DRN-3593979

The complaint

Mr H complains that Barclays Bank UK PLC ("Barclays") have unfairly refused to refund over £26,000 he lost as part of an investment scam.

What happened

The details of this complaint are well known to both parties, so I will not repeat everything again here. In summary, Mr H was approached by several scam investment brokers ("Abinance", "Bubblext" and "Reverse Trails") who convinced him to invest his money under the pretence of increasing his monthly income through crypto currency trading.

Mr H transferred around £26,000 over 16 payments made from 17 August 2020 to 31 December 2020. Barclays initially identified the first payment made on 17 August 2020 as suspicious (although it hasn't been able to explain why) which resulted in it sending a text message to Mr H asking him to confirm the payment was genuine, which he did. However, he subsequently discovered he had been scammed and complained when Barclays refused to refund the money he had lost.

Our investigator upheld the complaint. She didn't think sending a text message was a proportionate response to the suspicious activity identified on Mr H's account and thought Barclays should have gone further. The investigator thought that the scam would have likely been prevented if Barclays had contacted Mr H from the outset and asked probing questions about the nature of the payment. Barclays disagreed, so the matter has been escalated to me to determine.

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.

Having done so, I agree with the conclusions reached by the investigator for the following reasons:

- It isn't in dispute that Mr H authorised the disputed payments he made to the various crypto-exchange platforms using his Barclays credit card (where his funds were subsequently transferred on to the scammers from his crypto wallet, of which I understand the scammers had access to). The payments were requested by him using his legitimate security credentials provided by Barclays, and the starting position is that banks ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.

- However, I've considered whether Barclays should have done more to prevent Mr H from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character.

- Barclays has said that the first payment Mr H made to Tinkbit on 17 August 2020 did trigger its fraud detection systems, although it has been unable to specify why. However, they have said that it could've been due to the transaction appearing out of character or because of previous instances of fraud related to the merchant.

- So, it isn't in dispute that this first payment *was* unusual given that it did trigger the bank's fraud prevention systems and was automatically blocked pending further enquiry. Accordingly, it's just a matter of whether the bank went far enough in all the circumstances with that intervention.

- When Mr H attempted the £1,000 payment to Tinkbit on 17 August 2020, Barclays sent him a text message asking him to confirm the payment was genuine. I appreciate Barclays have been unable to disclose the specific reason why the payment was blocked, but given they've said it would have been due to it appearing unusual or due to previous instances of fraud related to the merchant, I'm not persuaded a text message asking Mr H to confirm he was making the payment is a proportionate response. Given it had flagged it as a suspicious payment, it ought to have gone further and spoken to Mr H to find out more about the nature of the transaction he was making before allowing it to be processed, rather than simply asking him to confirm if it was genuine.

- Barclays says that if it had a discussion with Mr H it would not have found any adverse information about the merchant he was dealing with. I appreciate there were no FCA warning published about the merchant at the point Mr H began making the scam payments. However, I still think it's likely that a scam warning would have prevented Mr H from going any further, as there were several indications that he was being scammed, which Barclays ought reasonably to have been aware of (particularly those involving cryptocurrency) by August 2020.

- If Barclays had contacted Mr H and asked him further questions and for more of the basic surrounding context, I think it's likely he would have explained what he was doing and that he was making an investment after being approached by an unknown broker, where he was being told to send money to the broker via crypto-exchange platforms. He would have likely told them that the broker had access to his crypto wallets and was making "trades" on his behalf, which is also another hallmark of this type of investment scam, as the fraudster will often transfer the money into their own wallet from the victim's once the money has been transferred. Barclays should have recognised these circumstances of being indicative of a scam and have acted to provide Mr H with a warning.

- Overall, I'm satisfied that a warning to Mr H from his trusted bank would have probably led him to discover various scam warnings online. I appreciate there were no FCA warnings about the merchants at the time, but I can see there were other websites warning people about investing with merchants such as Bubblext at the time.

- Even if Mr H had not worked out that the broker he was talking to was fraudulent, it is likely that a warning would have at least alerted him to the common issues arising in relation to cryptocurrency/forex dealer scams, which in turn would have revealed the truth behind the supposed broker's representations. This would have probably stopped Mr H in his tracks. So, but for Barclays' failure to act on clear triggers of potential fraud or financial harm, Mr H probably wouldn't have made the payments on his credit card.

- Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the

Financial Services and Markets Act 2000). In this case, I do not think that Mr H was to blame for what happened; that he did not foresee the risk of this sort of harm or any harm. I do not think Mr H could have foreseen the risk that the companies he was dealing with were scammers and the trading account he was viewing was likely to be a simulation. And as Barclays has pointed out, there were no regulatory warnings in place about the brokers at the time Mr H started making the payments. So, in the circumstances, I do not think it would be fair to reduce compensation on the basis that Mr H should share blame for what happened.

My final decision

For the reasons given above, I uphold this complaint and direct Barclays Bank UK PLC to

(1) Refund Mr H the loss incurred from his credit card as a result of the payments he made as part of the scam, and rework his account to reimburse any interest and charges levied as a result, as though the payments had not taken place.

(2) Pay 8% simple interest per year on any payments Mr H made towards the credit balance as a result of the scam, from the date he paid them to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 10 October 2022.

Jack Ferris
Ombudsman