

## **The complaint**

Mr and Mrs T complain they were victims of an investment scam and that Barclays Bank UK PLC didn't do enough to protect that from happening or to help them get their money back.

## **What happened**

Mr and Mrs T were looking for investment opportunities and came into contact with someone claiming to be an investment broker working for a company I'll refer to as "S". S claimed to have set up an automated investment platform that would invest in various financial sectors without Mr and Mrs T having to manually invest. The broker said they could generate a 2% return on all investments, and that there was a high success rate. Mr and Mrs T subsequently invested over £55,000, all of which they lost.

Mr and Mrs T paid £5,000 and £25,000 via online transfer from their Barclays account on 3 March and 10 April 2017, and £2,500 and £22,500 on 9 and 16 August 2017, which they paid using their Barclays Visa debit card.

The broker provided Mr and Mrs T with a trading account which appeared genuine and professional. The trading account showed slow but steady progress. The broker would call them to discuss the performance of the investments.

In July 2017, Mr and Mrs T made a withdrawal of £323.60 following which they made the two later payments. They then decided to cease trading so they could use the funds for a deposit on a property. But the broker said they'd need to give 60 days' notice on or before the 'renewal date', which was 11 April 2019. Mr and Mrs T then discovered a warning on the Financial Conduct Authority ("FCA") website that exposed S as a scam. By 14 August 2018, they were unable to access their trading account, so they contacted Barclays.

Barclays accepted they'd been victims of a scam, but it said it couldn't refund any money. It also said the receiving banks had confirmed that no funds remained in the accounts. Mr and Mrs T complained to Barclays because they felt it had should've prevented the payments from leaving their account.

Barclays said it was only able to identify the payments they'd made on 3 March and 10 April 2017. It said the payments had been willingly transferred and indemnities were raised as soon as it was made aware, but both beneficiary banks had confirmed that no funds remained. It also said the Contingent Reimbursement Model (CRM), had come into effect on 23 May 2019, therefore, it wouldn't apply to the two transactions.

Mr and Mrs T weren't satisfied and so they complained to this service, arguing that not enough was done to protect them. But our investigator didn't think the complaint should be upheld. She didn't think the first transaction was unusual or suspicious because in the six months prior, there were a number of transactions of similar value. She accepted the second payment should have triggered Barclays' fraud systems, but she didn't think this would've made a difference to Mr and Mrs T's decision to go ahead with the payment because they'd made a successful withdrawal request which would have legitimised S and reassured him that it was safe to continue.

## **My provisional decision**

### *CRM Code*

The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Mr and Mrs T said they'd fallen victim to, in all but a limited number of circumstances. Barclays had said the CRM code didn't apply because in this case the disputed took place before the code came into force, and I was satisfied that's fair and applies to all of the four bank transfer payments.

### *Chargeback*

Chargeback is a voluntary scheme run by Visa whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed. Our role in such cases is not to second-guess Visa's arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. Barclays) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholders (Mr and Mrs T).

Barclays didn't consider whether it could raise a chargeback request for the debit card transactions. But, as the Visa chargeback rules didn't cover investment trading that took place before 14 October 2017, it could only have raised a chargeback claim if Mr and Mrs T had written evidence of the broker promising returns which were not received, which they didn't have. So, I was satisfied Barclay's decision not to raise a Chargeback request in respect of the card payments was fair.

### *Should Barclays refund any money?*

I was satisfied all four payments were 'authorised' by Mr and Mrs T. This is because they were made using the legitimate security credentials provided to them by Barclays. Mr and Mrs T think they've been disadvantaged because Barclays' system didn't include a payee name check, but Barclays had explained that at the time of the payments, only the sort code and account number needed to be correct, and I was satisfied that was the case.

Mr and Mrs T believe they are entitled to a refund because, even though they authorised the payments, they were the victims of a scam and Barclays should have either done more to stop that happening or to help get the money back. Banks have various and long-standing obligations to be alert to fraud and scams and to act in their customers' best interests. But these are predicated on there having been a fraud or scam. So, my first consideration was whether S was operating a scam as Mr and Mrs T allege.

Not every complaint referred to us and categorised as an investment scam is in fact a scam. Some cases simply involve high-risk unregulated investments that resulted in disappointing returns or losses. Some of these investments may have been promoted using sales methods that were arguably unethical and/or misleading. However, while customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

I carefully considered this, and I was persuaded that at the relevant time S was operating a scam. This is because it wasn't registered with the Financial Conduct Authority ("FCA"), yet it was providing financial services in the UK, so it's likely they were operating a scam. However, where the customer has been the victim of a scam, it may sometimes be fair and

reasonable for the bank to reimburse them even though they authorised the payment.

From the evidence I had seen, the money went to a company in respect of which there were no warnings with either the FCA or IOSCO. Therefore the extent of what we would expect Barclays to have done to protect Mr and Mrs T is restricted to 'triggers', meaning I need to consider whether the transactions were so unusual or suspicious that Barclays ought to have intervened to warn Mr and Mrs T when they tried to make the payments. Barclays, along with other payment services providers, should be monitoring accounts and be on the lookout for unusual transactions or other signs of fraud.

I considered the nature of each of the payments in the context of whether they were unusual or uncharacteristic of how Mr and Mrs T normally ran their account. The first payment of £5,000 was made via online transfer on 3 March 2017 and I agreed with our investigator that it was neither unusual nor suspicious. While I accepted a lot of the payments were for day to day expenses, in the six months prior to the first transaction, there were a number of transactions out of the account that were of a similar value which, regardless of the explanations given for those transactions, meant the payment of £5,000 didn't stand out as unusual.

However, I agreed the second payment of £25,000 was unusual and that it should have triggered a call from Barclays. I said that during this call I would expect Barclays to have asked some probing questions in response to which I thought it was likely Mr and Mrs T would have explained how they'd come into contact with S and the fact they'd been allowed to withdraw a small amount of money from the trading platform.

I would then expect Barclays to have warned Mr and Mrs T about the risks associated with the investment and explain that allowing small withdrawals can be a tactic used by fraudsters to build confidence. I also said I expected Barclays to discuss with them the nature of the checks they'd undertaken and to give some advice on additional due diligence.

I explained our investigator had said she didn't believe a call from Barclays would have made a difference to Mr and Mrs T's decision to go ahead with the second payment because there were no warnings about S at that time. But S wasn't licensed by the UK's Gambling Commission (which was a requirement for all binary options dealers), I thought it was likely they would have decided not to go ahead with the payment because this would have indicated something was amiss.

I explained I hadn't seen any evidence that Mr and Mrs T were keen to take risks. They had explained they'd relocated to the UK, they were using their pension fund to start a new life and they didn't have a history of high-risk investing. So, I concluded that if they'd had any inkling this might be a scam, it's likely they wouldn't have gone ahead with the payment.

Because of this, I thought that Barclays had missed an opportunity to intervene in circumstances when to do so would likely have prevented Mr and Mrs T's loss. Consequently, I was minded to direct Barclays to refund the money they lost from 10th April 2017 onwards.

## **Developments**

Barclays has said I haven't detailed the due diligence completed by Mr or Mrs T to check S was genuine or the due diligence they completed before making payments to each recipient. Barclays has also said there's no evidence that the scam was sophisticated because there's no evidence of professional-looking documentation or contacts.

It's also suggested the fact Mr and Mrs T didn't know S wasn't regulated suggested they

didn't even undertake basic research or consult with someone about whether the returns were too good to be true and that the company was legitimate.

### **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.

Barclays has argued that Mr and Mrs T didn't undertake sufficient due diligence before deciding to go ahead with the disputed payments. It has also said the scam wasn't very sophisticated.

Other than checking that S was regulated, I don't think there was much Mr and Mrs T could have done in terms of research that would have uncovered that they were being scammed. This is because there were no warnings about S on either the FCA or IOSCO websites, and I haven't seen any evidence that there were bad reviews which would have been apparent from a basic internet search.

Before investing, Mr and Mrs T researched S online and didn't find anything to suggest it wasn't a genuine investment company. But they didn't check the FCA register until they became suspicious that S was operating a scam. Other than their pension fund, Mr and Mrs T were not experienced investors. They had relocated from outside of the UK and had never invested in the UK before, so they didn't know to check the FCA register. S claimed to have set up an automated investment platform that would invest in various financial sectors, and the broker provided Mr and Mrs T with a trading account which appeared genuine and professional. So, I'm satisfied this was a sophisticated scam and I don't think Mr and Mrs T could reasonably be expected to have realised they were being scammed without some effective intervention from Barclays.

Barclays has said Mr and Mrs T should have sought a second opinion from a professional concerning the returns they'd been promised, but I don't think it's reasonable to expect them to have done that, especially as they clearly trusted their broker. I've also considered the fact they were promised a 2% return on their investment and I don't think that, to an inexperienced investor, this was too good to be true.

In my provisional decision, I've explained that I think Barclays should have contacted Mr and Mrs T when they tried to make the second payment and that it should have asked questions around who they were paying and what it was for. I've no reason to think they wouldn't have disclosed that they were paying an investment company and at this point I would expect Barclays to have warned them about the risks involved with investing and to have told them about possible ways to check up on the investment company, including checking the FCA register. Had it done this I maintain my view that Mr and Mrs T would have realised that S wasn't regulated in the UK. They would then, having been advised by Barclays that this was a red flag, most likely have decided not to go ahead with the investment because it was being funded by their pension and they didn't have an appetite for risk.

### **My final decision**

I uphold this complaint and direct Barclays Bank UK PLC to pay Mr and Mrs T £50,000. This should include a payment of 8% simple interest, per year, from the respective dates of loss to the date of settlement.

\*If Barclays deducts tax in relation to the interest element of this award it should provide Mr and Mrs T with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Mr T to accept or reject my decision before 21 March 2023.

Carolyn Bonnell  
**Ombudsman**