

The complaint

Mrs K complains that Barclays Bank UK PLC did not do enough to protect her from the financial harm caused by an investment scam.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mrs K complains that she was the victim of a scam involving five online payments using her Barclays VISA debit card linked to her current account. She made payments totalling £9893.32 to a cryptocurrency exchange company between 11 December 2020 and 15 December 2020. After Mrs K's money was converted into cryptocurrency, it was then sent to a 'wallet' which she believed was held with a company I'll refer to as D.

When Mrs K realised she'd been the victim of a scam, she asked Barclays to either refund the money she'd lost or to process chargeback claims under VISA's Chargeback Scheme. She told Barclays it should have made additional checks before processing the payments to help protect her from financial harm. She said the pattern and amounts involved were significantly higher than her usual spending, involving multiple transfers on a single day to a new payee and that a conversation with Barclays could've exposed the scam. She said she rarely made payments to trading institutions and the payments should have flagged up as suspicious or unusual. Further, had Barclays asked for more information, it would have realized she wasn't given any investment brochures or information.

Barclays told Mrs K its attempt to recover her money was unsuccessful and there was nothing further it could do. Mrs K wasn't satisfied and so she complained to this service explaining she'd been the victim of a sophisticated scam. She said the scammers had taken advantage of her inexperience and that Barclays should put things right by refunding the money she'd lost. She said she'd been affected personally, emotionally, and financially.

Our investigator thought the complaint should be upheld in part and that Barclays should refund Mrs K the payment she made on 15 December 2020 for £4,534.87, less 25% for contributory negligence. She was satisfied the payment was unusual as it was the third consecutive payment Mrs K had made that day, with the transaction values increasing each time and using over 90% of the available funds. She was also satisfied that if Barclays had contacted Mrs K to ask questions about the payments she would probably have shared details about the reason for the payment and as there was information in the public domain about the very high risks associated with crypto trading, she might have decided not to make the payment. But she felt Mrs K should share some blame for the loss as she didn't conduct any independent research before agreeing to pay the money.

She explained she didn't think Barclays needed to refund the other three payments because they were of low value, they weren't unusual, and they fell within the usual spending pattern for Mrs K's account. The payments were also made to a genuine merchant who provided cryptocurrency. She finally said chargeback claims would be unsuccessful because the payments were made to a genuine merchant who had provided their services to Mrs K.

Mrs K wasn't satisfied and so she asked for her complaint to be reviewed by an ombudsman. She has said that while the first four payments were for lower amounts, they were unusual because they were to a new payee made on three consecutive days and therefore Barclays should have raised additional questions. She also said Barclays should've raised a chargeback request under the VISA Chargeback Scheme.

Barclays added that it didn't think a conversation would have prevented the transactions from taking place and that the involvement of a broker wouldn't have made it more likely to conclude it was a scam especially as there were no warnings against the cryptocurrency exchange company on the FCA Register.

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.

Although Mrs K didn't intend the money to go to scammers, she did authorise the disputed payments. Barclays is expected to process payments and withdrawals that a customer authorises it to make. But, where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

Mrs K has lost £9893.32 in payments that she made via a cryptocurrency exchange company. From the evidence I've seen, the payments went to a genuine cryptocurrency exchange company and were subsequently exchanged for crypto and sent onto a wallet Mrs K believed was in her name with D. Buying cryptocurrency is a legitimate activity and therefore the extent of what we would expect Barclays to have done to protect Mrs K is restricted to 'triggers', meaning I need to consider whether the transactions were so unusual that Barclays ought to have intervened to warn Mrs K when she tried to make the payments.

Barclays, along with other payment services providers, should be monitoring accounts and be on the lookout for unusual transactions or other signs of fraud. Barclays has confirmed the payments didn't flag as suspicious on its system. I've considered the nature of the payments in the context of whether they were unusual or uncharacteristic of how Mrs K normally ran her account and I agree with our investigator that the first four payments of £839.11, £2,529.14, 829.94 and £1,160.26 were not unusual. I appreciate there were four separate payments made on three consecutive days but given the amounts were not unusually large and that they were made to a legitimate company, I'm not persuaded there was any obligation on Barclays to intervene or prevent the payments. So, I don't think it needs to refund them.

Chargeback

Chargeback is a voluntary scheme run by VISA whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed. Our role in such cases is not to second-guess Visa's arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. Barclays) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder (Mrs K).

Chargeback is a voluntary scheme and Barclays is bound by the card scheme operators (Visa in this case) rules. But being the victim of a scam doesn't automatically entitle the payer to a refund through the chargeback scheme. Barclays said it did raise a chargeback

claim but for the claim to be successful, Mrs K would have needed to show the cryptocurrency exchange company didn't provide the cryptocurrency and that her loss arose from those transactions, which it did not. I'm satisfied therefore that Barclay's conclusion that the chargeback claim would be unsuccessful was reasonable.

The fifth payment

The fifth and final payment of £4534.87 was significantly higher than the earlier payments and I'm satisfied that in the context of other payments Mrs K made from her account, it was unusual, especially as she had made two other payments to the same account earlier that day. Because of this, I think Mrs K should've been given a warning by Barclays when she tried to make this payment.

I accept it's not for this service to instruct which checks Barclays should do or the questions it should ask. But, given the size of this payment, how unusual it was and that it was going to a cryptocurrency provider, I think in these circumstances it would be reasonable to expect these additional checks to include questions. Those questions could have included the purpose of the payment, how Mrs K had come into contact with the cryptocurrency exchange, whether she was under pressure to pay, and whether anyone (like a broker) was helping her in the background.

If it had asked these questions, I think Barclays would've found out that D was in the background 'helping' Mrs K and they were trading her money. She'd likely have also explained that she had not done any research into D. On finding this out, I think Barclays should then have warned Mrs K about the increase of scams of this type in recent years. I think it could have explained its experience, particularly involving brokers that can provide fake wallets and trading accounts that make it seem like the consumer is 'winning' and would eventually not allow them to withdraw their funds. I also think Barclays could have explained the importance of checking D was legitimate and the risks of sending money in this way.

As Barclays is a financial business and Mrs K wasn't an experienced investor, I think Barclays' warnings would have at least led her to investigate D and cryptocurrency scams further. If she'd done that, the warnings about cryptocurrency scams published by the FCA and Action Fraud would have become apparent and she most likely wouldn't have made that payment. I accept there were no warnings about D on the FCA register but if Barclays had asked Mrs K further questions before processing the payment, as I think it should have, I don't think Mrs K would have lost the money from that payment.

I've thought about whether Mrs K should bear some responsibility for her loss and I think she should. This was a sophisticated scam, but Mrs K didn't undertake any checks into D before she made the payments. So, I agree with our investigator that the money Barclays should refund should be reduced by 25% for contributory negligence.

The refund should include a payment of 8% simple interest on the refunded payments from the date they were paid until the date they are refunded.

My final decision

For the reasons set out above, I uphold Mrs K's complaint in part. My decision is that Barclays Bank UK PLC should

- Refund Mrs K the £4534.87 payment less 25% for contributory negligence.
- Pay 8% simple interest per year on the refund, from the time of the payment until the time it is refunded

HM Revenue & Customs may require Barclays to deduct tax from the interest it pays Mrs K. If it does, and if Mrs K requests it, Barclays should provide her with a certificate showing how much tax it has taken off so that she may reclaim it if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 22 September 2022.

Carolyn Bonnell
Ombudsman