

The complaint

Ms N complains that Barclays Bank UK PLC ("Barclays") won't refund the money she lost as part of a scam.

What happened

The background to this complaint is well known to both parties, so I'll only refer to some key events here.

In 2021 a friend of Ms N referred her to a company that I will call B. Ms N completed an enquiry form and was contact by a representative of B.

Subsequently, the following payments were made to two crypto exchanges via debit card payment and my understanding is that the funds were then converted into crypto and transferred on to B.

Transaction Number	Date	Amount	Payee
1	15 January 2021	£3,790	Simplex
2	21 January 2021	£20	Bitcoin UK
3	22 January 2021	£4,000	Bitcoin UK
4	26 January 2021	£1,050	Bitcoin UK
5	26 January 2021	£1,100	Bitcoin UK
6	29 January 2021	£500	Bitcoin UK
7	29 January 2021	£4,000	Bitcoin UK
8	30 January 2021	£4,000	Bitcoin UK
9	5 February 2021	£20	Bitcoin UK
10	5 February 2021	£4,000	Bitcoin UK
11	5 February 2021	£4,020	Bitcoin UK
12	6 February 2021	£4,100	Bitcoin UK
13	7 February 2021	£3,500	Bitcoin UK
14	9 February 2021	£180	Bitcoin UK

Ms N realised that she had been scammed when her friend was unable to withdraw her profits.

She made a complaint via a representative to Barclays and requested that the above transactions be refunded. Barclays agreed to a refund from and including transaction 11 as this is when it thought it should have intervened. It did though deduct 50% from this refund as it believes that Ms N contributed to her own loss.

One of investigators looked into this matter and she agreed that Barclays should have intervened during transaction 11 but she did not agree with the 50% deduction for contributory negligence. Barclays agreed with this. Ms N did not agree and therefore this complaint has been passed to me to issue 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.

At the time Ms N made her payments, banks are expected to process payments a customer authorised it to make; but as a matter of good industry practice, they should have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam.

There is a balance to be struck: banks and building societies had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction.

All of the payments in dispute were sent to well-known crypto exchanges. So, it's reasonable for me to conclude that Barclays ought to have known that Ms N was likely purchasing crypto at the time she sent these payments. I've also thought about whether there was anything else about the payments which ought to have concerned Barclays.

Firstly, I need to address whether Ms N was scammed at all. Initially Ms N's representative did not supply us with sufficient evidence to demonstrate that she was scammed. However, she has though recently supplied us with evidence to demonstrate that she was scammed so I am satisfied that Ms N was scammed.

The first ten payments

I don't think I can fairly say that the first 10 payments were out of character enough for Barclays to have intervened. I also note, from Ms N's bank statements that she has made payments of a similar size in the past.

Payment 11

I do however think payment eleven, ought to have warranted an intervention from Barclays especially as it represented over £8,000 sent to a crypto exchange in one day which was unusual for Ms N.

If an intervention by Barclays had taken place, it likely would've identified that the payment was going to the consumer's own account with the crypto exchange in question. But I don't think the conversation should have stopped only on the basis that the money appeared to be going somewhere safe and within Ms N's control.

I say this because, by the time Ms N made these payments, Barclays ought reasonably to have had a good enough understanding of how these scams worked, to have been able to identify the risk of harm occurring to its account holders from fraud. This includes the consumer often making a number of purchases of crypto assets in a relatively short space of time or a consumer repeatedly sending money to a platform where the money is subsequently moved on to or taken by the scammer. So, it is with this in mind that I think Barclays ought to have probed further about the nature and context of the payments Ms N was making.

In light of this, I think Ms N's losses were foreseeable to Barclays, despite the payments on the face of it not leaving her control. And I'm satisfied that, had Barclays asked relevant questions of Ms N, it would have been apparent that she was falling victim to a scam. In other words, but for Barclays's failure to make reasonable further enquiries, it would have been on notice that there was a very high chance that Ms N was going to suffer financial harm from a scam.

Had Barclays provided Ms N with a warning, it would have likely alerted her to the common issues arising in relation to cryptocurrency scams. I think this, in turn, would have led Ms N to question whether she was in fact dealing with a legitimate business. Had she then researched B more closely she would have discovered what she was being promised had the common features of scam. The result of this is that, probing questions from Barclays about the nature of the payments would have likely stopped Ms N from making any further payments.

I've also thought about whether Ms N's actions contributed to her losses. Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions. In this instance there were no credible warnings online about B, the chats between Ms N and the scammer looked legitimate and she was introduced to B via a friend rather than being cold called. So, I don't think albeit on balance that a deduction for contributory negligence is appropriate.

I've considered whether Barclays could have recovered any of Ms N's payments. But given that the timescales involved and given that payments were sent to a crypto exchange and were then forwarded on to B, I don't think that any recovery could have been made or that the Contingent Reimbursement Model applies in this instance.

Putting things right

I think that Barclays Bank UK PLC should do the following.

- Refund the remaining 50% of all the transactions from and including transaction 11
- It should also pay 8% simple interest, per year, on this amount, from the date of the payment, to the date of settlement (less any lawfully deductible tax)

My final decision

My final decision is that Barclays Bank UK PLC should pay compensation as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms N to accept or reject my decision before 16 April 2024.

Charlie Newton
Ombudsman