

The complaint

Mr D 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 D complains that starting in April 2018 he made several CHAPS payments from his account held with Barclays to what he thought was a legitimate investment with a third-party company. Mr D says these payments were made in a Barclays branch.

Date	Recipient	Type of Transaction	Amount
20/04/2018	Lgc Global	Bank transfer	£100,000
22/05/2018	Lgc Global	Bank transfer	£70,000
02/07/2018	Lgc Global	Bank transfer	£300,000
16/07/2018	Lgc Global	Bank transfer	£30,000
16/07/2018	Lgc Global	Bank transfer	£50,000
20/07/2018	Lgc Global	Bank transfer	£25,000
Total			£575,000

In 2018, Mr D says he was introduced to an individual of a company that could give him access to purchasing luxury watches at a discounted price. Mr D arranged to meet the director of the company at his office in London and he was given a brochure of the available watches for sale.

Mr D went on to meet the individual on ten separate occasions to discuss his plans for watch purchases. Following the initial meeting, Mr D was persuaded to consider an alternative arrangement to direct purchase, buying through an internet platform the company owned. Mr D says he was told he would get discounts on the purchases and his money would be worth more when converted to digital currency on the platform. Mr D says he was persuaded to make an initial deposit to gain access to the platform and this was made in a Barclays branch.

Once Mr D made his initial deposit, he was able to view his balance and top up when he was able to free some capital with the intention of achieving higher returns. The platform showed his funds were earning interest.

The retail part of the platform was due to launch on 23 July 2018. But this was delayed, initially until August 2018. Mr D was then told that due to high demand he wasn't able to make his purchases. He started to become suspicious and concluded he'd likely been the victim of a scam in September 2018.

Mr D says he attempted to report the suspected fraud twice in a Barclays branch but was

told no one was available to help him. Mr D unfortunately then became very ill and was unable to chase up his complaint until 2019.

When Mr D's health improved, he got legal advice and returned to Barclays to make enquiries about getting his money back. At this point Barclays logged a formal complaint and Mr D was given a Final Response Letter (FRL).

Following the FRL, Barclays contacted Mr D again and refunded him half of the money he lost – £287,500.00. Barclays went on to say that Mr D only got a refund of half of the money lost as he should've taken reasonable steps to ensure the payment was genuine. This included completing checks on the person he was sending the money to. So, Barclays said the payment was subject to a 50% reduction due to what they consider to be contributory negligence on his behalf.

Mr D remained unhappy, so he brought his complaint to our service.

Our investigator looked into the complaint and thought it should be upheld. In summary, our investigator found the scam to be sophisticated and thought Mr D should get the full amount of his money back.

Barclays responded to the investigator's view and didn't agree to fully reimburse Mr D. In summary, it said Mr D didn't receive any paperwork or signed documentation for the watches or agreement; Mr D had no knowledge of this type of investment in particular, but he had experience within the investment industry as a whole and therefore ought to have known the importance of contracts and written agreements when investing this level of money. And he should've done more due diligence into the person and company he was sending money to. Barclays says, if he had done so, he ought likely to have had some concerns, and so it thinks he should be held partially responsible for his loss.

As no agreement could be reached, the case was passed to me for a final decision on the matter. I issued my provisional findings, upholding the complaint. I've copied below the part of that decision which detailed my rationale:

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

Having done so, I've come to the same outcome as the investigator for materially the same reasons and I intend to uphold this complaint. I'll explain why.

For me to uphold this complaint, I need to be satisfied Barclays ought to have prevented the payments to the scam, and/or it unreasonably hindered recovery of the funds.

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 discourtesy 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 D 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 D 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.

Bearing this in mind, I need to decide whether Barclays acted fairly and reasonably in its dealings with Mr D when it processed the relevant payments.

Mr D made all the payments by CHAPS in a Barclays branch. Mr D says he was told by Barclays this was the safest way to make the payments. I've thought about whether the initial and subsequent transfers Mr D made were out of character and unusual.

The initial payment of £100,000 was unusual and extremely large compared to other payments Mr D had made from his account in the previous six months. While Mr D had made other payments for relatively large amounts these were still for considerably less value than the payment made to the fraudulent company, and they were to known payees or his own accounts. Mr D had also not made a payment to the company before. So, I'm persuaded that it wasn't typical of how the account was usually run and so, I think it ought to have caused the Barclays advisor in branch to be concerned that Mr D might have been at risk of financial harm.

With all of the above in mind I think Barclays ought to fairly and reasonably have asked additional questions in branch to satisfy itself that Mr D wasn't likely to be at risk of financial harm. I should be clear from the outset; I can't know for certain how events would've transpired if the Barclays advisor had handled things differently and intervened appropriately. So, I must reach a conclusion based on the balance of probabilities and that

conclusion must be informed by the available evidence.

In these particular circumstances, in order to meet its obligations summarised above, I would reasonably expect Barclays to have asked Mr D who the payment was for, what it was for, and for the basic surrounding context, and to then have proceeded appropriately from there, with the intention to disturb or unearth a potential fraud or scam. Mr D hadn't been coached by the scammer(s) on how to answer any questions from his bank about the payment (which is sometimes the case with scams), so I think it more likely than not he would have answered Barclays' questions freely. Bearing this in mind, I think it would have been appropriate for Barclays to also question Mr D around how he had heard about the investment, what rate of return was expected or guaranteed, and what he knew about the company/people he was dealing with. I think it would have come to light from this that Mr D was intending to invest in digital currency and later on in luxury watches. At the time, Barclays should have been well aware of the possibility of digital currency scams and Mr D's mention of investing in such a product ought to have prompted further questions.

It would or ought to have been straightforward for Barclays to talk to Mr D about the detail of these types of scams and how they typically happen. And I think it fairly and reasonably ought to have informed him of the steps he needed to take to protect himself. And to have given him advice in line with the actions it was suggesting its customers could take to protect themselves on its website.

I've then gone on to think about what difference the intervention would've likely made had appropriate questions been posed to Mr D.

Both Mr D and Barclays have confirmed that Mr D's usual investments were in property. He has no experience in buying luxury watches or digital currency. Had Barclays established this (which I don't think would be unreasonable as part of an appropriate conversation), I'm persuaded Mr D would've likely been convinced to hold off sending any payments until more research had been done or he had seen some of the watches he was interested in purchasing. As we now know there were no watches, it's likely Mr D would've held off sending any money all together. Seeing the goods, you're intending to purchase is one of the bits of advice Barclays gives on its website, so I don't think it's unreasonable to say this is what it should have advised Mr D here also, along with general warnings about fraud and scams of this nature, and how best to protect himself.

Although no contact has been made to the retailer of the watches in connection to this complaint, information is readily available on the internet and through news articles regarding this fraudster. In those articles the company affiliated to the sale of the watches has confirmed it had no relationship or agreement with the company involved in the fraud. So, I'm satisfied it would've been difficult for the fraudster to produce examples of what Mr D thought he was purchasing, even more so given they were very high-end watches.

So even though the scam was persuasive to Mr D at the time, I'm satisfied that if Barclays had done what it reasonably ought to have done at the time (to meet its obligations summarised above), it really ought to have been able to cause sufficient concern in Mr D's mind so as to, at least, make him think twice, and ultimately conclude that the risk of proceeding was too high to accept.

It follows that I'm satisfied that it is more likely than not that if Barclays had acted as it reasonably ought to have done, Mr D wouldn't have made the first payment to the scam nor, it follows, any of the subsequent payments.

Recovery

Given what I've explained above, there's no need for me to consider whether Barclays ought to have done more to help Mr D recover the payments (since I think if Barclays had done what it ought to have done at the time of the first payment, none of the payments would likely have been made). For the sake of completeness, however, although there is no record of Mr D visiting a Barclays branch in 2018, it's clear he stopped making payments to the fraudulent company around the same time. And I'm satisfied that it would have been clear to Mr D at this point that he had most likely been the victim of a scam. I think it's more likely than not that at this point that Mr D, especially given the amount of money he had lost, would've attempted to recover it through his bank (as he's said he did). So, I have no reason to disbelieve Mr D when he said he visited the branch at this point. And I can't see that Barclays at this point logged the potential fraud or made any attempt to recover any of the funds. This may or may not have made a difference to whether the funds were recoverable from the beneficiary bank. But for the reasons I've explained, there's no need for me to consider this further.

Should Mr D bear some responsibility for his loss?

I've thought carefully about whether it would be fair and reasonable to hold Mr D partially responsible for the loss he has suffered. And on balance, in the individual circumstances of this case, I'm minded to say it wouldn't.

Barclays have raised a number of things it thinks Mr D could've done himself to prevent his loss. But I'm not satisfied a reduction in compensation is appropriate here. In my view, it was the failure of Barclays to have an appropriate conversation with Mr D at the time of the first payment instruction that really caused the loss. This was a sophisticated scam whereby given the presentation of the scammer and the meetings and locations involved, it's understandable how Mr D was drawn into things. This was a very large amount of money for Mr D to invest, and I don't think he would have done so if he'd foreseen the possibility of it being a scam. And I'm not persuaded that the measures Barclays has said it thinks Mr D could or should have taken himself at the time would have most likely led Mr D to establishing the type of scam, he ended up being a victim of without intervention advice from Barclays at the time of payments. I say this as an address change or a company carrying a loss in my eyes wouldn't alert someone to the possibility of a scam when he had already been convinced of the legitimacy of the company by other more elaborate means. Companies often have different registered addresses to those that they use day to day. And a company losing money also doesn't mean the company is necessarily involved in a scam.

I've also gone on to think about the point at which I think Mr D ought to have realised he had fallen victim to a scam and whether he should've stopped making payments before he did.

Mr D had been the victim of a sophisticated scam over a very short space of time. Although it was a short amount of time, a lot had happened in that period including ten meetings with the director of the company. Mr D had been supplied with brochures, a legitimate platform to hold his money, as well as invites to parties at a luxury car dealership of which he attended one. Without some sort of intervention by the bank, I'm not persuaded Mr D had any reason to stop sending payments until the company itself started arousing suspicion by delaying Mr D's first purchase.

In assessing what would be fair compensation, an ombudsman should look to put a consumer as close to the position they would be in now, had a firm/business acted accordingly, and prevented a loss from happening.

In this case I'm satisfied this means that appropriate compensation would be for Barclays to refund Mr D the rest of the payments he lost, so that he has then received a full refund of the £575,000 he lost to the scam – because, as I've explained, I don't think Mr D would have lost

this money if Barclays had done what it reasonably ought to have done. It would also be appropriate for Barclays to pay Mr D interest on each payment it hasn't yet refunded from the date of the payment to the date of settlement, to compensate Mr D for being deprived of these funds since he lost them. I've thought carefully about how that interest should be calculated. To fund the payments to the scam Mr D liquidated money from a number of different investments, and in this case it's difficult to know exactly what would have happened with the money if Mr D had not fallen victim to the scam. In a situation like this I don't think it's unreasonable for interest to be calculated at 8% simple per year. This has long been our approach to suitable interest where the consumer has been deprived of the use of funds (which Mr D has, given he lost it to the scam).

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £160,000, plus any interest and/or costs/interest on costs that I consider appropriate. If I think that fair compensation is more than £160,000, I may recommend that the business pays the balance.

Decision and award: I uphold the complaint. I think that fair compensation is £575,000. My decision is that Barclays Bank UK PLC should pay Mr D £160,000 plus 8% simple interest.

Recommendation: I think fair compensation is more than £160,000, so I recommend that Barclays Bank UK PLC pays Mr D the balance plus 8% simple interest.

This recommendation is not part of my determination or award. Barclays Bank UK PLC doesn't have to do what I recommend. It's unlikely that Mr D can accept my decision and go to court to ask for the balance. Mr D may want to get independent legal advice before deciding whether to accept this decision.

Both Mr D and Barclays responded to say they accepted my provisional findings and had nothing further to add.

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.

Given the responses to my provisional decision, and there being no further information for me to consider, I see no reason to depart from the outcome I reached. So, for the reasons set out above, I'm upholding Mr D's complaint.

Putting things right

Decision and award: I uphold the complaint. I think that fair compensation is £575,000. My decision is that Barclays Bank UK PLC should pay Mr D £160,000 plus 8% simple interest.

Recommendation: I think fair compensation is more than £160,000, so I recommend that Barclays Bank UK PLC pays Mr D the balance plus 8% simple interest in line with how I've described it above.

If Barclays considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr D how much it's taken off. It should also give Mr D a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold Mr D's complaint against Barclays Bank UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 26 July 2023.

Tom Wagstaff
Ombudsman