

The complaint

Miss D complains that Barclays Bank UK PLC (“Barclays”) won’t reimburse money she lost to two investment scams.

Miss D is being represented by solicitors in her complaint.

What happened

Miss D was looking online for investment trading opportunities. In April 2021, she made six payments totalling £16,582.14 using her Barclays debit card in connection with two investment opportunities. Miss D says both investments turned out to be a scam.

Investment 1

Miss D checked out Trustpilot reviews for a broker “C” and filled out an online enquiry form after seeing lots of positive reviews. She received a call from a representative who claimed that C worked with Barclays. Miss D started with a small initial deposit and continued to invest under her account manager’s instructions after seeing the ‘profits’ her trades had made. These subsequent deposits first went to cryptocurrency exchanges, where the funds were converted into cryptocurrency before Miss D forwarded them on to her trading account with C. She states her deposits were also topped up by C and she was able to make a withdrawal of £253.34.

Miss D realised she’d been scammed when she tried making a subsequent withdrawal for a much larger amount but was told she needed to set up a temporary bank account for her profits to be paid, and that she’d need to pay 10% of her profits.

Investment 2

Around the same time, Miss D engaged with another broker “F” who she says she came across via posts on a social media platform. Miss D says she did this in case anything went wrong with her dealings with C. She started with a small initial deposit and says she was enticed into making a further deposit after seeing the ‘profits’ she’d already made and being told she’d receive a higher return. Just like with the other investment, the money was first sent to a legitimate cryptocurrency exchange, where it was converted into cryptocurrency which Miss D then forwarded on to her trading account with F.

When the returns promised didn’t end up in her trading account, and her account manager started pressuring her into depositing more funds, Miss D realised she’d fallen victim to another scam.

The following transactions are relevant to this complaint –

Date	Debit/ Credit	Type	Amount	Notes
9 April	Debit	Card payment to Onlinepayment	£223.26	Investment 1
12 April	Debit	Card payment to Moonpay	£368.50	Investment 2

13 April	Debit	Card payment to Moonpay	£2,092.19	Investment 2
14 April	Debit	Card payment to Buy Digital Asset	£4,335.00	Investment 1
14 April	Debit	Card payment to Binance	£4,335.00	Investment 1
14 April	Debit	Card payment to Moonpay	£5,228.19	Investment 2
16 April	Credit	Withdrawal from Investment 1	£253.34	
13 May	Credit	Temporary chargeback credit	£368.50	
13 May	Credit	Temporary chargeback credit	£2,092.19	
13 May	Credit	Temporary chargeback credit	£4,335.00	
13 May	Credit	Temporary chargeback credit	£5,228.19	
3 June	Credit	Temporary chargeback credit	£223.26	
21 July	Debit	Chargeback reversal	£380.50	£12.04 extra
21 July	Debit	Chargeback reversal	£2,610.56	£68.37 extra
21 July	Debit	Chargeback reversal	£5,399.01	£170.82 extra

On being notified of the matter, Barclays attempted a chargeback. Some of the payments were successfully defended by the cryptocurrency exchange and the credits Barclays had temporarily applied were reversed (albeit higher amounts).

Barclays refused to refund any of the disputed transactions and Miss D referred her complaint to our service. Our investigator didn't uphold it either. Miss D disagreed and asked for an ombudsman's decision.

I issued my provisional decision last month and explained why I intended reaching a different outcome to the investigator.

I invited both parties to provide further comments for my consideration. Both Barclays and Miss D accepted my provisional findings. What follows below is my provisional decision made final.

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'd like to reassure the parties that although I've only summarised the background to this complaint, I've read and considered everything in its entirety. Having done so, I agree with the conclusions reached by the investigator. I'll explain why.

The first question I need to consider in any case involving an investment scam is to determine, so far as is reasonably possible, whether the complainant was in fact scammed, rather than simply losing money to a high-risk investment. This is important because payment service providers only have a duty to protect customers from the risk of financial loss due to fraud. This duty to intervene isn't triggered where payments are made to a legitimate investment.

In this case, very little is known about C and F. Apart from Miss D's testimony, which I've carefully considered, we haven't been provided with any documentary evidence (such as emails, screenshots, etc.) of her dealings with either firm. I've done my own research and neither firm appears to have an active website or an online presence. Also, there aren't any warnings published on the Financial Conduct Authority (FCA) website, or on the Investor Alerts Portal of the International Organization of Securities Commissions (IOSCO).

But the limited information I've been able to find online is negative – there are reports in the public domain, ranging from C and F being unregulated to operating a scam. This hearsay is not in itself sufficient evidence of fraud. But, considered in conjunction with what Miss D has said, it may fairly and reasonably be regarded as circumstantial evidence that helps build an overall picture of scammers dishonestly seeking gains at the expense of others.

Having carefully considered the available information, it is my judgement that C and F weren't legitimate traders. They were likely operating illegally with dishonest intentions.

Recovery

While I think that C and F were likely operating a scam, the chargeback scheme rules don't automatically entitle Miss D to a refund based on these circumstances. The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between a merchant and a card issuer (on behalf of the cardholder). The card scheme operator – Visa in this case – ultimately arbitrates on a dispute if it can't be resolved between the merchant and the card issuer. Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed.

Miss D says her dealings were with C and F. But she didn't make the debit card payments to those firms; they went to different cryptocurrency exchanges. This is important because Barclays was only able to chargeback against the merchant she paid i.e., the cryptocurrency exchange, not another party. The service provided by the exchange would be to convert Miss D's payments into cryptocurrency. Therefore, the merchant she made the payments to did provide the service that was requested; that being the purchase of the cryptocurrency. The fact that the cryptocurrency was later transferred elsewhere – to the scammer – doesn't give rise to a valid chargeback claim against the merchants she paid.

That means that it wouldn't have been unreasonable if Barclays hadn't attempted chargebacks on any of the disputed transactions; there was little prospect of success. That said, I can see that Barclays did attempt to chargeback all the transactions except for the one to Buy Digital Asset (£4,335). It doesn't appear that it heard back from Onlinepayment (£223.26) or Binance (£4,335), so the temporary credits for those transactions have remained on Miss D's account. Moonpay defended the chargeback for its transactions (£368.50, £2,092.19, and £5,228.19) on the basis that the service was provided, and so the temporary credits were reversed. But the amounts that Barclays debited were higher than the original transaction amounts (see above table).

In recent correspondence, Barclays has said that this is a known 'Claim Issue'. I've looked through the available account statements and unless I've missed something, I can't see that Barclays has refunded the additional amount that was taken from Miss D's account at the time of reversing the temporary credit. I would expect Barclays to ensure that it doesn't debit an amount greater than the credit it temporarily applied while awaiting the outcome of the chargeback. Otherwise, Miss D has suffered further financial loss.

If Barclays can evidence that it's refunded this additional £251.23 it took from Miss D's account, then it doesn't need to do anything further in relation to the chargebacks. Otherwise, I would expect it to refund that amount along with simple interest at 8% per year, payable from when it reversed the credits to the date of settlement.

Duty of Care

Notwithstanding the recovery efforts, I've considered whether Barclays could have done more to prevent Miss D from falling victim to the scams in the first instance, i.e., when she authorised the transactions.

The transactions in dispute were authorised by Miss D using her legitimate security credentials. So, under the relevant regulations, she's considered liable for the loss (even if she was duped) unless there's evidence that Barclays could and should reasonably have done more to protect her against the risk of fraud and scams *and* that this would have made a difference to her decision-making.

I've considered that the disputed payments were sent to legitimate crypto platforms. I accept that buying cryptocurrency is a legitimate exercise. But both the Financial Conduct Authority (FCA) and Action Fraud had warned of crypto exchange and forex trading scams in 2018. And in May 2019, Action Fraud published further warnings that such scams had tripled in the past year. This type of insight is something that regulated businesses, including Barclays, ought to take notice of.

So, even though Miss D was transferring funds to a crypto account in her name, Barclays ought to have been on the lookout for unusual and out of character transactions. While the transfers were made to her own wallet, scams involving transfers to crypto accounts were well known to banks by this time and I therefore think that where payments were also out of character, potential losses were foreseeable to the originating bank.

I've considered Miss D's account activity in the year leading up to the disputed transactions to establish whether the transactions ought to have appeared so unusual or uncharacteristic that Barclays should have paused them pending further enquiries. Having done so, I'm not persuaded that the individual disputed amounts when considered in isolation were *that* unusual or suspicious such that I think Barclays ought to have intervened.

But Miss D made three large-value transactions on 14 April - all to cryptocurrency exchanges. While previous account activity does show individual large-value transactions – up to £10,000 – given the increased frequency of transactions on 14 April, I think Barclays ought to have been concerned that there was a possibility that something wasn't right. Specifically, the third transaction that day – £5,228.19 – ought to have triggered the bank's fraud detection systems. I consider that it would have been reasonable for Barclays to have properly questioned Miss D before executing her authorised instruction.

Even if she had been sending money to a legitimate crypto platform, it didn't follow that Miss D's money was safe, or that she wasn't at risk of financial harm due to fraud or a scam. In April 2021, I think Barclays had or ought to have had a good enough understanding of how these scams worked to have been able to identify the risk of harm from fraud. Including, that the customer often first purchases cryptocurrency and moves it on to the fraudster under the assumption that they're moving it into their own wallet or account.

Had Barclays done more and warned Miss D about cryptocurrency scams, I've no reason to doubt that she would have explained the true purpose of her payment and how she came to know about the investment opportunity. I can't see that Miss D had been given a reason to think she had to hide this information from her bank. Neither had she been coached to tell them something different.

I'm satisfied that Miss D would have looked further into the investment opportunity in general, including whether F – this payment was in relation to the second scam – was regulated here in the UK or abroad. She could have discovered that it wasn't. Indeed, it's likely that Miss D would have come across the various warnings about cryptocurrency scams following an intervention from Barclays.

I'm persuaded that Miss D would have paid attention to warnings from her trusted bank, and that a meaningful intervention would likely have exposed the scam. It follows that I also think it's more likely than not that the intervention would have caused her to stop from going ahead with that third payment on 14 April, thereby limiting her financial loss. Therefore, although I don't think Barclays could have prevented the earlier transactions from going ahead, I find that it is liable for the loss Miss D's suffered as a result of the last disputed transaction.

I've also carefully thought about whether Miss D is partly to blame for what happened. She doesn't appear to have carried out sufficient independent research into F to reassure herself that the opportunity as presented to her was genuine.

What's more, I can see that in the months leading up to the payments, Miss D had made more than a dozen transactions to cryptocurrency exchanges. And payments were also made to multiple investment trading firms. I can't see that Miss D has raised any concerns about those payments at any point. As such, it's reasonable to assume that she had some awareness of the workings of cryptocurrency exchanges and trading in general.

Having given this a lot of thought, I do think that Miss D ought to bear shared responsibility for her losses and that compensation – refund of the last payment – should be reduced by 50%.

Putting things right

To put matters right, Barclays Bank UK PLC needs to –

- If it hasn't already done so, refund the additional £251.23 it took from Miss D's account when reversing the temporary credits which it applied while awaiting the chargeback outcome. If the refund is still outstanding, then it needs to add simple interest at 8% per year, payable from when it reversed the credits to the date of settlement.
- Refund the last debit card payment made on 14 April 2021 (see table above) which was made in relation to the second scam, making a 50% deduction for contributory negligence. I make no interest award in this instance as from what I've seen so far, Miss D was interested in cryptocurrency investment and so it's reasonable to assume she would have traded on a genuine platform but for the scam. Given the volatility with these types of investments, there's no guarantee that Miss D would have made a return.

My final decision

For the reasons given, my final decision is that I uphold this complaint. I require Barclays Bank UK PLC to put things right for Miss D as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 10 July 2023.

Gagandeep Singh
Ombudsman