and reasonable to say Barclays ought to make up Mr S' remaining loss.

The starting point in law is that Mr S is presumed liable for any transactions on his account that he authorises. He did authorise the two payments that are the subject of this complaint, even though he did so under false pretences and as a result of a scam.

But that's not the end of the story. Barclays is signed up to the CRM Code and so ought to refund victims of authorised push payment (APP) scams in all but a limited number of circumstances.

Before I move on to my findings about liability for the loss under the CRM

Code, it's necessary for me to discuss the money that's already been paid back to Mr S.

The refund already paid to Mr S in September 2020

Barclays has explained that it refunded half of Mr S' loss in September 2020 after reviewing his complaint and finding it hadn't acted quickly enough to recover his money. It has an obligation to seek to recover payments sent as a result of a scam, and to do so quickly.

Mr S has said how the information he was getting from the bank suggested it hadn't started to chase the money until perhaps May 2020. But I can see that isn't the case.

It's not entirely clear when Barclays did properly raise the scam claim and seek recovery of the funds. But I can see there are records of it doing so from 30 March 2020. And so it seems the delay was around two weeks at most.

I wouldn't normally make a finding that a customer should be reimbursed on the basis that the bank took longer than it ought to have in seeking to recover a scam payment. Such a finding would only be made if it was evident that quicker action would have meant the funds could have been recovered from the recipient account. There's no evidence to suggest that was the case here.

Mr S' money went to the genuine account of one of Barclays' corporate customers. Barclays has described how the turnover on that account runs into the millions of pounds each week and that it operates as a money transfer service. That means any payments into the account are quickly redirected to a different recipient, often internationally. Here, that would have been a different account controlled by the scammers. The reference on each incoming payment represents the instruction of where to send the funds on to. So I'm satisfied that Mr S' money wasn't recoverable at the point he reported the scam as it had already moved through the receiving account. It's important to remember Mr S didn't report the scam until around a month after he sent the money.

It does seem Mr S was given incorrect information at different times when discussing the scam with the bank. And it took too long to get an answer to him. But the bank has already fairly compensated him for these issues in paying him £300 in compensation.

Barclays said in its final response that it couldn't supply Mr S with the details of the recipient account holder. I did say to Mr S that I would try to get the bank to release that information to him. But it has declined to do so and so I'm unable to pass the detail on. The bank isn't required to share this information and I'm not able to direct it to do so.

I know Mr S feels strongly that Barclays didn't act quickly enough and that if it had moved to recover his funds sooner, then the result would have been different. That belief is, at least in part, based on the scammers contacting Mr S after he'd made payment to say they'd not received his funds. Mr S believes this shows that his funds had been held somewhere and ought to have been recoverable.

I can't say why the scammers told him what they did. It's quite possible they did have Mr S' money and were simply looking to obtain more. Or it might be that the recipient account owner ringfenced Mr S' funds. It could also be that the account the money transfer service sent the funds onto was frozen by that bank. Unfortunately, and I know this is frustrating to say the least for Mr S, I've no way of knowing. It's beyond the remit

of this service to be able to pursue the funds that far. All I can say is I'm satisfied Barclays was unable to recover the money, and that its delay in looking to do so didn't impact the chances of that recovery.

Mr S has expressed concern that the evidence provided by Barclays to this service paints a different picture to what he was being told whilst the scam was being investigated. The bank has already acknowledged that Mr S was misinformed at times.

Where I've made findings about what actions the bank was taking at different times, those are based on evidence which includes electronic records and notes. So I find the bank's evidence persuasive in terms of setting out the timeline and the bank's actions. I'm not persuaded the bank has misinformed this service or altered the history of events. It's more likely than not that the bank got it wrong when they were talking to Mr S.

Considerations under the CRM Code

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 apply in Mr S' case. And I agree that is the case, which is why I'm not telling the bank to do any more than it already has.

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 they were for legitimate goods and services.*

Did Barclays present Mr S with an effective warning?

I don't find the warning given by Barclays does meet the definition of an effective warning. The requirements for this are set out in the Code under standards for firms. And the warning that was presented doesn't meet all those requirements. For one, it doesn't make it clear that any money sent as a result of a scam would be lost and likely irrecoverable.

And so Barclays can't rely on the effective warnings exception to reimbursement. And this would normally mean that the bank is responsible for covering at least 50% of the loss. But here, Barclays has already refunded that amount. It did so in September 2020.

Barclays may not have refunded the 50% having reconsidered its position on effective warnings. But I can't ignore that the refund has been made and it is on the basis that it generally hasn't met the standards for firms requirements. I can't say Mr S should receive reimbursement over and above what I would otherwise consider fair and reasonable.

It's important to remember here that I wouldn't normally award a refund to a customer because of a delay in seeking recovery of payment. The amount to be refunded to Mr S would only increase if it could be said he had a reasonable basis of belief when

making the payments. I'll address that next.

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

I've seen at least some of the correspondence between Mr S and the scammers at both B and C. And I've seen the literature that Mr S was sent. There's no doubt that this was a convincing scam, and there are sophisticated elements to it. Carefully tailored email addresses that look as though they could belong to genuine employees of C; stolen and copied bond information; a detailed and convincing on-boarding and customer verification process. These are all elements that made the investment and the people Mr S was dealing with seem legitimate. I can certainly see how Mr S was drawn in by the scammers here.

However, I also find that Barclays have made a reasonable argument in respect of the information and warnings it presented to Mr S when he was making the first payment. The warning is relevant to the reasonable basis of belief considerations; it isn't only considered as part of the effective warning exception. That's because it does still form part of the wider circumstances and what was happening as the scam unfolded.

It's clear that the warning specifically addresses the scam risk of investments and cloned firms. It also explains the risk of using an unregulated broker. Mr S believed he was dealing with a genuine company in terms of who he was investing with (C) and who the broker was (B). And the warning given by the bank instructed Mr S to check the FCA website for the details of both. So I believe it's fair and reasonable to say the warning ought to have resonated with him, given it matched his circumstances. And that remains true even though the warning may not have technically been effective as per the Code.

Barclays has provided evidence to show that Mr S spent just under two minutes reading through this warning. Mr S himself has said how he would have read and taken notice of everything he was presented with. With those two points in mind I'm satisfied Mr S did read and understand the message and so ought fairly and reasonably to have acted on it and checked the FCA website.

Mr S has said that he did actually check the FCA website and found nothing concerning. But there were live warnings about cloned and unregulated companies for B (posted in January 2020) and C (posted in December 2019). The FCA warning for C contains some of the contact details Mr S was using to correspond with the scammers. And so it's difficult for me to understand why these warnings weren't found and why they didn't prevent Mr S from proceeding to make the payments.

It seems one of two things more likely than not happened. Either Mr S did check the FCA website, saw the warnings but decided to proceed anyway, which wouldn't be a reasonable course of action. Or he didn't take note of the bank's warning and didn't check the FCA website, thereby not carrying out an important piece of due diligence that would more likely than not have revealed the scam. Whichever it may be, the outcome would be the same. It would mean Mr S proceeded to make the payments without a reasonable basis for belief, even though the scam was very convincing up to that point.

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

It's arguable that Barclays ought to have done more to question the payments Mr S was making, particularly the first one. He was sending a large sum of money to a new payee. And so there could be an argument to say the bank ought to have questioned

Mr S directly, either on the phone or in branch. The counter to that would be that Mr S had recently made similar sized payments out of his account around the same time, and so the scam payment wasn't necessarily uncommon account activity.

Nonetheless, I've already made the finding that Mr S should bear some responsibility for the loss as he didn't have a reasonable basis for belief. That responsibility isn't diminished or removed by a possible further omission on the bank's part. And so, even if it might be said the bank ought to have done more, it would remain the case that Mr S would only receive a refund of 50% of the total loss.

My provisional decision

My provisional decision is that Barclays Bank UK PLC has paid sufficient redress to settle this complaint fairly and reasonably.

Mr S' response to the provisional decision said, in summary:

- Barclays repeatedly questioned whether he had been the victim of a scam, indicated that his money was safe, and said it hadn't started any form of recovery action.
- That swifter action from Barclays to recover the money would have made a difference.
- The fact that it's been found Barclays didn't do what it ought to have done in giving an effective warning, as per the CRM Code, ought to mean it bears responsibility for the loss.
- He did check the FCA website and found no warnings for either B or C. He said he'd checked several weeks before making the payments and is sure the warnings weren't there.

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.

I've thought carefully about what Mr S has said since the provisional decision. And I've done so whilst considering all the evidence and information that had already been supplied by him and Barclays.

Having done so I'm not departing from the findings I've already explained. I won't go over all those details again given there's no change. Instead I'll address the points raised by Mr S in response to the provisional decision. I'll do so in the same order as I've set them out above.

I've never doubted what Mr S has said he was told at different times whilst discussing the scam with the bank. I can accept he was questioned about whether it was actually a scam, that he was told his money looked to be safe in the receiving account, and that recovery action hadn't started. Call recordings might well confirm all of that, if they were available. But I'm satisfied that the information he was being given and what he was being told at the time was wrong.

Mr S has suggested instead that the bank is giving incorrect information to this service now, to hide its mistakes. But I'm not persuaded that is the case. I can't listen to the calls Mr S has referred to. And some of what was discussed was in branch. But I have seen evidence that satisfies me recovery action was started at least by the end of March 2020, as I explained in my provisional decision. The outcome of that action found Mr S' money had already moved through the account.

I remain satisfied that swifter action on the bank's part would not have made a difference to the recovery of funds. It did start recovery action in March. But even then, it had been a month between Mr S making the payments and his reporting of the scam. And so any chance of recovering the funds was always going to be remote. Given how the funds would have been moved on – considering what I said in my provisional decision about the nature of the business Mr S sent the payments to – I'm satisfied they would have been lost almost immediately.

The CRM Code does place responsibility for loss on a bank where it hasn't met the standards for firms. That includes where it hasn't given an effective warning. But the Code does also set out a requisite level of care on the customer's part. And as I've found Mr S didn't have a reasonable basis for belief at the time he made the payment, the Code states responsibility for the loss is to be shared between the parties. That is why Barclays isn't responsible for refunding Mr S' complete loss.

I've said Mr S lacked a reasonable basis of belief because the warning provided by the bank ought to have resonated with him and because there were live warnings for both B and C on the FCA website. Mr S has said he checked the website several weeks prior to making the payment. The suggestion being that the FCA warnings hadn't gone live.

The warning for B had been live for a month before Mr S made the payments, having been published on 6 January 2020. The warning for C had been live for almost two months, having been published on 18 December 2019. So it seems more likely than not both were live at the time Mr S ought to have been checking the FCA website. And I also find it's fair and reasonable to say that the presentation of the bank's warning at the point of payment ought to have prompted a further check of the FCA website in any case.

As a further consideration on the FCA warnings point, if Mr S checked the FCA website before the warning against B went live, it would be the case that he wouldn't have found an entry for B at all. It wouldn't have appeared on the FCA website without a warning as it wasn't a regulated firm. And so, if B wasn't listed at all, that ought to have prompted concern on Mr S' part given the content of the bank's warning.

Mr S has said that he wouldn't have seen the warning for C as he was directed to a cloned website. To be clear, I've not said that Mr S lacked a reasonable basis of belief because of what might have been found on the legitimate website for C. It is only the warnings on the FCA website that I've considered.

My final decision

I find that Barclays Bank UK PLC has paid sufficient redress to settle this complaint fairly and reasonably.

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

Ben Murray

Ombudsman