

The complaint

Mr and Mrs B complain that Barclays Bank UK PLC won't refund the money they lost, after they fell victim to an Authorised Push Payment ("APP") scam.

What happened

The background of 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.

In or around April 2018, Mr B was looking to invest. He was introduced to a broker, who had been recommended to him by a colleague of his son. Mr and Mrs B have said that their son was good friends with the colleague and had known them for several years, the colleague had also invested with the broker.

A meeting was arranged with the broker at Mr and Mrs B's home address. The investment opportunity - which was for the broker to invest in cryptocurrency, on Mr B's behalf, was discussed. Mr B explained the broker showed him excellent figures for what could typically be received through the investment. Which Mr B thought were achievable, given he's said he'd had success with investing in cryptocurrency previously.

Convinced by what he'd seen and heard Mr B decided to go ahead and invest and signed an 'agreement'/'contract' to deposit £140,000 to the broker. This was done on the understanding that the funds would need to remain invested for a minimum of twelve months, with Mr B agreeing to pay the broker 20% of the financial gain over that twelve-month period.

Mr B went ahead and made the following payments, from his and Mrs B's joint account;

13 April 2018	£50,000
27 April 2018	£50,000
2 May 2018	£40,000

Having made the payments Mr B has said he was in regular contact with the broker. But when he tried to withdraw money, after the twelve months had passed, he was unable to and then all communication stopped. Unknown to Mr B at the time the person who he'd met and was dealing with was actually a fraudster and Mr B had sent money to an account the fraudster controlled.

Mr and Mrs B raised the matter with Barclays and it looked into their fraud claim. It issued its final response on 9 June 2022, upholding the complaint in part. In summary, it recognised it could have done more and didn't flag the payments at the time they were made and had it of done so, it said it may have been able to make Mr B aware of possible scam activity and for him to consider his actions further before making the payments.

But it added it felt Mr B also held some liability for entering into such an agreement without compelling due diligence, given the amount of money involved. Overall, Barclays agreed to refund Mr and Mrs B 50% of the money they lost, along with interest.

Unhappy with Barclays' response, through their representatives, Mr and Mrs B then brought their complaint to this service. One of our investigator's looked into things and thought the complaint should be upheld. In summary, she didn't think Mr B had acted unreasonably when making the payments. As a result she thought Barclays should refund Mr and Mrs B the remainder of the money they'd lost, along with interest.

Barclays didn't agree with our Investigator's view. In summary it said whilst it sympathised with Mr and Mrs B, it didn't consider it should have to refund the remaining loss. It maintained that it felt Mr B didn't conduct enough due diligence, other than trusting his son.

As agreement couldn't be reached the complaint has now been passed to me for a 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.

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 terms and conditions of the customer's account. However, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have 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 that its customers were at risk of fraud (among 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.

In this case, I need to decide whether Barclays acted fairly and reasonably in its dealings with Mr and Mrs B, when Mr B made the payments and the scam was reported, or whether it should have done more than it did.

It is not in dispute that Mr B authorised the payments himself. Because of this, Barclays had an obligation to follow his instructions. But, as explained above, there are some situations in which it should reasonably have had a closer look at the circumstances surrounding the payments. I consider that as a matter of good practice Barclays should've been on the lookout for unusual and out of character transactions.

Barclays has already agreed it should have done more than it did. It recognised the payments Mr B instructed it to make were out of character and that it could have done more to make him aware of possible scam activity. For these reasons, Barclays agreed to refund 50% of Mr and Mrs B's total losses, but it doesn't think it should be liable for the whole amount and that Mr B should also carry some of the liability.

So, the only thing left for me to consider is whether Mr and Mrs B should bear some responsibility for their loss.

Should Mr and Mrs B share some responsibility for their losses?

I've thought about whether Mr and Mrs B ought to take some responsibility for the loss. But having done so, I think they have been the unwitting victims of a clever fraudster. I am not persuaded that, in the individual circumstances of this case, Mr and Mrs B's actions or inactions have contributed to the loss that they went on to suffer to such an extent that they should be held partially liable for it. I think a reasonable person could similarly have been persuaded to invest in what, on the face of it, appeared to Mr B to be a legitimate investment opportunity.

Importantly here Mr B had received the recommendation from his son's colleague who was well-known to them and had been for several years. I think it's understandable and reasonable why this would have contributed to Mr B believing the person that was being recommended to him was legitimate. Alongside this I also think the fraudster attending Mr B's house, in person, to talk about the investment opportunity would have made things seem all the more plausible.

As well as this, Mr B has told us that he'd had success with cryptocurrency investments in the past. With this in mind I don't think the returns that were discussed with Mr B, albeit high, would have appeared as concerningly unrealistic to him, to the point where they ought to have concerned him.

I do appreciate that, with the benefit of hindsight, there may have been more things Mr B could have done. For instance, the 'agreement'/contract wasn't as convincing as it could have been. But this, in and of itself, isn't enough to fairly and reasonably believe that Mr B was negligent in proceeding.

Mr and Mrs B haven't been scammed before, they're not experts in all matters relating to frauds and scams, nor about how they work or can play out. People don't want or expect to be scammed and I think overall and when considering things in the round, in the circumstances of this case, I don't consider Mr B had any reason to think who he was paying would not keep to their side of that bargain, especially in the absence of any warnings or intervention by Barclays.

Overall, I'm not persuaded here that there was anything specific that would have appeared as a glaring red flag to Mr B that all might not have been as it seemed. And I can't ignore that Barclays did not educate Mr B about the relevant scam type, to raise his awareness about the types of checks he could do to protect himself from financial harm.

Putting things right

For the reasons set out above I uphold this complaint and Barclays Bank UK PLC should now:

- Refund Mr and Mrs B the remainder of the money they lost (that being £70,000)
- Pay 8% interest on this amount, from the date the payments were made to the date of settlement*

**If Barclays Bank UK PLC deducts tax from this part of the award it should provide a tax deduction certificate to Mr and Mrs B so they can reclaim the amount from HMRC if eligible to do so.*

My final decision

My final decision is that I uphold this complaint against Barclays Bank UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 1 December 2023.

Stephen Wise
Ombudsman