

Complaint

Miss M is unhappy that Barclays Bank UK PLC won't refund the money she lost when she fell victim to an investment scam.

Background

In late 2020, a friend of Miss M's recommended she invest her money with a particular business. Her friend had already invested money with this business and her investments were apparently performing well. Unfortunately, although it wasn't clear to either Miss M or her friend at the time, the business in question wasn't a legitimate one, but a scammer.

Miss M was put in contact with a man who claimed to be her "broker" who explained that he would manage the investments on her behalf. She was taken through a fake customer verification process that involved her supplying copies of documents, including her passport.

The broker asked her to open a cryptocurrency wallet with a third-party business. She transferred fiat currency to this third-party business which was then converted to cryptocurrency. That cryptocurrency was subsequently transferred out of Miss M's account to a blockchain address controlled by the fraudster. She was given access to a platform which showed her fictionalised data on how her investment was performing. This data suggested that her investment was performing well and so encouraged her to invest more money. In total, Miss M transferred a little over £100,000.

When Miss M wanted to withdraw funds from her account, all communication with the scammer stopped. She recognised that she must've fallen victim to a scam and so she contacted Barclays immediately. Barclays said it wouldn't pay her a refund. It said that she suffered no financial loss when she made a transfer from her Barclays account. The account to which she made those transfers was also under her control. It was only when she authorised the transfer of the cryptocurrency onwards from that account that she suffered a financial loss. That transaction didn't involve Barclays.

Miss M was unhappy with the response she received from Barclays and so she referred a complaint to this service. It was looked at by an Investigator who upheld it in part. The Investigator said that Barclays should've recognised that there had been a sudden change in the pattern of activity on Miss M's account. It shouldn't have simply taken her payment instructions at face value.

The Investigator noted that when she authorised a payment for £10,000 to the fraudster on 23 December 2020 it was the fourth payment she'd made to the scammer. The Investigator considered that Barclays should've recognised there was an enhanced risk that Miss M had been targeted by a fraudster. Rather than processing that payment, it should've contacted her and asked her several questions about the payment. If it had done so, the Investigator considered it highly likely that the scam would've unfolded and her subsequent losses would've been prevented.

The Investigator recommended that Barclays refund each transaction from that point onwards and add 8% simple interest per annum to each. Barclays disagreed with the

Investigator's view. It said it would've had no reason to question the payments because the third-party business to which she'd made the payments is a legitimate merchant.

It also pointed out that there is now a warning on the website of the regulator about the scammer. However, this wasn't posted until February 2021. It said even if it had intervened and questioned the December 2020 payment, it wouldn't have found any concerning information online. It's most likely that it wouldn't have been able to prevent Miss M falling victim to the scam.

Finally, it didn't think it was fair for it to be expected to pay 8% simple interest on each payment, particularly given that most of the transactions were funded by transfers from Miss M's partner's account, rather than her own funds.

Since Barclays disagreed with the Investigator's recommendation, the complaint has been passed to me to consider and come to a final decision.

Findings

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

The starting point under the Payment Services Regulations 2017 and the terms of his account is that Miss M is liable for payments she's authorised. 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 make additional checks, before processing a payment, or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I'm satisfied that there was a stark change in the way Miss M was using her account. I say that because most of the payments made from her account were for small sums. Only two payments were for more than £1,000 – and one of them was a direct debit payment. When Miss M authorised four payments of around £25,000 in one calendar month, I think Barclays ought to have recognised that Miss M was at risk of financial harm due to fraud.

I'm mindful of the fact that there can be short-term spikes in spending on an account where most payments are fairly low, particularly given that the funds that were paid to the scammer were transferred into Miss M's account from a different account controlled by her partner. It's quite common, for example, for a customer to set aside savings for a specific purpose which might involve a large transfer of funds. For that reason, I don't think it was unreasonable for Barclays to have processed the earliest payments Miss M made in connection with the scam. But I agree with the Investigator that the £10,000 payment she authorised on 23

December 2020 was the point at which concerns about the risk of fraud ought to have manifested.

Barclays says that Miss M would've seen a warning with each payment. The text of this warning attempts to deal with a range of different scam types. It recommended that Miss M check the FCA website for warnings about scam companies. I don't know if Miss M followed this advice. She doesn't recall seeing the warning. But in any event, there was no warning on the FCA website in December 2020, although one was published in early 2021.

However, given the sums of money involved and the fact that Miss M's spending pattern had many of the hallmarks of an investment scam, I think Barclays needed to do more than display a general warning about the risk of such scams during the payment process. I don't think it should've processed the £10,000 payment until it had spoken to Miss M and asked her about its purpose.

If it had done so, I think it would've emerged that Miss M didn't really understand what the company's investment strategy was. That would be unsurprising since it didn't have a coherent explanation as to how it would earn a return for her. She would likely have explained that she'd set up a cryptocurrency account with a third party and that she had no control of the cryptocurrency she was purchasing. These would've been strong indicators that it was unlikely to be a legitimate investment. I also agree with the observations the Investigator made that Barclays would've been concerned about the fact that Miss M couldn't withdraw any of the proceeds of her investment without first requesting the permission of the broker.

There was a significant asymmetry of knowledge in play here. Miss M wasn't an experienced investor and the scammer took full advantage of that. An employee of the bank should have contextualised the general warning given when she was making the payment and explained to Miss M that, if the investment company wasn't on the FCA Register, it was an unauthorised business. It couldn't legitimately offer her any investment products or advice without being authorised by the regulator and so it was unlikely to be anything other than a scam. If this had happened, I think it would be very unlikely that she'd have wanted to proceed with any of the subsequent payments.

I've also considered whether Miss M should be considered in any way responsible for her losses. It appears that she trusted and acted on the advice of a friend who appeared to have an investment with the same company that was performing well. In the circumstances, I don't think it was unreasonable for her to have taken this at face value. Overall, I'm satisfied she was the blameless victim of a sophisticated scam and I don't think she can be said to be partially responsible for her own losses.

Putting things right

The Investigator recommended that Barclays refund every transaction from that point onwards. She also recommended that it add 8% simple interest per annum to that sum. However, I'm not convinced that would be fair compensation in the circumstances of this case, particularly given that most of the money that was paid to the scammers came from someone else's account.

For that reason, I'm asking Barclays to only add on any interest at the rate that applied to her current account. This interest calculation should run from the date the payments left her account until the date the settlement is paid.

Final decision

For the reasons I've explained, I'm upholding this complaint.

If Miss M accepts my decision, Barclays Bank UK PLC should:

- Refund the payments she made to the scammer from the £10,000 payment made on 23 December 2020 onwards.
- Calculate whether any interest should be applied in line with my instructions above. If so, this should be added to the award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 17 January 2023.

James Kimmitt
Ombudsman