DRN-3584095

The complaint

Mr L is unhappy that Barclays Bank UK PLC ("Barclays") won't reimburse money he lost as part of a cryptocurrency investment scam.

What happened

Mr L was looking to invest in cryptocurrency and came across the website for a company called Crypto-Com (which subsequently turned out to be operating fraudulently). Mr L's told us that the website had a secure padlock sign and looked professional, and his friends thought it seemed legitimate. He says that he reviewed the website's terms and conditions as well as the privacy policy. He also researched the company's registered address.

Mr L completed an enquiry form and was contacted by a representative from Crypto-Com who he says encouraged him to check customer reviews. Mr L also received a Blockchain Council certificate in the name of his account manager. He was told he could make a profit of around 8% a day and agreed to start with an initial investment of £250.

To facilitate trading on his account, Mr L first sent money from his Barclays bank account to another company called Coinbase. It converted his funds into cryptocurrency, which Mr L then sent on to his trading account with Crypto-Com.

After making an initial deposit, Mr L saw his 'trades' making gains of between £0 and £15 over the next few weeks. Seeing the gains that were supposedly being made, he was convinced by his 'account manager' to invest more money. He says the individual gained his trust by regularly discussing shared interests. Mr L was also able to make a withdrawal which he says gave him the confidence that the everything was above board.

Mr L's account manager then told him about an opportunity to make higher profits if he executed trades in a certain stock. This led him to invest higher sums over the coming days. Mr L says he saw his trading account had made a profit of 20-25% following the trades.

The transactions relevant to this complaint are set out in the table below.

Transaction Date	Type	Merchant/Payee	Amount
22 September 2020	Faster payment	CB Payments Ltd	£2.00
22 September 2020	Faster payment	CB PAYMENTS	£5,000.00
1 October 2020	Credit	Coinbase	£272.05 **(credit)**
5 October 2020	Faster payment	CB PAYMENTS	£10,000.00
6 October 2020	Faster payment	CB PAYMENTS	£10,000.00
7 October 2020	Faster payment	CB PAYMENTS	£10,000.00
8 October 2020	Faster payment	CB PAYMENTS	£10,000.00
9 October 2020	Faster payment	CB PAYMENTS	£10,000.00
10 October 2020	Faster payment	CB PAYMENTS	£10,000.00
12 October 2020	Faster payment	CB PAYMENTS	£24,747.00
		Total payments	£89,749.00

		Less credits	£272.05
		Total loss	**£89,476.95**

Mr L decided that he didn't want to invest any more funds and enquired about making a withdrawal. He was told that he needed to pay £22,746.04 in Bitcoin conversion fees and Capital Gains Tax before funds could be released (representing 22% of the withdrawal amount). Mr L made the payment at one of Barclays' branches. The payment was flagged and later released after Mr L confirmed it was genuine.

It was only when Mr L was asked to pay more tax that he became suspicious and realised that he'd been scammed. He contacted Barclays immediately who investigated the matter and ultimately refused to refund the payments Mr L had made. It said that Mr L had authorised the payments and sent money from his Barclays account to his account with Coinbase, so this was a buyer/seller dispute. Barclays accepted there were delays in its investigation and paid £200 compensation in recognition of this.

Our investigator upheld the complaint. He thought that Barclays ought to have intervened when Mr L attempted to make the payment of £5,000 on 22 September 2020. Had it done so, he thought it likely the bank would have uncovered the scam, thereby limiting Mr L's loss. So, the investigator recommended that all payments Mr L made from that point onwards be refunded less the credit already received.

Barclays disagreed with the investigator's findings. It said the payment of £5,000 wasn't out of character for Mr L's usual spending but accepted the £10,000 on 5 October 2020 was. Barclays acknowledged that it didn't appear to have provided any effective warnings prior to the payment requests and so accepted it was liable for Mr L's losses. But it also considered Mr L equally liable and said that he didn't meet the 'Requisite Level of Care'. So, it proposed to refund 50% of his losses from the first £10,000 payment onwards.

Our investigator put the bank's offer to Mr L, but it wasn't accepted. As an agreement couldn't be reached, the matter has been escalated to me to decide.

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.

Under regulations, and in accordance with general banking terms and conditions, banks should execute an authorised payment instruction without undue delay. The starting position is that liability for an authorised payment rests with the payer, even if they were duped into doing so, for example as part of an investment scam.

The payments Mr L made to the fraudulent company weren't sent directly from his bank account to the company's. All payments were made via another account in Mr L's name which he had control over. Under these circumstances, the Lending Standards Board's Contingent Reimbursement Model (the CRM Code), which requires signatories such as Barclays to reimburse customers who are victims of scams like this one in all but a limited number of circumstances, doesn't apply.

While I find the CRM Code doesn't apply here, that code is not the full extent of the relevant obligations that could apply in cases such as this. In accordance with the law, regulations and good industry practice, a bank has a duty to protect its customers against the risk of fraud and scams so far as is reasonably possible. If, in breach of that duty, a bank fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime, it might be liable for the losses incurred by its customers as a result.

So, even though Mr L was transferring funds to a cryptocurrency account in his name, Barclays ought to have been on the lookout for unusual and out of character transactions. While the transfers were made to his own wallet, scams involving transfers to cryptocurrency accounts were well known to banks by this time and I therefore think that where payments were also out of character, potential losses were foreseeable to the originating bank.

I've considered the operation of Mr L's account in the year leading up to the disputed payments. I don't consider the initial payment of £2 to be unusual or suspicious such that I think Barclays ought to have intervened at that point.

Our investigator's view was that the next payment, for £5,000, was unusual for Mr L's account activity and ought to have triggered the bank's systems. But Barclays disagrees and says that two months earlier, in July 2020, Mr L made a payment of £3,860.17 to a new payee. It acknowledges that this payment was made from Mr L's business account but argues that it was made using the same 'membership' and the bank's systems monitor any payment using that membership.

I've carefully considered the comments Barclays has put forward. But I'm not persuaded by its explanation. While it's not for our service to dictate how a bank should configure its systems for flagging unusual transactions, I think it's important to note that a personal account is used for an entirely different purpose to a business account. The nature, value, and volume of transactions on a business account tend to be very different to an account intended for personal use. This is evident from looking at statements for Mr L's personal and business accounts.

It is my view that it isn't reasonable to say that payments made by an individual on behalf of a limited company can be compared like for like to payments made on their personal account for the purposes of what constitutes as unusual and uncharacteristic spending on the personal account.

The payment in question was made from Mr L's personal account. Like the investigator, I'm satisfied that it was not in keeping with the general spending activity on Mr L's personal account. I consider that it was so unusual that Barclays' systems ought to have triggered an alert and the payment paused, pending further investigation. Given the amount involved, and the fact that the payment was to a cryptocurrency exchange, I consider it would have been reasonable for Barclays to have properly questioned Mr L before executing his authorised instruction.

Had Barclays carried out its due diligence and duties and asked Mr L about the payment, I've no reason to doubt that he would have explained what he was doing and the true purpose of his payment to Coinbase. He had been given no reason to think he had to hide this information from his bank, and neither had he been coached to tell them something different (which we know was the case at the time of the last payment).

Had Barclays done more and warned Mr L about cryptocurrency scams, I'm satisfied that he would have looked further into the investment opportunity in general, including whether Crypto-Com was regulated here in the UK or abroad. He could have discovered that it wasn't. Indeed, it's likely that Mr L would have come across the various warnings about cryptocurrency exchange scams.

I'm therefore persuaded that a meaningful intervention from Barclays at that time would likely have exposed the scam. And I think it's more likely than not that intervention would have caused Mr L to stop from going ahead with the payment, thereby preventing further losses. Barclays has acknowledged that no such warning was given to Mr L, even when it did intervene subsequently. I find that Barclays can be held liable for these losses and that it needs to reimburse Mr L.

I've also carefully thought about whether Mr L is partly to blame for what happened as Barclays has argued. I'm not persuaded that he is. I haven't seen any evidence to suggest that he had investment experience such that he ought to have realised he had been given inaccurate information, or that what he was told was too good to be true. Investing in such areas as crypto and forex can produce good returns and in my view a return of up to 8% doesn't sound that unrealistic, particularly when it was a *likely* return and not guaranteed. I do accept that such investments do come with a lot of volatility. But this might not be known to the layperson.

Barclays has argued that it's been unable to locate the 'good' Trustpilot reviews that Mr L says he saw before deciding to invest. It also submits that historic reviews still show on the website. A cursory search on Trustpilot's 'Help Center' website page suggests that it is possible to have reviews removed – by the reviewer, other users, as well as Trustpilot itself. I would also add that in my experience reviews posted about such companies can and are deleted.

I've seen an email chain from Mr L to the scammer from October 2020 where he says that he's decided not to invest more money and wants make a withdrawal due to concerns about seeing a "few concerning reviews on Trust pilot". I think it's unlikely that Mr L would have given negative reviews as a reason for not wanting to invest further unless he'd actually come across them. Given this contemporaneous evidence, I'm persuaded by what Mr L has told us about checking reviews before deciding to invest with Crypto-Com.

I've thought about this carefully, given the imbalance of knowledge between the parties. While acknowledging that Mr L could have done more research – as can most customers – overall, I'm not persuaded that it would be fair to make a deduction for contributory negligence in this case.

As I've decided that Barclays needs to reimburse Mr L most of the payments, it's only fair that it adds interest to the reimbursed amount. The funds Mr L sent to the scammer were transferred from his business accounts and would likely have stayed there but for the scam. Under the circumstances, I consider that Barclays should add simple interest at the rate payable on Mr L's business account instead of 8% that the investigator recommended.

I know Mr L has said that a fraction of the amount he sent to the scammers came from his personal funds. But I've also looked at the account statements and they show that funds were transferred from his business accounts. So, I have to consider what's fair and reasonable in the circumstances and make a decision. Having done so, I think a fair outcome overall would be for interest to be paid at the business account rate.

Putting things right

To put things right for Mr L, Barclays Bank UK PLC needs to:

- reimburse all but the first disputed payment, less £272.05 that has already been recovered; and
- add simple interest on the reimbursed payments (less any tax properly deductible) at the interest rate payable on Mr L's business account, calculated from the date of payment to the date of settlement.

My final decision

For the reasons given, my final decision is that I uphold this complaint and require Barclays Bank UK PLC to put matters right as set out above.

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

Gagandeep Singh
Ombudsman