

## **The complaint**

Mrs B is unhappy that Barclays Bank UK PLC ("Barclays") won't refund her after she fell victim to a scam.

## **What happened**

While the account is held in Mrs B's sole name, a family member that I'll refer to as T, has provided most of the submissions and made most of the transactions on Mrs B's account (with her authorisation) in relation to the scam.

In January 2021, T says he was contacted by someone he didn't know on a social media website – I'll refer to this person as X. After talking for a short period of time, they moved their communication to a messaging app. T says that prior to being contacted by X, he had regular contact with a separate friend online who regularly talked to him about cryptocurrency trading and the profit he'd made from the trading. So, when X started talking to T about trading and the money X had made, T was interested to know more.

T says X shared an app with him he could use for trading, and helped T to set up an account on the app. They also helped T set up new crypto wallets with two genuine cryptocurrency exchanges. X told T he could make good profits by converting his money into USDT then buying and selling different cryptocurrencies based on daily fluctuations.

T made some small initial payments, but says he lost some money with his trades. So, he got in touch with his friend and showed him the app and the trades he'd made. T says his friend explained some mistakes he was making that were negatively impacting on his ability to make profit, but never suggested that the app T was using might be suspicious or fake.

T initially made small transfers from Mrs B's account to fund the trading account, but when T attempted to make a transfer of £5,000 from Mrs B account, the payment was flagged by Barclays and a block was placed on Mrs B's online banking.

T and Mrs B went into a Barclays branch on 2 March 2021. T says they attended the branch approximately 30 minutes before the branch was due to close. The branch staff made a call to an internal department in relation to the block and asked Mrs B/T to talk to a staff member on the phone. T says the call lasted about 45 minutes then was cut off. The branch staff called the internal department again and after being on hold for a further 30 minutes Mrs B/T were passed the phone. T says that as Mrs B wasn't confident talking in English, she asked T to speak to the staff. T says that after the call had finished, they showed the branch staff the app they were using for trading and says they specifically asked them if it was ok to invest.

T says the staff member moved away and then came back shortly after and said everything was fine. T says that based on this they were confident that the investment was genuine.

Barclays have been unable to provide a copy of the call T and Mrs B had with the internal department. However, they have provided their contact notes completed by their staff. These notes say:

*“The customer has come in with their son and has already completed a transfer to her son for £5,000 to approve the transaction. Customer then passed me to their son who has explained they are aware of the risks of this payment. I have then related this information to the customer who has mentioned they are not aware of the risks of using crypto or trading and does not know when their son will pay them back. Customer unwilling, or coerced into this transaction, branch staff will now follow process and speak with the customer separately.” Staff member A*

*“Spoke to customer separately, she did not understand the questioning over the phone and is aware what is going on. She understands that there may be risks in investing in cryptocurrency but is happy with the payment. Her son has also shown us the cryptocurrency account where the money is invested.” Staff member B*

Following this branch visit, T says X told him that a big event was happening and that he could make large profits if he increased his investment, so he made further payments into the trading platform from Mrs B’s account.

T says that the profits in the trading account increased as promised, but when he tried to withdraw the funds, he was told he had to pay more money in first. At which point T realised it had been a scam.

T says he did an online search of the trading app before opening an account but couldn’t find any information about them online. T says this wasn’t surprising as he believed it may’ve been a Chinese company and would only be found if searched on China’s web services. He says that he had talked extensively with X, even though it was only for a few days, but thought they had developed a genuine friendship and he trusted her. T also felt that if there was anything wrong with the trading app that either his friend (who was experienced in trading) would’ve identified it, or that the branch staff would’ve when he showed them the app.

I’ve listed below the payments and transfers made from Mrs B’s account as part of the scam.

Date	Pmt No	Transaction details	Amount
8.2.2021	1	Scam payment – from ISA account	£ 400.00
<b>18.2.2021</b>	<b>2</b>	<b>Scam payment – from ISA account Barclays refunded 50%</b>	<b>£ 1,000.00</b>
24.2.2021	3	Transfer to T – from current account	£ 5,000.00
2.3.2021	4	Transfer to T – from current account	£ 2,628.27
2.3.2021	5	Mrs B goes into a Barclays branch with T	
<b>3.3.2021</b>	<b>6</b>	<b>Scam payment – from ISA account Barclays refunded 50%</b>	<b>£ 5,000.00</b>
3.3.2021	7	Transfer to T – from current account	£ 5,000.00
4.3.2021	8	Transfer to T – from current account	£ 5,000.00
4.3.2021	9	Transfer to T – from current account	£ 5,000.00
		<b>Total loss</b>	<b>£29,028.27</b>

A fraud claim was raised with Barclays in March 2021, which separated out the payments made from T’s account and from Mrs B’s account. The only transactions that were raised in relation to Mrs B’s account were the two transactions in bold in the table above.

Barclays investigated Mrs B’s fraud claim and initially declined to refund her. T raised a complaint with Barclays over the outcome and highlighted the extreme impact that losing this

money had had on Mrs B and their family. T explained that Mrs B was unable to sleep and as a result Mrs B had been involved in an emergency call to paramedics.

Barclays reconsidered Mrs B's fraud claim and changed their position – offering to refund 50% of the two payments they considered as part of her claim. They declined to refund the remaining 50% saying their notes indicated they'd explained the risk of investments and that Mrs B chose to continue with the payments anyway. They offered Mrs B £50 for the distress and inconvenience caused by the overturn in their decision and agreed to pay £271.96 in interest on the refunded amount.

Mrs B wasn't happy with Barclays' response, so she brought a complaint to our service.

An investigator looked into Mrs B's complaint about the same two transactions that Barclays considered under the fraud claim. The investigator felt the 50% refund was fair, saying that Mrs B didn't do sufficient checks prior to investing. Also, the investigator didn't award any further payment for Mrs B's distress or inconvenience saying that most of the impact had been caused by the scammer not by Barclays.

Mrs B didn't agree with the investigator's opinion, saying:

- She couldn't have checked the company on the Financial Conduct Authority's website as she didn't know who they were until after they were aware of the scam.
- Barclays were the experts and when Mrs B and T went into the branch, Barclays should've identified that the app wasn't genuine and sufficiently warned them.
- T had relied on his friend who have been doing this type of trading for years and knew much more about it than him – and his friend didn't identify that it was a scam.

As the case couldn't be resolved it was passed to me to review.

### **My provisional decision**

On 2 March 2023 I issued my provisional decision, in which I said:

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

#### The transactions I'm considering under this complaint

When Barclays reviewed the fraud claim from Mrs B, they only considered two of the payments she made as part of the scam. They are the payments for £1,000 and £5,000 which are referenced (in bold) in the table above.

However, having carefully considered the circumstances around this case and the scam Mrs B fell victim to, I'm satisfied that all of the payments made as part of the scam should be considered under this complaint.

I say this because after a block was placed on Mrs B's account on 23 February 2021, further payments were made as part of the scam albeit the money was transferred from Mrs B's account to T's account - before T forwarded the funds onto the scammer. However, the payments were only made from T's account to get around the blocks that were placed on Mrs B's account by Barclays.

So, while T has raised a separate complaint regarding the transactions that were made from his account – all of the transactions made from his account were funded by transfers from

Mrs B's account. Also, included in the "notes" captured by Barclays during Mrs B's visit to a Barclays branch it says "Cx states he will be investing approximately £20k on behalf of Mrs B". All of which persuades me that the financial loss suffered as a result of the scam is Mrs B's financial loss – with T not having suffered a financial loss.

Therefore, all of the payments included in the table above should be considered as part of Mrs B's fraud claim and under this complaint.

#### Is Mrs B entitled a refund under the CRM Code?

Barclays are a signatory of the Lending Standards Board's Contingent Reimbursement Model (CRM Code) which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. Barclays says two of those exceptions apply in this case.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that\*:

- The customer made payments without having 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.
- The customer ignored effective warnings, by failing to take appropriate action in response to such an effective warning

\* there are further exceptions outlined in the CRM Code, but they don't apply to this case.

#### Did Mrs B ignore an effective warning?

Barclays have provided a copy of the warning they say Mrs B would've seen when selecting the payment purpose of "investment".

The warning says:

*We're continuing to increase the protection we offer you, but it's also important for you to protect yourself. Once a transaction's gone through, it's difficult to recover your money. We'll never ask you to move your money to a "safe" account, nor will the police, HMRC or any trusted organisation*

*Stay safe from scams*

*Check the FCA register and warning list to confirm that the investment company is certified and regulated before proceeding. Scammers often clone genuine companies, creating documents and websites that look real – check the spelling.*

*Fraudsters often provide an initial return on an investment to encourage you to provide larger amounts of money, so get a second opinion from a qualified advisor. If the offer sounds too good to be true, it probably is.*

However, I'm not satisfied that this warning would be considered effective in line with the CRM Code. The first part of the warning talks about scam types that aren't relevant to the scam Mrs B was the victim of, so I'm not persuaded this would've been impactful in her circumstances.

And, while the second part of the warning does suggest checking the FCA register, it doesn't explain why this is important or what steps Mrs B should take if the company wasn't on the

FCA register. I think that is particularly important in this case as Mrs B was the victim of a cryptocurrency scam, and the cryptocurrency app that was being used to trade wasn't listed on the FCA warning list or on the FCA register.

On that basis, I'm not satisfied that Barclays have shown that Mrs B ignored an effective warning.

However, because of the size of the first two payments (being £400 and £1,000), I wouldn't have expected Barclays to identify a fraud risk and therefore wouldn't expect them to have given a warning. So, Barclays' offer to refund 50% of the second payment made for £1,000 is more than I would've recommended.

But I think a warning should've been given when Mrs B made the third payment of £5,000 on 24 February 2021. Especially considering that on 23 February, Barclays have a recorded note that Mrs B attempted to make another payment of £5,000 which was blocked by their system.

The note says they tried to call Mrs B but couldn't get hold of her – so they blocked her online banking.

I'm satisfied that at this point, Barclays should've identified that Mrs B was potentially at risk from financial harm and intervened before allowing further payments to be made. I think a call with Mrs B at this point would've uncovered the scam and prevented Mrs B from making any further payments. I say this because the trading was suggested by someone who contacted T out of the blue and who he hadn't met, also because Mrs B was not familiar with cryptocurrency or trading in cryptocurrencies. Whereas Barclays were aware of these types of scams in February 2021 and should've identified the warning signs based on what Mrs B would've told them.

Also, I'm not satisfied that Barclays adequately discussed fraud risks with Mrs B and T when they went into the Barclays branch in March. The notes Barclays have provided suggest Mrs B wasn't aware of the risks of crypto trading and more importantly that Mrs B may've been coerced into the transaction. It says that staff spoke to Mrs B separately, but the notes suggest that they talked to her about the risk relating to returns associated with investing in cryptocurrency without any reference to the risk of cryptocurrency scams or a relevant warning being given. Also, there is nothing to say what satisfied Barclays staff that Mrs B wasn't being coerced into allowing the transactions.

Barclays have told us that they have concerns Mrs B was allowing T to use her account by sharing her security credentials with him, however when they were made aware of this in March, I can't see that they considered whether they should've activated the banking protocol in order to safeguard Mrs B.

Overall, I think Barclays should've intervened after they stopped the payment on 23 February 2021, and that any probing conversation with Mrs B would've uncovered the scam and prevented her from making any further payments. So, Barclays should refund Mrs B from payment 3 onwards.

However, I also need to consider whether Mrs B had a reasonable basis for believing the investment was legitimate, in order to decide whether there is any shared liability for Mrs B's loss.

Did Mrs B have a reasonable basis for belief?

T has provided several reasons why he believed this was a legitimate investment, including:

- He believed he had developed a friendship with X and could trust them.
- He shared the app with a friend who had experience in trading, and they didn't suggest it might be a scam.
- The branch staff looked at the app when he was in the branch with Mrs B and didn't suggest it might be a scam.
- He did an online search for the app company but couldn't find any information – and he thought this was because it was a Chinese company.
- X told him that he could lose the money he'd invested to trade with.

However, there were several red flags with the information T had including:

- X had contacted T out of the blue via a social media website. She wasn't someone that T knew, and it wasn't long after they'd started talking that he started taking investment advice from her. While he had extensive conversations daily with X, I'm not satisfied that it's reasonable to trust someone he'd met so recently and didn't know with regards to investment advice.
- T says that when he searched online for the app company, he couldn't find any information about it. However, I would expect any large reputable organisation that is providing investment and trading facilities to have an international presence online – so not finding anything about them should've been concerning.

All of these points build into T's reasonable basis for believing that this was a legitimate investment, which is important in this case, as it also has an impact on Mrs B's basis for belief. Because most of the information Mrs B had and relied on in making the decision to allow the payments from her account came from T.

But ultimately, I need to reach a decision based on whether I think Mrs B had a reasonable basis for believing this was a legitimate investment. Although it's unclear exactly how much information T gave Mrs B, the Barclays notes from their discussion in branch support that Mrs T was aware that the payments were for cryptocurrency and that she knew some risk was involved.

Based on what I've seen, I'm not satisfied that Mrs B had enough information in order to reasonably believe this was legitimate. I say this because I'm not satisfied that she fully understood who the funds were being invested with, how the trading would work, whether the company that provided the app was genuine or whether the information she was given was reliable. So, I would've expected her to complete some independent checks which could've included getting independent advice from someone experienced in cryptocurrency trading, or cryptocurrency investments. T says that Mrs B watched some online videos about cryptocurrency, however I'm not satisfied that this is sufficient research based on the information she had about the investment.

Also, I'm concerned that when Barclays placed blocks on Mrs B's account due to a payment flagging, that the payments were changed and sent to T's account as a stopover before being forwarded to the trading platform. I'm not satisfied that it was reasonable for Mrs B and T to find ways to negate the bank's security measures in order to continue making payments.

On that basis, I'm satisfied that Mrs B should share the responsibility for her loss with Barclays, whereby Barclays should only refund 50% of the payments she made from payment 3 onwards – excluding payment 6 which they've already refunded 50% of.

### The interest award

As I believe Barclays should've intervened from payment 3, I intend to ask Barclays to pay interest on the refunds from the date of the payments until the date of settlement – excluding payment 6 which they've already paid interest on. And, as the payments were funded by transfers out of Mrs B's ISA account, the interest should be calculated at the account rate applicable to her ISA account.

### The impact on Mrs B of the scam

Mrs B has told us about the severe impact this has had on her health, including the high levels of stress she's experienced and an inability to sleep. Mrs B has also told us about an incident that resulted in her son calling emergency services, which she says was a result of the stress.

I realise that Mrs B lost a significant sum of money, and don't wish to under play the severity of the impact on her. But I must take into consideration that most of the stress was caused by the scammer who defrauded her, and I can't fairly hold Barclays liable for the scammer's actions or the impact of their actions.

So, in making an award for distress and inconvenience I can only look at Barclays actions, and whether I think they directly caused any additional distress to Mrs B. I think it's also important to explain the awards that we make for distress and inconvenience are modest.

Having very carefully considered what Mrs B has told us and taking into account my findings above that had Barclays intervened further they could've uncovered the scam and prevented some of the payments – I intend to ask Barclays to pay Mrs B £400 in compensation. As, if Barclays had stepped in earlier, I think the impact on Mrs B and the level of stress she experienced would've been reduced. The £400 is in addition to the £50 they've already paid her.

### Putting things right

I said I intended to ask Barclays Bank UK PLC to:

- Refund Mrs B £11,314.14 (being 50% of payments 3, 4, 7,8 and 9),
- Pay interest on the above refund at the account interest rate applicable to Mrs B's ISA account from the date of the payments until the date of settlement,
- Pay Mrs B £400 for her distress and inconvenience (this is in addition to the £50 they've already paid her).

### **Response to my provisional decision**

Barclays responded to my provisional decision, saying they didn't have anything further to add.

Mrs B's representative responded and provided a lengthy submission. As part of that they raised the following points:

- Money was never "lost" as a result of the trades.
- T disputes the time they spent on the phone with Barclays when they went into the branch – saying they were on hold twice for 45 minutes and once for 30 minutes.
- The branch staff took their phone behind closed doors, so T and Mrs B couldn't see

what checks they did, but they believed they had verified the app.

- Barclays contact notes from the phone call with T and Mrs B are untrue. Barclays never discussed anything about the risk of cryptocurrency investment or trading and neither T nor Mrs B said they understood any risks. The only thing that happened during the call was that the account was unlocked.
- Mrs B didn't transfer the money to T's account to get around the blocks on her account, they didn't know why the payments weren't going through. They say it could've happened because of internet connection or server connection problems.
- Barclays no longer allow payments to be made to one of the cryptocurrency exchanges that payments were made to. Barclays would've been aware when Mrs B made these payments about the risks for any payments made to that cryptocurrency exchange, so they should've taken this action sooner which would've prevented Mrs B's loss.

I've reviewed the case again in order to issue a final 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.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

I haven't addressed each point that Mrs B and her representative raised in response to my provisional decision, however I'd like to reassure them that I have fully considered all the points they've made in reaching my answer.

T disputes some of the detail I included in the background setting out what happened. This detail was taken from the information provided to either our service or Barclays as part of Mrs B's complaint. One of the points T disputes is that he lost money as a result of trades. However, he's provided a copy of his online chat with X which says: "I can't say to my mum I lost it otherwise she will not be happy and not want to do it again". This comment was made in February 2021 and suggests that he believed he'd lost funds as a result of his trading. Some of the other details T disagrees with also contradict evidence or testimony that forms part of this case.

T also raised concerns about the investigator's opinion. However, the investigator's opinion was included as part of the background to explain the result of their review of Mrs B's case. The points T had raised in response to the investigator's opinion were considered and were the reason that the case was put forward for an ombudsman to review and issue a decision.

### *Did Mrs B have a reasonable basis for believing the investment was genuine*

T says that Mrs B trusted what he told her about the investment, that his friend who was experienced in cryptocurrency trading believed the app they used for trading was genuine, and that Barclays endorsed the app they were using and told them that they could withdraw their funds.

As I explained in my provisional decision, I need to reach an answer based on knowledge Mrs B had in authorising these payments.

T has strongly disputed the contact notes provided by Barclays which suggest that T and Mrs B were told about the risk of cryptocurrency trading or investing. However, the contact



notes that Barclays have provided, were entered by three separate staff members. On balance, I think it's more likely than not that they are a reasonable approximation of the conversation that was held. Also, I think it's important to note that as part of T's chat with X, it's clear that T was aware of the volatility of cryptocurrency prior to investing. I say this because on the following comments he made:

6/2/2021 – T: "but I heard bitcoin can be quite volatile"

9/2/2021 – T: "obviously I don't want to lost the money"

It's unclear whether T clearly explained to Mrs B the possible risks involved in cryptocurrency trading/investing, however I think it's more likely than not that Barclays did mention something about possible risk.

T has provided no further evidence to show that Mrs B completed any checks with regards to the legitimacy of the investment or what she was told by T. He says they relied on Barclays endorsing the app they were using, and Mrs B believing what T told her about the investment. However, I'm not satisfied that I can safely conclude that Barclays told Mrs B that the app was genuine, and the notes entered by Barclays' staff (during the branch visit in March 2021) suggest that Mrs B was told to do as much research as possible before continuing to make payments.

Also, this advice is similar to what Mrs B would've seen in the warning that was provided when she tried to make the payment of £5,000. While this message wasn't an effective warning under the CRM Code, it should've raised concerns for Mrs B and T about the risk of investment scams and the need to complete independent checks.

Online searches show postings as early as 2020, which suggest the app that Mrs B and T were using for their trading could be a scam, so it's likely that if Mrs B had completed some independent checks she wouldn't have made this investment. Taking all of these points into account, including the ones set out in my provisional decision, I'm not satisfied that Mrs B had sufficient basis for believing the investment was genuine.

T has highlighted that Barclays no longer allow payments to the cryptocurrency exchange, however this wasn't in place at the time Mrs B made the payments. But I accept that Barclays would've been aware of cryptocurrency scams, which is part of the reason why I think they should've and could've uncovered the scam and prevented Mrs B's loss from the third payment onwards. In deciding Mrs B's case, I can only apply the regulations, laws and industry guidelines that were in place at the time she made the payments so can't retrospectively apply an approach that Barclays has now taken.

I'm sorry to disappoint Mrs B but having carefully considered all of the points that she and her representative have made, I'm not persuaded to change my decision from that reached in my provisional decision. On that basis, Barclays should refund 50% of payments 3, 4, 7, 8 and 9 and pay interest on that refund at the account interest rate applicable to Mrs B's ISA account, from the date of the payments until the date of settlement. Barclays should also pay Mrs B £400 for her distress and inconvenience.

### **Putting things right**

To put things right Barclays Bank UK PLC should:

- Refund Mrs B £11,314.14 (being 50% of payments 3, 4, 7,8 and 9),
- Pay interest on the above refund at the account interest rate applicable to Mrs B's ISA account from the date of the payments until the date of settlement,

- Pay Mrs B £400 for her distress and inconvenience (this is in addition to the £50 they've already paid her).

**My final decision**

My final decision is that I partially uphold this complaint against Barclays Bank UK PLC and require them to compensate Mrs B as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 29 November 2023.

Lisa Lowe  
**Ombudsman**