

The complaint

Mrs C complains that Barclays Bank UK PLC won't refund money she lost when she was the victim of a scam.

What happened

The background to this complaint is well known to both parties and so I'll only refer to some key events here.

In 2021 Mrs C was the victim of a cryptocurrency scam after she contacted a firm I'll refer to as 'G'. She made the following fund transfers to various cryptocurrency exchange platforms, where it was converted into cryptocurrency and ultimately lost to the scam:

Date	Amount
8 July 2021	£3
8 July 2021	£5
13 August 2021	£5
19 August 2021	£2,000
10 September 2021	£20
14 September 2021	£3,500
24 September 2021	£5,750
27 September 2021	£7,246
28 September 2021	£8,900
30 September 2021	£9,500
1 October 2021	£5,000
4 October 2021	£2,700
4 October 2021	£5,000
4 October 2021	£4,900
5 October 2021	£10,000
5 October 2021	£6,000
5 October 2021	£9,000
6 October 2021	£18,000
8 October 2021	£23,000
13 October 2021	£20
Total:	£120,549

Mrs C received the following credits from the cryptocurrency exchange platforms:

Date	Amount
16 September 2021	£2,000
1 October 2021	£9,500
21 October 2021	£20
8 November 2021	£3
8 November 2021	£5
Total:	£11,528

And so, Mrs C's total loss is £109,021 from the scam.

Mrs C reported the scam to Barclays on 26 October 2021. Barclays called Mrs C on 21 February 2022 and explained, after investigating the claim, they wouldn't be refunding the payments and advised that she would need to pursue the matter through the cryptocurrency exchange platforms. Mrs C said she was unhappy that Barclays released the 6 and 8 October 2021 payments – totalling £41,000 - without contacting her. Barclays explained this was because they'd already had several 'scam' conversations with Mrs C before these payments and she confirmed she was happy for them to go through. Mrs C remained dissatisfied, as she felt Barclays showed a lack of duty of care, and so raised a complaint. She thought Barclays could've refused to release the payments until they'd been investigated – especially as it was huge amount of money. Mrs C also added that, in the last call she had with Barclays, she was treated like an idiot.

Barclays responded to the complaint on 25 March 2022. They said their fraud detection system flagged numerous payments relating to this scam and they had multiple in-depth scam conversations with Mrs C. In these calls, they said Mrs C denied being involved with any third party or broker and that she'd opened the cryptocurrency accounts of her own volition (with nobody else having access). And that there hadn't been any remote access software installed on Mrs C's device, and she'd done due diligence on the companies involved.

Barclays added that Mrs C made no mention of G, so they were unable to locate a warning published by the Financial Conduct Authority (FCA) - that said G were providing financial services or products in the UK without their authorisation – which meant they couldn't identify it was a scam. And, as Mrs C received multiple credits into her bank account from the cryptocurrency exchange platform, it indicated she had control of the accounts. Barclays didn't uphold the complaint as they'd found no bank error.

Mrs C referred the complaint to the Financial Ombudsman and clarified she was only seeking the refund of the £18,000 and £23,000 payments she made on 6 and 8 October 2021. She thought Barclays should've done more checks before releasing the payments, particularly due to her sounding 'hysterical' in previous calls.

Our investigator, in short, said:

- He listened to the calls in which Barclays questioned Mrs C about the payments as part of their fraud prevention. And although Mrs C sounded inconvenienced at answering the questions, he didn't think she sounded distressed or hysterical (even if she felt this way), or that Barclays ought to have overruled what she was telling them.
- He thought Barclays handled the calls well, asking relevant questions and giving appropriate advice – such as recommending Mrs C try to withdraw funds to ensure it was a legitimate investment. And, when asked, Mrs C didn't inform Barclays that there was a broker (G) involved.
- Even if Barclays had contacted Mrs C about the £18,000 and £23,000 payments, given G had convinced her they were a legitimate firm, he thought Mrs C would've proceeded with making the payments and asked Barclays to release them.
- He noted that Mrs C says she was told by Barclays that payments over £10,000 couldn't be processed via the mobile banking app. But Barclays have confirmed there isn't a £10,000 limit and so, if Mrs C was told this, she was unfortunately given wrong information.
- After informing Barclays she'd been scammed, Barclays sent acknowledgement letters to Mrs C on 26 October and 4 November 2021. There wasn't however any

further contact until Mrs C got in touch with Barclays on 21 February 2022. And so, he thought £150 compensation should be paid to recognise this poor service.

Mrs C disagreed and so the matter has been passed to me to decide.

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 that Mrs C has been the victim of a scam. I realise she's lost a significant sum of money and so I don't underestimate the impact this has had on her. But, while I know this isn't the outcome Mrs C will be hoping for, I don't think Barclays has acted unfairly by not refunding her loss for similar reasons to our Investigator. I'll explain why.

I've thought about the CRM code which can offer a potential means of obtaining a refund following Authorised Push Payment (APP) scams like this one. But the CRM code only applies to payments made to an account held by another person. As the payments Mrs C made were sent to accounts she held in her own name with cryptocurrency exchange platforms, they're not covered under the CRM code. I've therefore considered whether Barclays should reimburse Mrs C under any of their other obligations.

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that their customer authorises them to make. Here, it isn't disputed that Mrs C knowingly made the payments from her Barclays account. I appreciate Mrs C was tricked by the scammer as she thought it was a genuine investment opportunity. Nevertheless, I'm satisfied the payments were authorised by Mrs C. So, under the Payment Services Regulations 2017 and the terms of her account, Barclays are expected to process the payments and Mrs C is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for Barclays to take additional steps or make additional checks before processing a payment to help protect customers from the possibility of financial harm from fraud.

In this case, Barclays called Mrs C on multiple occasions about payments she made before those in question on 6 and 8 October 2021. I've carefully listened to these calls and Barclays explained to Mrs C that, due to the prevalence of cryptocurrency scams, they needed to carry out further checks – including asking her questions – before releasing the payments. And I think Barclays asked Mrs C appropriate questions to ascertain the purpose of the payments and to establish whether there was a risk of a scam. In response to the questions Barclays asked, Mrs C confirmed:

- She'd research cryptocurrency and the firms she was dealing with online, with them being reputable. And she was satisfied she'd carried out enough checks on the firms she was sending the payments to – including checking the FCA website. So, she felt quite secure with making the payments.
- She'd attended an online cryptocurrency seminar that was recommended by a friend of someone she knows who works in financial services.
- Nobody else had access to her cryptocurrency accounts (wallets) or knew her account details. Nor was anyone else connected to her device – via remote access software – when the accounts were opened.
- There wasn't a middleman or broker involved with the cryptocurrency investment. And she hadn't been asked to send money for time sensitive reasons (so she wasn't

being rushed). Nor had she taken out a loan to make the investment, clicked on a social media advert or been asked to make the payment on behalf of someone else. She also hadn't been given a script from someone to use when speaking with Barclays.

- She understood the risks associated with cryptocurrency, had invested before and would like to take the risk with her money. So, she asked for Barclays to release the payments.
- She could withdraw from her cryptocurrency account if she wanted. But when asked to test a withdrawal prior to releasing one of the payments, she refused as she didn't have time and was willing to take responsibility for the payment.

From what Mrs C told Barclays, I think it was reasonable for them to be reassured the payments weren't being made in relation to a scam. It's unclear why Mrs C didn't tell Barclays about G's involvement, including that G had assisted her in opening her cryptocurrency accounts using remote access software. If she had done, given there was a warning on the FCA's website about G at the time, then I think it's possible Barclays could've given more suitable advice and the scam may have been prevented. But I don't think I can hold Barclays responsible for this.

I'm aware Mrs C feels that Barclays ought to have realised something was wrong as she was in a terrible state at the time and sounded 'hysterical'. So, she thinks they should've spotted this and done more checks before releasing the payments. But while I appreciate Mrs C felt this way, I don't think this came across in the calls. Instead, I think Mrs C came across more annoyed at the inconvenience of having to go through the fraud prevention checks on multiple occasions – as she had to explain the same thing(s) to Barclays each time. I therefore don't think they could've reasonably known something was wrong. And while I understand Mrs C believes they spoke to her in a condescending manner and treated her like an idiot in one of the calls, I disagree. I think Barclays were, largely, polite and dealt with Mrs C in an appropriate manner.

Mrs C has argued that Barclays should've called her before releasing the 6 and 8 October 2021 payments – especially due to them being of a significant value. And, by not doing so, they showed a lack of duty of care towards her. Although I understand her feelings in this regard, I think it was reasonable for Barclays to release these payments without carrying out additional checks based on the previous payments that were made and the conversations they'd already had with Mrs C. This is because by this point, although they were of a higher value, I consider the payment instructions Mrs C had given Barclays were consistent with her typical account activity – as she'd been sending money regularly to cryptocurrency exchange platforms. And in response to the questions Barclays had asked Mrs C in their attempt to identify whether she was at risk of the financial harm from fraud, she'd reassured them otherwise – by, amongst other things, confirming she'd carried out due diligence on the firms and explaining she understood the risks of cryptocurrency (which she was willing to accept).

In any event, even if Barclays had called Mrs C about these payments, I'm not persuaded it would've made a difference. I think it's most likely that Mrs C would've answered any further questions in a similar manner as before and requested the payments be released. Because of this, I don't think Barclays is responsible for the loss Mrs C has suffered.

On a final note, I've considered the service Mrs C received from Barclays. This includes Mrs C saying she was told by Barclays there was a £10,000 payment limit on the mobile banking app (and so being led to believe the payments shouldn't have gone through). While I've not heard this in the calls I've listened to, Barclays has since confirmed a £10,000 limit doesn't apply. Therefore, if Mrs C was told this, it seems she was sadly given incorrect

information – albeit this wouldn't change my view on whether Barclays is responsible for the loss suffered.

I do however agree with our investigator that Barclays ought to have communicated better with Mrs C when considering her claim. And, although the delay in considering Mrs C's claim didn't change the outcome, I appreciate it would've caused her trouble and upset that could've been avoided. I appreciate Mrs C may think it's not enough, but I think £150 compensation is a reasonable amount to recognise this

I'm sympathetic to Mrs C's situation and the loss she has suffered. But in the circumstances of this complaint, I think Barclays has acted fairly by not refunding the payments. And so, I'm only awarding the £150 compensation for the service issues Mrs C experienced.

My final decision

My final decision is that I uphold this complaint in part. I direct Barclays Bank UK PLC to pay Mrs C £150 compensation.

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

Daniel O'Dell
Ombudsman