

The complaint

Mr L complains that Barclays Bank UK PLC won't refund the full amount of money he lost after he fell victim to an 'authorised push payment ("APP") scam.

What happened

The background to this complaint is well-known to both parties, so I won't repeat it in detail here. But in summary and based on the submissions of both parties, I understand it to be as follows.

Mr L complains that starting on 04 March 2021 he made several payments from his account held with Barclays to what he thought was a legitimate investment with a third-party company.

1	04/03/2021	£1,000.00
2	12/04/2021	£1,000.00
3	18/04/2021	£1,000.00
4	24/06/2021	£1,000.00
5	12/07/2021	£1,000.00
6	19/08/2021	£1,000.00
7	22/09/2021	£200.00
8	26/11/2021	£500.00
9	13/12/2021	£300.00
10	30/12/2021	£500.00
11	12/01/2022	£500.00
12	27/01/2022	£3,000.00
13	27/01/2022	£3,000.00
14	25/02/2022	£10,000.00
15	28/02/2021	£20,000.00
16	28/02/2022	£10,000.00
17	03/03/2022	£9,100.00
18	31/03/2022	£5,000.00
19	31/03/2022	£10,000.00
20	22/04/2022	£11,999.00
21	22/04/2022	£12,000.00
Withdrawals	14/04/2021	£115.46
Withdrawals	24/04/2021	£1,030.78
Net total		£100,952.76

In 2021, Mr L says he was called by a company and convinced into investing in cryptocurrency. Mr L was assigned an account manager who helped him set up an account and a wallet to deposit funds. At the same time and unknown to Mr L, the person posing as the account manager also gained control of his computer and wallet through an app he convinced Mr L to download.

In March 2021 Mr L began depositing funds into his wallet and as his investment increased, he continued to send regular payments to increase the funds available to invest.

Over the period of Mr L sending the funds, he says he had several account managers and was able to withdraw funds on two occasions. When Mr L tried to withdraw more money from his account and was unable to, he became suspicious and concluded that he had been the victim of a scam. So, he logged a complaint with Barclays.

Barclays looked into Mr L's complaint and partially upheld it. Barclays said that even though the transactions were beyond the scope of Contingent Reimbursement Model (CRM) rules (as the payments went to a legitimate bank account and then transferred to a wallet in the consumer's name), it decided to offer a partial refund of £47,049.50. This represented 50% of the payments Mr L made from 27 January 2022. Barclays acknowledged that from 27 January the payments were unusual for the account and that no intervention was made until the final payment. Furthermore, Barclays waived a £9,500 Barclays loan and offered 8% compensatory interest and a £150 distress and inconvenience payment.

Barclays offered 50% of the total paid as it felt Mr L hadn't done enough to safeguard himself against the scam, what it referred to as contributory negligence. Mr L didn't agree with the offer of settlement, so he brought his complaint to our service.

Our investigator looked into the complaint but didn't find Barclays needed to pay any further money to resolve the complaint. She said that the payments made up to 27 January 2022 were relatively small and in line with the other spending on Mr L's account around that time. So, she didn't think these should've been flagged by Barclays as suspicious or at risk of financial harm.

Our investigator went on to say that the payment of £3,000.00 onwards should've been flagged by Barclays and it wasn't, so it was fair to make an offer of settlement from this date. Our investigator also agreed that the offer should be for 50% of what was sent from this date.

Mr L didn't agree with the investigator's view, so the complaint's been passed to me for 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.

Prevention

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No courtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

I'm satisfied that although Mr L didn't intend his money to go to a fraudster, he did authorise the payments. I understand he wouldn't have authorised the payments if he'd known the investment was a scam, but Barclays are expected to process payments that a customer authorises or instructs it to make, and that is what it did. The Payment Services Regulations (PSRs), state that payments are authorised if the payer consented to them and, in this case, I'm satisfied Mr L consented to the payments as at the time he believed he was making payments for the purposes of a legitimate investment.

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 payments.

Taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider having been good industry practice at the time, I consider Barclays should fairly and reasonably:

- Have been monitoring accounts – and any payments made or received – to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams;
- Have had systems in place to look out for unusual transactions or other signs that might indicate its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer; and
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

Our service has referenced the relevant rules, codes of practice and good industry practice at the time in many previous decisions published on our website.

Having considered the circumstances of the payments Mr L made, I very much agree with the investigator and Barclays when they highlighted the first payments up to 27 January 2022 were reasonably in line with other payments Mr L was making from his account around that time. Mr L had made payments of the same amount and slightly less, so I'm not persuaded Barclays should've flagged these as suspicious or unusual and alerted Mr L or done further checks.

I am satisfied that the payments after that date were much higher and were out of character for Mr L's spending. So, these should've flagged, and Barclays have correctly agreed to refund some of this money from that date.

Recovery

Barclays didn't attempt to recover any of the funds, but I'm not convinced this would've had any impact on getting Mr L's money back. After the payments were made, I couldn't reasonably expect Barclays to have done anything further until Mr L notified it of the scam. And here, Mr L didn't instruct Barclays to send the payments directly to the scammers but

instead to cryptocurrency account(s) held in his own name. That's what Barclays did. I don't think it was ever likely that Barclays would be able to facilitate recovery of the payments after Mr L moved the payments from his cryptocurrency account(s) onto the scammers. So, I don't think I can hold Barclays responsible for Mr L being unable to recover his funds.

Should Mr L bear some responsibility for his loss?

I've thought carefully about whether it would be fair and reasonable to hold Mr L partially responsible for the loss he has suffered. And on balance, in the individual circumstances of this case, I've decided Mr L should bear some responsibility for the loss.

Mr L wasn't an experienced investor and he had only just started investing in cryptocurrency. Mr L sent a large amount of money to the scam over the course of the year with a small amount withdrawn. With this level of investment, I'd expect a high amount of due diligence to be done into the company and the investment before the money was sent.

Mr L says he was called out of the blue and told about the investment. Cryptocurrency was widely reported on in the media around this time as having a high rate of scams, I too would've expected Mr L in his profession to be more cautious about sending such high sums to something he had very minimal information or knowledge of.

As someone that works in finance, Mr L would likely be aware of the potential risks of taking out loans for investment purposes and that it's unusual advice for a legitimate company to give someone. Mr L was also told to lie about the purpose of the loans, and I think this should have raised concerns for him on the legitimacy of the investment.

In summary I'm satisfied that Mr L sent a considerable amount of money with minimal to no research. For that reason, I'm persuaded that Mr L shouldn't get the full amount of the investment back. I'm therefore satisfied Barclays decision to reduce the compensation by 50% was a fair and reasonable one

I also agree with the investigator when she's said that the £9,500.00 loan Barclays agreed to write off is over what I would've suggested it pay had the complaint come to our service without Barclays already agreeing to pay half the money. Therefore, for the reasons I've explained, I'm satisfied Barclays' offer is fair and reasonable in all the circumstances of the case, and I won't be asking it to do anything more.

My final decision

My final decision is that I don't uphold this complaint or require Barclays to pay any more money to Mr L.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 11 July 2023.

Tom Wagstaff
Ombudsman