DRN-3970469

Complaint

Mr T is unhappy that Barclays Bank UK PLC hasn't refunded him in full after he fell victim to a scam.

Background

In 2020, Mr T was researching potential investment opportunities online when he found what he thought was a legitimate investment with an established business. He made enquiries and was offered the chance to invest in a fixed-rate bond. In total, Mr T transferred £85,000 in the belief that he was investing in a bond that would pay a return of 3.72% annually and would mature in three years.

Unfortunately, Mr T wasn't dealing with an employee of a legitimate investment business, but a scammer. He made two payments of £30,000 and £25,000 respectively on 13 July and then a further payment of £30,000 on 15 July. Barclays says that a warning was displayed when Mr T made these payments. It says that the text of that warning would've been as follows:

> *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.*

Barclays said that, by the time Mr T made the third payment to the scammer it should've recognised that there was an increased risk that he'd been targeted by scammers and intervened. It therefore refunded 50% of the total amount he lost to the scam. However, it didn't think it should be expected to refund the whole amount. It didn't think Mr T had done enough to assure himself that he was dealing with a genuine company.

It says that he didn't complete any individual checks. It pointed out that the website of the regulator, the Financial Conduct Authority (FCA), including a warning about scammers defrauding people by imitating the business he thought was investing with. The phone number that was used to call him was specifically referred to in that warning.

Mr T was unhappy with this response from Barclays and so he referred a complaint to this service. It was looked at by an Investigator who upheld it. She considered Mr T's complaint under the terms of the Contingent Reimbursement Model (CRM) code. The starting point under that code is that Barclays should pay Mr T a refund, unless one of the exceptions applies. In this instance, Barclays would be justified in not paying him a full refund if it could establish that:

Findings

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

I issued a provisional decision on this complaint on 21 December 2022. I wrote:

> *The starting point in law is that Mr T is presumed liable for any transaction he authorises. He did authorise the payments that are the subject of this complaint, albeit only because he'd been tricked into thinking he was paying into a legitimate investment.*
>
> *However, that's not the end of the story. Barclays is a signatory to the CRM code. This code says that firms should refund its customers where they fall victim to a scam like this one, except in a small number of circumstances. In this instance, Barclays has accepted that it should've done more when Mr T asked it to make the third payment and so has agreed to refund 50% of his losses.*
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> *I agree with the Investigator that the warning didn't meet the definition of an 'Effective Warning' as described in the CRM Code and I've come to that conclusion for broadly the same reasons. Nonetheless, the warning did contain relevant information and suggested some basic checks Mr T could've carried out to reduce the risk that he'd been taken in by a scam.*
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> *Barclays has provided evidence showing how long the warnings were displayed when each payment was made. On the first payment, the warning was displayed for two seconds. However, for the second payment it was displayed for just under two minutes. I think it's more likely than not that Mr T had the opportunity to read the content of the warning and process it before proceeding. The text put him on notice of the risk of cloned websites and recommended he check the FCA website to protect himself. I don't think it was reasonable for him to have proceeded with the second and third payment once he'd read the text of that warning. For that reason, I'm not persuaded that Mr T can be said to have had a reasonable basis for believing that the second and third payments were in connection with a legitimate investment. One of the consequences of that is that Barclays isn't required to refund him in full under the CRM code.*
>
> *I've also considered the first payment. Barclays' evidence suggests Mr T didn't have enough time to read the warning. It therefore can't have had an impact on whether it was reasonable for him to believe this investment to be genuine. For that reason, I think it needs to refund the first payment Mr T made in full.*
>
> *I realise this will be a hugely disappointing outcome for Mr T. I don't intend to downplay or diminish the fact that he fell victim to a cruel and sophisticated scam. However, I must look at the actions and inactions of Barclays and consider whether it has applied the terms of the CRM Code fairly. In this instance, I'm satisfied it's fair and reasonable for it to only refund 50% of the money he lost when making the second and third payments.*

I explained that I intend to uphold the complaint in part and ask Barclays to refund the remaining 50% of the first payment. Barclays responded to say that it agreed with the provisional decision.

Mr T didn't agree with my findings and made several observations. He said that he has had problems with online banking in the past. In particular, he says that each time he logs in, an error message is briefly displayed before he gains access. He says that, given the frequency of such erroneous messages, a warning at the point of making a payment would understandably have less impact. He also questioned whether, in the light of that recurring technical problem, it can be known for sure that the warning was displayed.

Mr T also questioned the conclusions I'd set out regarding whether the warning was effective. It wasn't clear how I could've concluded that the warning wasn't effective, but still concluded that Barclays only had to pay him a partial refund.

I've considered this response carefully, but I'm not persuaded to depart from the position I set out in my provisional decision. The CRM code starts with the assumption that a customer who's a victim of a scam like this one should be reimbursed, unless one of the exceptions applies. There are two relevant exceptions that are under consideration here. The first applies if Mr T made the payments after he ignored an "Effective Warning."

When I use that term, the word 'effective' isn't given its ordinary and everyday meaning. It is specifically defined in the text of the Code itself. A series of technical requirements are set out that must be met for a warning to meet that definition. I didn't find that all of those requirements were met in this case and, as a result, I don't think Barclays could reasonably rely on its warning to justify not reimbursing Mr T.

The other applicable exception is where the customer makes a payment without *"a reasonable basis for believing that … the person or business with whom they transacted was legitimate."*

Although the warning didn't meet all the technical requirements in the code, I still think it had relevant information in that would've put the reader on notice of the risks of proceeding with the payment. It also set out some steps they could take to protect themselves from the risk of fraud. I think a customer who proceeded to make payment having read that warning would no longer have a reasonable basis for believing they were dealing with a legitimate business.

Mr T has pointed out that I can't know for certain that the warning was displayed. I accept that is the case. Barclays' electronic records do suggest a warning would've been displayed and track the length of time that a customer spends at each part of the payment process, including the warning screen. I can't know with certainty what Mr T saw on his screen when making these payments. In such circumstances, I must come to a decision on the balance of probabilities. In this instance, I'm persuaded that it was more likely than not that the warning was displayed.

Final decision

For the reasons I've set out above, I uphold this complaint in part. If Mr T accepts my decision, Barclays Bank UK PLC should pay him the remaining 50% of the first payment he made in connection with the scam.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 16 March 2023.

James Kimmitt
Ombudsman