

The complaint

Mr W complains that Barclays Bank UK PLC will not refund all of the money he lost after falling victim to a cryptocurrency investment scam.

What happened

In late December 2020, Mr W fell victim to a scam after connecting with an individual on a dating app. He explains that he was not looking for investment options at the time, but they introduced him to cryptocurrency investing and convinced him to have a go. Mr W set up a wallet with a cryptocurrency exchange. He explains that he started with a small amount of a few hundred pounds and saw screenshots showing that investment had made a profit of £3,000. Over a period of five days, Mr W made nine payments, sending approximately £45,800 to his wallet with the cryptocurrency exchange and then onwards from there whilst following the fraudster's instructions.

Mr W has told us he started to become suspicious about the situation and was unable to sleep because he was replaying what he'd been told in his mind. Mr W tried to withdraw some of the money himself and was unable to. He thought what the fraudster had told him about opening an account at another money transferring business didn't seem right when he was already 'up' from where he'd started. In a panic, Mr W called the Police and the scam was identified.

The Police advised Mr W to call his bank straight away. Mr W explains that he called the bank's fraud team at 5:17am on 31 December 2020 and was told there was nothing that could be done. Mr W called Action Fraud as soon as it opened. Mr W recalls that Action Fraud told him it had received a lot of complaints involving this cryptocurrency exchange. Following Action Fraud's advice, Mr W called the bank again. He explains that he spoke to the bank two further times that morning, the first call was to log the claim and the second call was to obtain the reference number which the bank had not provided to him.

Mr W explains he received a letter acknowledging the claim later that week. Barclays sent him a generic automated update text every week for the next five weeks. Mr W wrote a complaint letter and sent it to the bank's head office via special delivery because he was concerned that there had been no substantive news.

On 25 February 2021, the bank left Mr W a voicemail. He phoned back and explained that he was working abroad in Eastern Europe and it was very difficult for him to call as he was using his employer's phone. He asked if Barclays could liaise with his parents who were in the UK and could speak from a UK number but was told it was not possible. Mr W explains that he spent over 100 minutes on hold over Skype trying to connect to the right department. The department had closed for the day, but Mr W recalls that the operative he reached asked him questions about the scam to aid the investigation.

Mr W says that Barclays followed up with five more automated text messages between 26 February 2021 and 26 March 2021.

On 26 February 2021, Barclays refunded just over £37,000 straight into Mr W's account.

Mr W received a letter on 2 March 2021 confirming the refund. The letter was incomplete, with an obvious missing sentence and grammatical errors. It did not fully explain why Mr W was being held responsible for the remaining £8,000 that had been lost.

By 23 March 2021, Mr W had heard nothing about his complaint so called the bank. Mr W says he was told that the first four payments that he'd made were not refunded as they were made before the CRM Code came into force in May 2019. Mr W was confused as all the payments left his account in December 2020. Barclays said it would log a query about the payments. Mr W had no further contact from the bank until 15 April 2021.

Mr W received text messages asking if it was a good time to call to obtain further information. When the bank did not call, Mr W explains that he initiated a call over Skype. Mr W says the call was not productive as it turned out the bank did not require anything further from him and he'd been on hold for over two hours for no reason.

On 20 April 2021, Mr W received a letter. The letter referred to a conversation on 1 March 2021, but Mr W points out that he'd never spoken to the author of the letter at any time. The letter said the bank would not be able to reimburse the rest of the funds that Mr W had lost as they did not fall under the CRM remit, but did not explain what that meant. Mr W says the letter did not address his points and contained mistakes. He contacted the bank again.

On 21 April 2021, a member of the bank's staff advised that it would have been possible to allow Mr W's parents to discuss the complaint on his behalf by adding a password to the account. The bank then advised that the complaints procedure had been exhausted and Mr W should refer his complaint to this service.

One of our Investigators looked into things but did not recommend the complaint should be upheld. He explained that the CRM Code didn't apply to the payments Mr W made because it only covers payments that are sent to another person and the wallet Mr W had set up with the cryptocurrency exchange was in his own name.

He thought Barclays had treated Mr W fairly by refunding the transactions made from the fifth payment onwards. Our Investigator was not persuaded that the earlier payments Mr W made were particularly unusual or suspicious. He thought Barclays had tried to recover the funds, which is in line with what he would expect the bank to do in the circumstances. He agreed that the bank's response to Mr W's claim and complaint fell outside of the timescales it had originally indicated. He noted that Mr W would have appreciated more detailed updates, but he thought the bank had done what it could and noted that it struggled to reach him whilst he was abroad. He didn't think Barclays needed to refund any further funds or pay any compensation.

Mr W disagreed. He thought the transactions were unusual and completely out of character for his account well before the fifth payment. He said they looked suspicious by the third payment. He highlighted that the third payment made to the wallet was within an hour of the second and that it had greatly increased in value.

Mr W was concerned that the call recordings of the conversations he'd had with Barclays and Action Fraud were not on the case file. He reiterated that he'd been ignored by the bank initially and that it would have been best practice for Barclays to put restrictions in place to block payments to the cryptocurrency exchange based on what Action Fraud had said about receiving many reports. He felt the way Barclays had handled things was poor and added even more stress to an already difficult situation.

As no agreement could be reached, the complaint was referred to me.

On 24 May 2022, I issued my provisional decision on this complaint. In it, I explained why I was minded to partially uphold it. My reasoning for that position is copied in italics below:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Over the course of the scam, Mr W made nine payments from his Barclays account to the wallet account he had opened. Even though Mr W was the victim of a sophisticated scam, the transactions are considered to be authorised. Under the Payment Services Regulations 2017, Mr W is presumed liable for the loss in the first instance.

However, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Barclays should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.*
- 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). This is particularly so given the increase in sophisticated fraud and scams in recent years, which payment service providers are generally more familiar with than the average customer.*
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made 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.*

The bank's internal notes explain that it refunded just over £37,000 of the loss Mr W suffered because the fifth payment that he made flagged up on the bank's systems but by mistake the bank did not block it or contact Mr W to discuss it further. It refunded that payment and all of the payments that Mr W went on to make as it considered, on balance, that contact from the bank at that point would have uncovered the scam and prevented Mr W from sending any more money.

There's no debate that Barclays should be on the lookout for out of character and unusual payments and when they spot them, they should intervene and ask questions to challenge the purpose of the payments. Barclays readily accepts that it missed an opportunity to intervene and question whether Mr W was at risk of financial harm. It considers that it should have done so at the point of the fifth payment and that intervention would most likely have uncovered the scam. The disagreement in this case is that Mr W argues that the point of intervention should have been apparent earlier, and by the third payment he made.

I have thought about what Mr W has said. But I don't agree that there is a clear enough spending pattern occurring that is potentially indicative of financial harm earlier than the fifth payment. I don't think I can fairly say that significant risk factors were clearly evident at the time Mr W made the third and fourth payments.

I accept Mr W was making payments that were not typical for him. In the lead up to the scam, he did make faster payments from time to time, but nothing more than £1,000. So I can appreciate why Mr W considers that his third payment for just over £3,000 and the fourth payment for just over £5,000 stand out. But the size of the payments being made were fairly unremarkable generally, even though they do stand out when contrasted to Mr W's

typical spending amounts.

Transaction size alone isn't the only factor when assessing whether a bank should have intervened to challenge payments to cryptocurrency exchanges. I don't think the third or fourth payments were so unusual that Barclays ought to have reached out to Mr W to make enquiries about them before processing them.

I need to consider holistically whether Barclays has acted unreasonably by saying it should have intervened at the point of the fifth payment. The bank needs to strike a balance in the extent to which it intervenes in payments, against the risk of unduly inconveniencing or delaying legitimate payment requests. Whilst the third payment was made around an hour after the second payment, Mr W did not go on to make any more payments on that day. Even when Mr W made the fourth payment the next morning, I am not persuaded there was enough going on at that point to be able to say that Barclays missed an obvious opportunity to challenge a pattern of spending that was indicative of financial harm from fraud, even though the money was going to a cryptocurrency wallet provider.

Mr W has raised the point that Barclays should have stopped the transactions to this organisation and refers to what Action Fraud told him about the prevalence of scams involving this organisation. I do accept that cryptocurrency investment scams have increased in prevalence and they involve a customer moving money to an account in their own name. But it is possible to make legitimate investments in cryptocurrency. The payments Mr W made were to a legitimate cryptocurrency exchange.

I think the situation evolved and there were clearer indications that things were perhaps not legitimate at the fifth payment. The fifth payment was around two hours after the fourth payment and again for just over £5,000. I agree with Barclays that this payment ought to have warranted further discussion. At this point, even if the bank had thought Mr W was legitimately investing in cryptocurrency, transferring a further £5,000 was out of character with how Mr W had been investing, even when taking into account the fast moving cryptoasset market.

The fifth payment represented significantly more than his usual daily account spending and it occurred shortly after an earlier transfer for a similar amount. This change in how his account was being utilised had clearer hallmarks that were potentially indicative of fraud. By this point, I think it was reasonably foreseeable that Mr W could be at risk of financial harm from fraud.

I agree that Barclays should have had sufficient concerns at this point and that it should have made further enquiries with Mr W about the nature of the fifth payment before processing it. It follows that I consider Barclays' offer to refund the fifth payment and all of the payments that followed it to be fair and reasonable in the circumstances of this complaint.

Recovery of funds

I have seen evidence that Barclays tried to 'follow the money' and see if any of the funds Mr W had sent could be recovered. Ultimately this was not successful. But that outcome is not surprising given that fraudsters tend to move the funds on very quickly. As the fraudster was coaching Mr W, it seems more likely than not that they were able to utilise the funds as soon as they were sent.

The service Barclays provided to Mr W

Finally, I've considered the customer service provided to Mr W. Barclays has been able to

provide one call recording which I have listened to, but I have also considered Mr W's testimony and the bank's records.

Having done so, there's no doubt that the way Barclays handled Mr W's claim fell short. I appreciate that this was a difficult time for the bank, with staff members working remotely and the country still within the grip of the Covid-19 pandemic, which no doubt caused some unavoidable disruption to the level of service it was able to offer. But Mr W's timeline of events which I have set out in the background to this provisional decision shows that Barclays should have taken more care and acted with more urgency in the circumstances.

When Mr W first contacted the bank, he was distressed. It was the middle of the night and the scam had come to light after Mr W had contact with the Police via the emergency services. Barclays ought to have logged the fraud claim and given him a reference number during that first contact, or explained the process that he needed to follow if the out of hours operative Mr W spoke to was not able to take the required steps.

Mr W was trying to come to terms with the fact that he'd been tricked. The connection he'd made on the dating app was not what it seemed to be, and it was dawning on him that a considerable amount of money had been lost. I cannot even begin to imagine how overwhelmed Mr W felt in that moment. Some of that distress and emotional upset was no doubt caused by the fraudster who had cruelly deceived him. But Barclays' handling of this claim made an already difficult situation more protracted.

Mr W raised a complaint after waiting five weeks and not hearing anything substantive about his fraud claim. He was told that his parents could not manage the claim on his behalf but found out later that this would have been possible. Mr W struggled to manage the claim effectively from his location abroad. He has described his struggles to try and speak to the bank over the phone, only to later discover after significant periods of time on hold that the bank did not require anything further from him.

In addition to this, Barclays did not clearly explain to Mr W the approach it had taken to assessing his claim. It sent him a letter where the important detail that explained the reasoning behind the outcome was not included. He did not understand why he had received a partial refund and it was not explained to him why his claim was not able to be considered under the CRM Code until he spoke to this service.

I think it is clear that all of this inevitably caused Mr W distress. I realise this will be of little consolation to Mr W, but I think Barclays should pay him £400 in compensation to recognise the impact its poor service had on him.

Responses to my provisional decision

Barclays accepted my provisional decision and said it would be willing to pay the compensation I'd suggested to resolve the case.

Mr W and I spoke on the phone about my provisional decision. He said the promised profit was much more than I'd said and that he thought it may have been as much as \$50,000.

Mr W asked me which call recording the bank had provided. He explained he was unhappy with the way the bank had handled the situation. He thought the bank had lied repeatedly and was deliberately covering things up.

We talked about recovery of funds and how money tends to be utilised very quickly by fraudsters. I explained I didn't agree that a bank should stop all payments to cryptocurrency exchanges as a matter of course because not all transactions related to cryptocurrency are

automatically a scam.

Mr W explained he didn't feel the compensation element of the provisional decision went far enough. He felt Barclays had treated him with contempt and explained that he had to go through the experience and relive it repeatedly because of them. Mr W expressed concern that Barclays had got away with not providing all of the calls that had taken place, even though calls were meant to be recorded. He felt that Barclays had been incompetent the whole way through and he wanted all the calls to be heard. Mr W sent me a list of the calls he had made.

After seeing details of the dates and times of the calls Mr W had highlighted, Barclays were able to locate recordings of some of those conversations. Mr W said this illustrated the bank's incompetence at every level and that Barclays had lied to the Ombudsman Service about the calls it had available. He noted that one call in particular was missing and said his case was a *"prime example of chronic, endemic organisational incompetence and dishonesty on their part."*

Both parties have now had the opportunity to add further comments. In addition, I have listened to the additional call recordings Barclays has been able to locate. As such, I am now in a position to reach my 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.

I'm sorry to have to disappoint Mr W, but his response to my provisional decision and the further evidence that has been made available since then has not persuaded me to reach a different conclusion.

Mr W and I spoke about the provisional decision for around 40 minutes. As part of that conversation, we both broadly agreed that Barclays should have done more in the moment when he was making the payments. But we didn't agree on exactly when that point of intervention should be. Mr W feels the evolving situation should have been apparent earlier than the fifth payment that he made. I've thought very carefully about what Mr W told me. But I'm still not persuaded I could fairly say there was a clear enough spending pattern occurring that was potentially indicative of financial harm from fraud earlier than the fifth payment. For the reasons I've already explained in my provisional decision (which is summarised above and forms part of this final decision), I don't think I can fairly say that significant risk factors were clearly evident at the time Mr W made the third and fourth payments.

I turn now to the compensation that the bank should offer to acknowledge that it let Mr W down. When Mr W and I spoke, I explained there isn't a set formula to decide the level of compensation which would be appropriate and I think about the impact a business' actions or omissions have had on the individual involved.

At the time I reached my provisional decision, there was no doubt in my mind that Barclays should have handled this situation with more care. I noted that Mr W first called the bank in the middle of the night immediately after having contact with the Police via the emergency services. I was aware that Mr W had not heard anything substantive about the outcome of his fraud claim over five weeks on from when he reported it, and that Mr W had struggled to speak with Barclays from his location abroad. I was also aware that Barclays had not explained how or why it had given Mr W a partial refund and that it had given him unclear information about why the CRM Code was not applicable to his case.

I do understand that Mr W feels let down and angry at the bank. Some of the conversations I have now listened to were harrowing. I do not wish to cause Mr W further distress by recalling details that take him back to that time in his mind, but the level of stress and suffering he was going through by not knowing one way or the other what the bank's position was about such a large amount of his money was difficult to hear. Whilst Barclays was following its internal processes and procedures, it was not explaining to Mr W what was going on and important written correspondence contained significant errors. Authorised Push Payment fraud is a horrendous crime. It has a significant impact on the lives of its victims, and I feel the way Barclays interacted with Mr W lost sight of this.

But, as I explained to Mr W when we spoke, when considering an award in respect of the impact on him, I need to carefully consider the impact of Barclays' actions or inactions, not those of the other parties involved here. Most significantly, this means attempting to discount the actions of the fraudster, who was ultimately the party who perpetrated this fraud on Mr W and, as such, was the direct cause of Mr W's losses and the subsequent impact.

If Barclays had acted as I think it should have done, I agree the impact on Mr W would have been lessened. But I do not consider the bulk of the impact caused by the fraudster's deception and the scam itself would have been prevented or nullified. It would be disproportionate for me to attribute the impact to Barclays solely – even on the basis that it is the only party able to be held to account. Taking everything into account and thinking about the share of the impact reasonably attributable to Barclays here, I still consider it appropriate to make an award of £400 for the material distress and inconvenience Mr W has suffered.

I know Mr W is going to be disappointed by this conclusion and has already said he does not think it goes far enough. Discovering that the bank had got further call recordings at such a late stage in this investigation has no doubt further damaged Mr W's trust and confidence in Barclays. But I'm not a regulator and I have no powers to fine or punish Barclays for its conduct, nor can I tell Barclays what systems it needs to put in place to support customers when making a fraud claim.

My final decision

For the reasons I've given, my final decision is to instruct Barclays Bank UK PLC to pay Mr W £400 compensation for the distress and inconvenience it caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 13 September 2022.

Claire Marsh
Ombudsman