

The complaint

Mr H is unhappy that Barclays Banks UK PLC won't refund transactions he made as part of an investment scam.

The transaction came from a business account. Because he's a sole trader, I've just referred to him as Mr H.

What happened

In August 2018, Mr H came across a company, Brighter Trade – he wanted to get into trading for the first time after he inherited some money. He explained the account seemed to grow initially but he then started to lose money – in response, he was told to invest more so he could recoup what he'd lost and retain his VIP account status. Mr H recalled that he asked to withdraw money at times but he was dissuaded from taking larger amounts, being told to leave it there so he'd more leverage to invest. As part of trading with Brighter Trade, it's understood that Mr H made some deposits via Bitxplace, a crypto exchange.

In December 2018, Mr H said he couldn't get through to Brighter Trade and saw he'd lost a substantial amount. He later came across a claims management company and realised that he alongside others had been scammed.

In January 2019, Mr H contacted Barclays to dispute the payments he'd made as part of the scam. The merchants largely defended these claims, except for three payments to FBX*Bitxplace totalling £15,000.

Mr H raised a complaint with Barclays – he didn't think it handled the chargeback process correctly, which meant he didn't get his money back. Barclays said it couldn't do anything more for Mr H to pursue the claims, but it did pay £150 compensation for a mistake it made with how it credited and re-debited Mr H's account.

I've included a table with the transactions in dispute and the money that was returned to Mr H:

In August 2018, Mr H came across a company, Brighter Trade – he wanted to get into trading for the first time after he inherited some money. He explained that the account seemed to grow initially but he then started to lose money – in response, he was told to invest more so he could recoup what he'd lost and retain his VIP account status. Mr H recalled that he asked to withdraw money at times but he was dissuaded from taking larger amounts, being told to leave it there so he'd more leverage to invest. As part of trading with Brighter Trade, it's understood that Mr H made some deposits via Bitxplace, a crypto exchange.

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Date	Merchant	Amount
8 August 2018	Brightertrade.com	£500.00
14 August 2018	Brightertrade.com	£5,000.00
14 August 2018	Brightertrade.com	£5,000.00
14 August 2018	Psp*Brightertrade	£6,400.00
14 August 2018	Brightertrade.com	£100 credit
15 August 2018	Brightertrade.com	£500 credit
17 August 2018	Psp*Brightertrade	£5,000.00
17 August 2018	Psp*Brightertrade	£10,000.00
23 August 2018	Psp*Brightertrade	£10,000.00
29 August 2018	Brightertrade.com	£10,000.00
30 August 2018	Brightertrade.com	£1,000.00 credit
5 September 2018	Brightertrade.com	£5,500 credit
21 September 2018	Brightertrade.com	£10,000.00
5 October 2018	Psp*Brightertrade	£7,000.00
5 October 2018	Psp*Brightertrade	£10,000.00
5 October 2018	Brightertrade.com	£1,000.00 credit
11 October 2018	Psp*Bitxplace.com	£5,000.00
11 October 2018	Psp*Bitxplace.com	£10,000.00
18 October 2018	Psp*Bitxplace.com	£2,500.00
6 November 2018	Psp*Bitxplace.com	£5,000.00
20 November 2018	Brightertrade.com	£2,500.00
20 November 2018	Brightertrade.com	£5,000.00
27 November 2018	Brightertrade.com	£5,000.00
27 November 2018	Fbx*Bitxplace	£5,000.00
27 November 2018	Fbx*Bitxplace	£5,000.00
29 November 2018	Fbx*Bitxplace	£5,000.00
3 December 2018	Brightertrade.com	£5,000.00 credit
25 March 2019	Fbx*Bitxplace	£5,000.00 credit
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So, in all, Mr H paid the merchants £133,400 and he received £28,100 back. This makes the total amount in dispute £105,300.00.

On 30 June 2022, I sent my provisional findings. In summary, I thought Barclays should've intervened and that would've likely stopped Mr H making further payments. Because of this, I asked Barclays to refund the disputed payments less the first two payments to Brighter Trade and less any amount refunded by the merchants. I also thought a 20% deduction should be made for contributory negligence.

Barclays accepted my findings and had nothing further to add. Mr H respectfully challenged the 20% deduction on account of the lack of intervention and Barclays' handling of the dispute.

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 thought about Mr H's response carefully, I've not changed my mind about the outcome to this complaint.

I was sorry to read about the horrible time Mr H has been through and I don't doubt what a devastating effect this scam had on him. I want to be clear that in deciding Mr H shares some blame isn't to take away from how he was ultimately a victim in this situation.

But, as an independent decision maker, I must also recognise that Barclays was not the perpetrator of this scam. So, in holding Barclays responsible for its failures to intervene, it seems only fair to reflect on whether Mr H reasonably shoulders some blame too.

Deductions for contributory negligence aren't an exact science. Here, I don't think Mr H is as much to blame for his losses as Barclays are. But I do, as it seems Mr H accepts, think he bears some responsibility. My provisional findings set out why, and while I've considered Mr H's response carefully, I remain of the opinion that a 20% deduction is fair and reasonable.

So I've not changed my mind about the outcome of Mr H's complaint. For completeness, I've included my provisional findings below:

It's not in dispute that Mr H was a victim of a scam. For completeness, I agree. The Financial Conduct Authority (FCA) issued a warning about Brighter Trade for operating without the required authorisation. That indicates they were operating illegally, probably with dishonest intentions – as legitimate firms tend to comply with regulatory requirements. And the behaviour Mr H has reported – the expectation of unrealistic profits with minimal risk, being told to invest more to recoup losses and refusing large withdrawals – is indicative of a scam.

It's also not in dispute that Mr H authorised the transactions. So the starting position is that he's liable for the resulting loss. But there are some situations where we believe that banks – taking into account relevant rules, codes and best practice – ought to have identified a fraud risk, so should have looked at the wider circumstances.

Barclays said no concerns were raised with these transactions. Having reviewed Barclays' *'Customer Notepad Details'*, it did contact Mr H about transactions on 8 August 2018 and confirmed they were genuine. It's not clear this included the £500 payment to Brighter Trade. But even if it did, I think it's more likely that Barclays concerns related to the flurry of activity that day, which included a £100,000 credit. So I accept that checking the transactions were genuine would've been a proportionate response to that concern.

But I agree with our investigator that Barclays ought to have intervened later. On 14 August 2018, two transactions to the same merchant were made within 15 minutes – totalling £10,000. So I think Barclays should have been concerned about why these payments weren't made in one go and whether attempts were being made to circumvent its detection systems by making smaller consecutive payments.

Taking this into account, I think Barclays should've contacted Mr H when the second payment for £5,000 on 14 August 2018 was attempted. If it had done so, and if it had asked

suitably probing questions about the payment, I'm persuaded it would have uncovered that Brighter Trade weren't regulated by the FCA. It could've also unveiled that they'd told him to expect significant profit with very little risk. So, in line with the FCA's advice on how to avoid investment scams from the time, it could've warned Mr H that it was probably a scam.

If Barclays, speaking from a position of trust and expertise about financial services and scams, had said this, I don't think he would have proceeded with the payment. After all, this was his first experience with trading and I don't think he would've known before what to be wary of. So I'm satisfied Barclays can be held liable for the loss Mr H suffered from that point.

Contributory negligence

I've considered whether Mr H contributed to his losses. As I've said, he was an inexperienced investor and there wasn't much information available online about Brighter Trade before he invested. I can also understand how the platform's presentation and the guidance of 'experts' gave Mr H confidence. This was a sophisticated operation.

However, I'm also mindful that Mr H invested over £130,000 over four months. So, at some point, he wasn't just trying it out – this became a significant investment. Given this, I'd have expected Mr H to have done more to reassure himself that Brighter Trade were legitimate and to understand what the warning signs of investment scams were. Had he have done this, it's possible he could've uncovered their lack of regulation and the likelihood this was a scam himself. He may have also discovered the FCA's warning about Brighter Trade, first published on 31 August 2018.

In these circumstances, I think it would be fair to reduce compensation by 20% on the basis that Mr H should share some blame for what happened.

Chargeback

Mr H is unhappy that he wasn't given the opportunity to pursue the chargeback claims after the merchants defended them. But I don't think it would've changed the outcome of these claims.

That's because binary-options and forex trading disputes were only included with the scope of VISA's reason code 13.5 (misrepresentation) where the merchant *guaranteed* returns, which I've not seen evidence of. Or, where it stopped the cardholder from withdrawing funds. This required very specific evidence, such as how they attempted to resolve the dispute with the merchant, a dated screenshot of their available balance and evidence of their withdrawal request. Again, I've not seen that this evidence was available here.

I have considered whether, had Barclays intervened in August 2018, it could've supported Mr H with getting the required evidence. But there's nothing to show what the available balance was at the time. So I can't say what he'd have been able to claim.

It follows that I don't think Barclays' approach to the chargeback claims caused Mr H to lose out.

My final decision

For the reasons set out above, I uphold this complaint. I order Barclays Bank UK PLC to refund the payments made as part of the scam, less the first two payments to Brighter Trade and less any amount refunded by the merchants. Barclays should then deduct 20% for contributory negligence. I understand that amounts to an award of £79,840.

This was a Mr H's business account, so Barclays should add interest to that sum (less any tax properly deductible) at the relevant account rate from the respective dates of loss to the date of refund.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 17 August 2022.

Emma Szkolar
Ombudsman