

The complaint

Ms N complains that Barclays Bank UK PLC didn't do enough to protect her from the financial harm caused by an investment scam company, or to help her recover the money once she'd reported the scam to it.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Ms N saw an advertisement for an investment for a company I'll refer to as "B". She joined a telegram group and was contacted by someone claiming to be a broker who told her she could make significant returns by investing in cryptocurrency.

The broker asked her to first purchase cryptocurrency through a cryptocurrency exchange company and then load the cryptocurrency onto an online wallet. Between 2 March 2022 and 29 April 2022, she made seven payments totalling £3,975 using a debit card attached to her Barclays account. The first payment was to a cryptocurrency exchange platform I'll refer to as "C" and the other six payments were to a payment platform I'll refer to as "S".

Ms N realised she'd been scammed when she didn't receive any returns from her investment, and she lost contact with the broker. She complained to this service explaining how the scam had affected her and that Barclays had failed to prevent the scam by foreseeing the fraud and conducting a proper investigation.

Our investigator didn't recommend the complaint should be upheld because he didn't think the payments were suspicious or unusual, so he didn't think Barclays needed to intervene when Ms N made the payments. He explained the payments to legitimate accounts and while some banks have made the decision to block transactions to certain cryptocurrency exchanges, he didn't accept this was reason enough for Barclays to have intervened. He accepted there was a higher frequency of payments on 25 March 2022, but the combined amount was only £255. And he noted the payments took place over a six-week period, so S would have become a known and recognised merchant.

Our investigator also said the transfers were to accounts in Ms N's own name, so Barclays wouldn't have been able to recover the funds, and there would be no chargeback rights as the payments were to legitimate financial businesses, who had provided the service they were required to provide.

Miss N has asked for her complaint to be reviewed by an Ombudsman.

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.

Having done so, I've reached the same conclusion as our investigator. And for largely the same reasons. I'm sorry to hear that Ms N has been the victim of a cruel scam. I know she feels strongly about this complaint, and this will come as a disappointment to her, so I'll explain why.

I've thought about whether Barclays could have done more to recover Ms N's payments when she reported the scam to it. 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 cardholder (Ms N).

Ms N's own testimony supports that she used cryptocurrency exchanges to facilitate the transfers. It's only possible to make a chargeback claim to the merchant that received the disputed payments. It's most likely that the cryptocurrency exchanges would have been able to evidence they'd done what was asked of them. That is, in exchange for Ms N's payments, they converted and sent an amount of cryptocurrency to the wallet address provided. So, any chargeback was destined fail, therefore I'm satisfied that Barclays's decision not to raise a chargeback request against either of the cryptocurrency exchange companies was fair.

I'm satisfied Ms N 'authorised' the payments for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although she didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of her bank account, Ms N is presumed liable for the loss in the first instance.

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've carefully considered the circumstances, and I am persuaded this was probably a scam. But, although Ms N didn't intend her money to go to scammers, she did authorise the disputed payments. Barclays is expected to process payments and withdrawals that a customer authorises it to make, but 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.

Prevention

I've thought about whether Barclays could have done more to prevent the scam from occurring altogether. Buying cryptocurrency is a legitimate activity, but Barclays had an obligation to be alert to fraud and scams and these payments were part of a wider scam, so I need to consider whether it ought to have intervened to warn Ms N when she tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect Barclays to intervene with a view to protecting Ms N from financial harm due to fraud.

The payments didn't flag as suspicious on Barclay's systems. I've considered the nature of the payments in the context of whether they were unusual or uncharacteristic of how Ms N normally ran her account, and I don't think they were. All the payments were to legitimate

accounts and the largest payment was for £2,000 on 15 March 2022, so none of them were for particularly large amounts. On 25 March 2022, Ms N made three payments to S, but the cumulative total of the payments was only £255, and she'd made a previous payment to S on 15 March 2022. So, I don't think Barclays missed an opportunity to intervene.

Finally, as the payments were to accounts in Ms N's own name and the funds were transferred from there to accounts in the scammer's control, I'm satisfied there was no prospect of a successful recovery.

Overall, I'm satisfied Barclays took the correct steps prior to the funds being released – as well as the steps it took after being notified of the potential fraud. I'm sorry to hear Ms N has lost money and the effect this has had on her. But for the reasons I've explained, I don't think Barclays is to blame for this and so I can't fairly tell it to do anything further to resolve this complaint.

My final decision

For the reasons I've outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms N to accept or reject my decision before 24 November 2023.

Carolyn Bonnell
Ombudsman