

The complaint

Ms P complains that Barclays Bank UK PLC (Barclays) won't refund all the money she lost when she fell victim to a scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. The facts aren't in dispute, so I'll focus on giving the reasons for my 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.

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

- I understand that, as part of the scam, an unauthorised loan was taken out in Ms P's name. But I've seen this has since been closed. Barclays says it has been recovered, *"leaving the disputed transactions as the loss"*.
- I therefore don't need to make a finding about the loan; that has been resolved. I just need to consider Ms P's outstanding loss. Meaning I need to consider whether Barclays ought to refund any of the transactions she is disputing.
- Ms P made fourteen payments to one cryptocurrency exchange, and four to another. I understand the funds were converted to cryptocurrency and moved onto a trading platform with a merchant I'll refer to as S. Unfortunately, rather than genuinely investing this money on Ms P's behalf, S were acting fraudulently.
- Even though Ms P was tricked, it's not in dispute that she authorised these transactions. So the starting position is that she's liable for them – as Barclays is expected to act on her authorised payment instructions without undue delay.
- 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 surrounding the transaction before making the payment. If Barclays failed to do so here, and that failure led to a fraudulent loss, it might be fair to hold it liable.
- I agree with the investigator that Barclays ought to have identified some of these payments as risky and performed further checks – as we know it did. I'm not satisfied these checks always went far enough.
- For example, one call simply checked it was Ms P making the payment. That persuades me she authorised it. But I think Barclays should have asked more about the circumstances in which she was making it, to assess whether she was the victim of scam.

- But this alone doesn't mean Barclays is liable. That depends on whether it *would have* prevented the loss if it had intervened appropriately. In the circumstances, I'm not persuaded it would have done.
- This is largely because of the contact Ms P had with Barclays about the scam. During a call predominantly about another payment, they discussed her cryptocurrency trading. She told Barclays she was dealing with S and asked whether they were legitimate.
- The call handler told Ms P she didn't know whether S were a scammer. It would be expecting too much to think she ought to have recognised the name and immediately realised they were acting fraudulently. It's ultimately down to the individual making the payment to do their own due diligence and decide whether they want to trade with the merchant.
- Additionally, as none of the payments went directly from Barclays to S, the merchant wouldn't have triggered any watch list it has in place to detect payments to potentially fraudulent firms. So this wouldn't have flagged up to Barclays as a concern.
- However, the call handler advised Ms P about what she could do to check whether S were legitimate. Specifically, she told her to look them up on the website of the Financial Conduct Authority (FCA – the UK financial services regulator) to see if they were properly regulated. And Ms P told Barclays she would do so.
- If you look up S's name on the FCA website, or if you search for their name alongside FCA on Google, it shows that S aren't listed on the FCA's register of authorised firms. Instead, the FCA has issued a warning about S operating in the UK without authorisation. This warning was live at the time of the call.
- This call happened after two out of the eighteen scam payments were made, with the second payment having already been identified as suspicious – although, as above, the intervention wasn't very detailed. But even if that earlier intervention had gone further, I'm not persuaded it would have stopped Ms P from proceeding, given that the later call didn't.
- That's not to say there wasn't more Barclays *could have* done which *may* have uncovered the scam. Nor do I mean to cast blame on Ms P, who I understand and appreciate was the victim of a cruel and sophisticated scam. Ultimately, I'm considering what it's reasonable to expect from *Barclays* in the circumstances.
- I think the intervention call in which S was discussed did a reasonable job of setting out to Ms P what she should do to check S's legitimacy – bearing in mind this is something a bank will have better knowledge of than the average consumer. As that didn't stop the scam, I'm not inclined to think Barclays *ought to* have done more which *would have* stopped any further losses.
- I've also considered whether Barclays acted fairly when Ms P reported the scam. Despite the payments going via legitimate cryptocurrency exchanges, it did attempt to raise claims under the chargeback scheme. This is a voluntary scheme whereby payment disputes can be decided by the card-scheme provider (in this case, VISA).
- As it's a voluntary scheme, Barclays isn't obliged to raise chargeback claims for all card payment disputes. But I'd consider it good practice to do so if a claim was likely to succeed under VISA's rules.
- Such claims can only be raised against the merchant the consumer paid directly. In this case, that means the claims would be against the cryptocurrency exchanges rather than S.

- Unless these merchants refunded Ms P during the first stage of the chargeback claim, I wouldn't reasonably have expected Barclays to pursue the matter further. I'm not persuaded the claims would have succeeded under the scheme rules, given that the dispute was really about the merchant who the funds were transferred on to.
- As is common practice, whilst the chargeback claims were being considered, the disputed payments (totalling £76,823.47) were credited to Ms P pending the outcome of the claims. One of the merchants refunded three payments totalling £12,758.44 during the initial stage of the claim. The reason for this is unclear; it could simply be that it failed to respond in time.
- That means £64,065.03 should have been re-debited from Ms P, to reflect those claims which hadn't succeeded. As set out above, I wouldn't have expected Barclays to pursue these further. The records I've seen for some of the declined claims show the exchange loaded the funds to the account as requested – which I'm satisfied means the claims wouldn't have successfully under VISA's rules.
- Barclays re-debited these funds on two different days, taking £65,815.66 in total. But that's more than it should have taken, given the value of the three successful claims. I therefore agree with our investigator that Barclays should pay Ms P £1,750.63 for the additional amount it took back – as it has agreed to do following the investigator's view.
- While I appreciate why Ms P feels strongly about this matter, having carefully considered all the circumstances, I'm not persuaded it would be fair to hold Barclays liable for more of her loss.

Putting things right

Barclays Bank UK PLC must refund Ms P for the £1,750.63 which shouldn't have been removed from her account. It should pay 8% simple interest on this amount, running from the day it removed the funds from her account, following the responses to the chargeback claims, to the date of settlement.

My final decision

My final decision is that I uphold this complaint. I direct Barclays Bank UK PLC to put things right in line with what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 31 March 2023.

Rachel Loughlin
Ombudsman