

## The complaint

Mrs S complains that Barclays Bank UK Plc (Barclays) won't refund the money she lost when she fell victim to an investment scam.

## What happened

I issued my provisional decision on this case in December 2022, explaining I was minded to uphold this complaint and direct Barclays to refund 50% of the first two payments. This also set out the details of the complaint and the reasons for my decision:

*I understand that Mrs S made several card payments as part of this scam, which she's been refunded for. So I'm only considering the outstanding loss – that is, the bank transfers for £12,000 and £5,500 respectively in April 2020, and the £6,142.87 transfer in May 2020.*

*The starting position is that Mrs S is liable for payments she authorises – as banks have a duty to execute authorised payment instructions without undue delay. While she was tricked by scammers, it's not in dispute that Mrs S used her own security credentials to request these payments. 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 surrounding the transaction before making the payment. If Barclays failed to do so, and that failure led to a fraudulent loss, it might be fair to hold it liable.*

*There is an additional consideration for the first two payments – as they are also covered by the Contingent Reimbursement Model (CRM) code, which Barclays is a signatory of. This code doesn't apply to the last payment as it doesn't cover international transfers.*

### Should Barclays refund the first two payments?

*In line with the CRM code, banks are expected to refund victims of these types of scams unless they can show that an exception within the code applies. In this case, the relevant exceptions are:*

- The customer ignored an 'effective warning' from the bank by failing to take appropriate steps in response to that warning; or*
- The customer made the payment without a reasonable basis for believing that: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.*

*I can see that, at least for the £12,000 payment, Mrs S selected the payment purpose as an investment. Barclays says this means the following warning was displayed:*

*Could this be a scam?*

*Have you checked that the company you're paying is genuine? You should be extra careful, as we've seen an increase in cloned websites of financial institutions. You can check the FCA website to see if there are any warning messages about the company you're looking to invest in.*

*You should also check that any investment you're considering is through a FCA regulated firm, and that the spelling is exactly the same as the company you're in contact with.*

*Be aware that fraudsters often provide an initial return on an investment to encourage you to provide larger amounts of money. They might also use current news topics, like COVID-19, to ask you to move your current investment, or invest in new accounts in the UK or overseas. It's best to talk to someone you trust or a financial adviser before investing your money and you should reject unexpected offers.*

*I'm not persuaded this meets the definition of an 'effective warning' under the CRM code. That's because it doesn't make it clear that, if the customer is being scammed, any money sent will be lost and likely irrecoverable. While it's helpful that the warning mentions checking the FCA website, it doesn't say this is something you must do, or give consequences for not doing so. Overall, I don't consider this was sufficiently impactful or clear enough. So Mrs S hasn't ignored an effective warning.*

*That said, I do think the information contained within the warning was relevant to the scam Mrs S fell victim to. So this does impact my consideration of whether she had a reasonable basis for belief. For the following reasons, I'm not persuaded she did have a reasonable basis for believing the 'investment' was legitimate:*

- Mrs S has told us she didn't know this type of scam could happen. But the warning she saw made it clear they did – and showed concern by the bank these were becoming more prevalent.*
- Particularly given the amount Mrs S was investing, I would reasonably have expected her to complete some research into the merchant she paying ('E'). And she's told us that, due to her line of work, she understood the process and checked E were registered with the Financial Conduct Authority (FCA). She says E's website gave an FCA number. But that she didn't check this against the FCA website – which Barclays' warning suggested to check.*
- Additionally, I've managed to access an archived version of E's website from April 2020. And I can't see anything on there to suggest they were claiming to be regulated by the FCA. In fact, Mrs S's submission from when she referred her complaint to us includes a review of E by an investment website which says: "The broker doesn't provide any information about its regulation or licence and it actually seems it doesn't have any". And so I'm not persuaded Mrs S had a reasonable basis for believing that E was legitimate due to it being regulated by the FCA.*
- Mrs S has also told us she completed online research into E, including looking at reviews, before investing with them. But looking from search results from the time of the payments, I haven't found any positive reviews for E. And Mrs S's submissions include screenshots of a common review site. These don't show any positive reviews for E, only negative ones – including a negative review referring to E as a scam pre-dating these payments.*

- *I'm also mindful that, when looking at all the payments made as part of this scam (including the card payments Barclays has already refunded), they were going to lots of different companies. I gather Mrs S wasn't aware that the card payments were going to a different company, but she could have seen this on her statements. It's not clear to me why Mrs S thought she had to pay at least three different payees as part of the investment – none of which were E.*

*Taking all of these circumstances together, I'm not persuaded Mrs S had a reasonable basis for believing that she was making payments to E as a legitimate merchant. I haven't been able to validate the points she says she relied on, and I think Barclays' warning gave her further relevant information about the risk and what steps she could take. So I'm satisfied there is an exception under the CRM code which Barclays can fairly rely on as a reason not to refund Mrs S in full. But I've also considered Barclays' obligations under the code. I think, given the payment sizes, it ought to have displayed an effective warning – which it didn't do.*

*It also appears that Barclays could have responded more quickly when Mrs S reported the scam. In the circumstances, and in line with the CRM code, I consider it fair that Barclays should refund 50% of these payments.*

#### *Should Barclays refund the third payment?*

*This was an international payment, so isn't covered by the CRM code. I therefore have to consider this payment as a separate event in line with our general expectations on banks regarding their duty to help protect their customers from fraud and scams.*

*In line with these general expectations, I consider it reasonable that Barclays processed this authorised payment instruction without completing further checks. I don't consider this payment to have looked particularly suspicious given Mrs S's account history up to that point. By then, there was a history of what appeared to be investment payments.*

*Furthermore, Mrs S had made a genuine, undisputed payment of £19,000 to a new payee within the last two months. So there was a history of her making higher payments. And so I don't think this loss is attributable to an error by Barclays – meaning it's not liable. First and foremost, Barclays has a duty to promptly execute authorised payment instructions.*

#### *Is the compensation Barclays has paid fair?*

*As mentioned, Barclays has awarded £200 compensation for its delay responding to Mrs S's contact about the scam. While I think that added to her upset and frustration, I'm not persuaded it materially affected her loss. By the time she realised she had been scammed and reported this, several months had passed. It's therefore unlikely these bank transfers could have been recovered. Scammers generally move funds on promptly to avoid this. And we can already see a pattern of the scammers using various different accounts to divert the funds. In the circumstances, I'm not minded to make a further award for the impact of this delay. I'm persuaded the compensation paid fairly reflects the unnecessary upset this caused, in what were already difficult circumstances for Mrs S.*

I invited both parties to submit further comments or evidence before I reached my final decision. Barclays said it would accept the conclusion I'd proposed. Mrs S didn't agree, as she thinks Barclays should fully refund all three payments. I've summarised the reasons

she's given for this:

- She hadn't previously made such large payments or an international payment. Previous large payments were mainly to herself or part of the scam, and it's too short a period of time to look at just the two months leading up to the scam. So Barclays breached its duty of care as the payments should have triggered as unusual activity.
- She disputes that Barclays showed the warning it told us was displayed
- Barclays also has failed in its obligations to effectively prevent money laundering
- Her circumstances rendered her vulnerable to the scam as she was the only earner and had difficulty getting a job that complimented her childcare responsibility, so needed income to cover her mortgage. And this was a sophisticated scam.
- She believes search engine optimisation accounts for why some entries coming up higher, even when filtering for information that was published at the time of her payments.
- She maintains that E were claiming to be FCA-registered

### **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've decided to uphold it and to make the same award as I did in my provisional decision – which is set out above and forms part of my final decision. As this already explains most of my reasons for my award, I'll focus here on addressing the points Mrs S raised in response to my provisional findings.

My provisional decision referred to a genuine higher-value payment Mrs S had made within the two months prior to the scam. To clarify, we don't just look at the past two months of activity – we look at a longer period. But the activity I was referring fell within that timescale (normally around a year); the reference to it being within the two months prior was to help direct the parties towards the payment I was referring to. And the bank's records do show it to be a payment to a new payee, rather than an existing payee. Albeit I note the payee name shares the same surname as Mrs S. Regardless, the point remains that this payment will have fed into the bank's consideration of what level of payment to expect from Mrs S. By the time of the third payment, I don't think the international payment would have looked so unusual that I'd consider it fair to hold Barclays at fault for not intervening further.

Our expectations of banks when processing payments do take into account banks' anti-money laundering obligations, amongst other things. This feeds into our consideration of whether the bank should have taken further action (such as displaying an effective warning). But I'd also point out that the concern here wasn't with the *source* of the funds Mrs S was transferring, even though I accept it was ultimately lost to criminal activity.

I'd also point that, under the provisions of the CRM code, I *do* agree that Barclays ought to have intervened and given an effective warning on the £12,000 payment. I've found that Barclays failed to do this, which is why I think it should bear some responsibility for the payments covered by the code.

I've considered the points Mrs S raised about why she fell for the scam. I do appreciate why her circumstances at the time meant she was looking for other sources of income – which led to her being tricked by a sophisticated investment scam. But we'd only expect a bank to fully refund a customer under the CRM code, regardless of their reasonable basis for belief, if their circumstances meant it would be unreasonable to expect them to have protected

themselves against the scam. Here, it's clear Mrs S did try to assess whether the platform was legitimate. So I don't think Mrs S's circumstances mean Barclays is obliged to fully refund her. I'd only expect it to do so if she had a reasonable basis for believing the scam.

When thinking about what information Mrs S would have – or should have – seen if she had done her due diligence on E, I appreciate her point that we can't be certain about the order of search results for E. But searching for E online by filtering for results available prior to her investment does show there was, by that point, information online about E which cast doubts on their legitimacy. Some of this information was even included by Mrs S in her submissions to our service. For example, Mrs S says she relied on positive reviews. But I've not been able to locate these. Instead, her own submissions to our service include a negative review pre-dating her investment.

It seems a key factor Mrs S was relying on was her belief that E were FCA-regulated. I've taken her recollections about this into account. But the information isn't clear, so I have to decide what's more likely. As explained above, the archived website I've been able to access for E from the time didn't say they were FCA-regulated. And I've found other information online at the time saying the same – i.e. that E don't appear to be regulated. And so I don't think it was reasonable for Mrs S to rely on this. As set out in my provisional decision, it also seems odd that the payments Mrs S made (including her card payments which have been refunded) were going to three different companies – none of which were E. It doesn't appear that Mrs S questioned this.

Mrs S also says the Barclays' warning wasn't displayed. The audit information I've been sent does show that Barclays displayed some form of warning tailored to Mrs S selecting that the £12,000 payment was for an investment. But I don't think it's enough to be particularly confident that the version of the warning Barclays has provided was definitely shown. The issue is that, even if Mrs S was shown a different warning that didn't give as much detail, it does still appear that she was given a warning about investment scams – which she's told us she didn't know happened. And as set out above, I haven't been able to establish a reasonable basis for her belief that E were FCA regulated and had positive reviews. Bearing in mind I've already found Barclays at fault for not providing an effective warning, I still think there's enough to support the conclusion that Mrs S didn't have a reasonable basis for belief.

I appreciate this will be very disappointing for Mrs S. But for these reasons, I'm not persuaded it would be fair to increase my award from my provisional decision.

### **Putting things right**

To put things right, Barclays Bank UK Plc should refund Mrs S 50% of the payments she made for £12,000 and £5,500, which means it will need to pay her £8,750. It should also pay 8% simple interest per year from the dates the payments left her account to the date of settlement.

### **My final decision**

My final decision is that I uphold this complaint and direct Barclays Bank UK Plc to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 14 February 2023.

Rachel Loughlin  
**Ombudsman**