

The complaint

Miss L is unhappy that Barclays Bank UK Plc hasn't reimbursed the money she lost after she fell victim to an investment scam.

Background

Both parties are aware of the circumstances of the complaint, so I won't repeat them all here. But briefly, Miss L has explained that in 2020, she had to close two of her businesses due to Covid-19 so was looking for an alternative means on income. She found an investment page that took her interest and provided her contact details to be called back on.

She was called within the next few days by a lady claiming to be from an investment firm. Unbeknownst to Miss L at the time, this lady was actually a fraudster. Miss L says the lady explained their 'firm' invest in a number of different areas, such as commodities, cryptocurrency and foreign exchange. Miss L explains investing was described as an excellent opportunity to make money and that the company's minimum investment value was £500. Miss L was also told she'd need to provide copies of her identification to prove she was able to work in the UK. Miss L says she wasn't concerned by this, as she follows a similar process in business with new employees. Miss L said she was impressed by what the lady had told her so made a card payment through the fraudster's website for around £500. Miss L was advised she'd be partnered with a broker who would be in touch soon.

From this point onwards Miss L had daily contact with her 'broker' – also part of the scam. Miss L was told to download an instant messaging app on her phone to speak to the broker, as well as to download software on her computer so that the broker could gain remote access. Miss L has explained her broker called her every morning and would discuss how her investments were performing. The fraudster would show Miss L what appeared to be a trading platform of Miss L's investments and profits. A week after her initial investment, Miss L was led to believe she'd made around \$150 and was encouraged to invest more in order to earn larger profits. Encouraged by her profits so far, Miss L decided to invest a further £5,500. Miss L was told a 'wallet' had been created in her name, which she sent the money to, and received email correspondence from the wallet provider confirming receipt (the fraudster had in fact created this account using the identification Miss L had provided, and had full control of the funds once the money was transferred to this account).

When making the initial transfer, Barclays says Miss L would've been presented with a warning which included advice for Miss L to check the FCA website for warnings on the firm and ensure any investments she made were FCA-regulated. It also warned that fraudsters may provide an initial investment return to encourage consumers to provide larger amounts of money. Miss L says she does not recall seeing this warning. Miss L also received automated text messages from Barclays querying this payment transfer, which she responded to. However the questions were unrelated to the scam she fell victim to. After answering these questions, Barclays released Miss L's payment.

Again Miss L could see this payment transfer on her trading platform and the broker continued to speak to her daily, showing where minor losses were being made, but also large profits. The broker also provided Miss L with a document that set out additional

'bonuses' she could earn from the investment firm if she invested larger amounts. Encouraged by her earnings so far and the potential to earn additional bonuses, ten days after her initial transfer Miss L made two further payments on the same day, the first for £42,100 and the second for £15,500. As profits continued to increase after these payments were made, Miss L transferred another £50,000 across three days later.

Later that week Miss L received communication from her broker, stating that unfortunately some of her investments had turned against her and her profits had dropped by around \$100,000. Miss L was told the investment company would be willing to 'buy' these losses from her if she paid £23,700. Miss L reasoned that it would be better to lose this amount than \$100,000 so paid this amount as requested.

Miss L later tried to make an account withdrawal and was told by the broker that she would need to pay an insurance fee. Miss L became suspicious about this and the related paperwork she received. She contacted Action Fraud and the Financial Conduct Authority (FCA) at which point she realised she'd been the victim of a scam and contacted Barclays to make a claim.

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 says one or more of those exceptions applies in this case.

Barclays considers Miss L didn't have a reasonable basis for believing she was dealing with a legitimate investment firm and therefore making legitimate transfers. However it acknowledges it could've done more to protect Miss L from financial harm, so provided Miss L with a refund of 50% of payments made. The initial card payment Miss L made was also fully refunded and Barclays awarded a further £300 compensation for delays in dealing with Miss L's claim. Miss L feels she should be refunded in full and so has referred her complaint to us.

I am also mindful that when Miss L 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 make 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.

An investigator looked into the complaint and thought Barclays ought to have done more. He considered Miss L did have a reasonable basis for believing the investment firm was legitimate until making the final payment of £23,700, at which point he considered Miss L should've had concerns and conducted further checks before proceeding. He therefore recommended Barclays should fully refund all fraudulent payments except the last. The investigator considered a 50% liability split was fair for the final payment to acknowledge that both sides could've done more at this point. As Barclays disagreed with the investigator's view, the complaint 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.

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Having done so, I am satisfied that:

- Under the terms of the CRM Code, Barclays should have fully refunded the money Miss L lost on all payments other than the last of £23,700. I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case for all other payments.
- Barclays should in any event have intervened when Miss L made the first transfer, as the payment was unusual and out of character for Miss L and had it done so, I am satisfied the fraud would have come to light and the loss prevented.
- In the circumstances Barclays should fairly and reasonably refund the money Miss L lost on payment transfers one to four.
- The money was taken from Miss L's current account. It is not clear how she 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 Miss L made the payment transfers to the date of payment.

I have considered Barclays' representations about whether Miss L had a reasonable basis for believing the transaction to be genuine. But they do not persuade me to reach a different view. In particular, I am not persuaded that Miss L 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 satisfied that Barclays has not shown that Miss L lacked a reasonable basis of belief. Barclays doesn't consider Miss L completed enough due diligence, or conducted relevant checks to ensure the investment firm was genuine. Barclays has said that, considering the value of funds she was investing, further independent research should have been completed before transferring the funds. Barclays also considers that as Miss L contacted the FCA to verify this was a scam, she could've done this sooner. I appreciate there were other checks here Miss L could've conducted, but I've also considered that the 'hook' to this scam was the early 'profits' Miss L thought she'd made and how this impacted her trust in the broker. She has said she initially invested £500 as that was an amount she was willing to risk, should the investment not go as planned. It was the success following this initial investment that reassured Miss L to invest further.

I appreciate Miss L never successfully withdrew any profits – but she'd also not attempted to until after all payments were made. I think it's important to note here that the methods fraudsters use to convince consumers that they are making profits are highly sophisticated – the fraudster in this case used a demonstration version of a genuine trading platform to lead Miss L to believe that she could physically see her investments making money – and Miss L was receiving confirmation from a genuine 'wallet' provider that her deposits were being received to her account. I can therefore understand why Miss L considered there to be convincing evidence that her money was being successfully deposited, then applied to an active trading account. I've also seen correspondence between Miss L and the fraudster that shows the daily phone calls that were taking place – I think the fraudster has gone to significant efforts to build a rapport with Miss L and build trust with this regular contact.

Miss L has acknowledged she is inexperienced in investing and hadn't heard of the FCA – only being directed there after she had raised concerns about this being a scam. I've considered Barclays' online warning which directs Miss L to check the FCA website for warnings and regulation. Miss L says she didn't see this, or at least doesn't recall seeing it. In any event, when the scam began, there were no warnings on the FCA register about this firm. Had Miss L checked, she would've obtained no results, but I've also considered that Miss L believed she was investing in some products, such as cryptocurrency, that weren't

regulated. Even if Miss L had looked into this further, it's questionable whether there would've been sufficient red flags to stop her proceeding with the transfers. I've also thought about the part of the warning that covers fraudsters providing returns – however this is included towards the bottom of the warning, among other parts that are less relevant to Miss L's circumstances, which I think could make it easier to overlook, particularly as by the time Miss L made this first transfer, she'd already made a payment by card to the scammer so was arguably less concerned by this point about the possibility this was a scam.

Overall, I think the level of sophistication of this scam, constant communication with the fraudster and the perception of being able to see profits being made led Miss L to having a reasonable basis for believing she was dealing with a legitimate investment firm for all but the final payment she made.

When making the final payment, I think the fraudster's offer of 'buying' her losses seemed too good to be true, and I've not seen any evidence that Miss L questioned how the fraudster wouldn't be out of pocket from doing so. I think this offer from the fraudster should've raised concerns with Miss L and at this point she ought to have asked more questions before proceeding. In not doing so, I don't think Miss L had a reasonable basis for believing the payment she was making at this point was legitimate. I therefore think Barclays' offer to refund 50% of this payment is fair.

I've considered the £300 Barclays awarded Miss L for the delays in investigating her claim. I appreciate this would've been a stressful time for Miss L, and delays by Barclays no doubt further contributed to this worry. I think £300 is a fair reflection of the additional stress Miss L experienced.

My final decision

For the reasons I've explained, my final decision is that I uphold Miss L's complaint against Barclays Bank UK Plc. I require Barclays Bank UK Plc to:

- Refund the remaining 50% of bank transfers one to four, totaling £56,550
- Pay 8% simple interest on these payments, from the date each payment was made until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 22 June 2022.

Kirsty Upton
Ombudsman