

Complaint

Mr R is unhappy that Barclays Bank UK PLC didn't reimburse him after he fell victim to a scam.

Background

In late 2021, I understand Mr R was approached online by an individual who offered him an investment opportunity. He told Mr R that his investment strategy focused on the trading of cryptocurrencies and foreign exchange. He was told that he could expect to double his money within a month. Unfortunately, the person who had contacted him wasn't a genuine investment professional, but a scammer.

He made the following payments to the scammer using his Barclays account.

18 October 2021	£5,000
18 October 2021	£10,000
4 February 2022	£10,000
8 February 2022	£20,000
9 February 2022	£10,000

Mr R notified Barclays about the scam via his professional representatives. As far as I can see, it didn't reply. Mr R was unhappy with that and so he referred his complaint to this service. It was looked at by an Investigator who upheld it in part. The Investigator considered that, by applying the terms of the Lending Standards Board's Contingent Reimbursement Model (CRM) Code, Barclays needed to refund 50% of the first payment Mr R made in connection with the scam. It should've determined that there was a risk associated with that payment and given an "*effective warning*" under the Code. There was no evidence that it did so here. However, the Investigator also concluded that Mr R had made this payment without a reasonable basis for believing the investment opportunity to be legitimate. That meant that Barclays could rely on an exception to reimbursement in the Code and not refund Mr R in full.

The subsequent payments Mr R made in connection with the scam were larger. For that reason, the Investigator thought Barclays should've done more than simply display a warning as part of the payment process – instead, it should have made contact with Mr R to discuss the payments in order to satisfy itself that he wasn't at risk of financial harm due to fraud. It shouldn't have processed the payments until it had done so. If it had taken these steps, he was persuaded that it could've prevented Mr R from falling victim to the scam.

However, he also considered that Mr R could fairly and reasonably be considered partially responsible for his own losses here and so it was fair for Barclays to deduct 50% from any compensation payable to Mr R on the grounds of contributory negligence.

The Investigator issued his view on 31 July 2023. He chased Barclays for a response on 21 August 2023. On 21 September 2023, the Investigator contacted Barclays to let it know that the case would be progressed to a final decision and that any final submissions should be made by 5 October 2021. Barclays didn't respond to the Investigator's view or the subsequent chasers. As a result, the complaint was passed to me to consider.

Findings

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

Our statutory rules provide – at DISP 3.5.8 to 3.5.15 of the Financial Conduct Authority Handbook – that we may give case-management directions and fix or extend deadlines; and that we may:

...reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested;

And that...

If a respondent fails to comply with a time limit, the Ombudsman may: (1) proceed with consideration of the complaint; and (2) include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.

I've therefore concluded that, in the absence of a response from Barclays to the investigator's initial view, it is fair and reasonable to proceed on the basis of the evidence we already have and to take account of its failure to reply to the investigator's opinion.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, that isn't the end of the story. These payments were covered by the terms of the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. The starting presumption under the Code is that victims of scams like this one should be refunded, unless an exception to reimbursement applies.

The most relevant exception in this case is where *"the Customer made the payment without a reasonable basis for believing that ... the person or business with whom they transacted was legitimate."* Nevertheless, the CRM Code only sets out the minimum expectations for firms. Good industry practice also required that Barclays be on the lookout for payments that were out of character or unusual to the extent that they might have indicated a fraud risk. On spotting such a payment, I'd expect it to intervene in a manner proportionate to the risk identified.

The first payment

The first payment made in connection with the scam was for £5,000 and took place on 18 October 2021. It was sufficiently out of character that Barclays should've displayed an *"effective warning"*. As it hasn't provided its file or responded to the Investigator's opinion, I've not seen any evidence that it did so and so it didn't meet the standards for firms set out in the Code.

However, I'm satisfied that it can rely on the exception to reimbursement quoted above. He

was told that he could expect to double his money in a short period, and he ought to have recognised that potential return as being too good to be true. For that reason, I'd agree with the Investigator's conclusion that Barclays should only need to refund 50% of his losses.

The later payments

Mr R made a payment of £10,000 to the scammer on 18 October 2021. The Investigator concluded that it should've intervened in connection with this payment, and I'd agree with that conclusion. It shouldn't have processed that payment without first contacting Mr R to ensure that he wasn't at risk of fraud. On the balance of probabilities, I think Mr R would've responded openly and honestly to its enquiries. If he had described how the investment had been offered to him, the returns he was promised or the details of the individual that was managing his funds for him, I think it would've quickly become apparent to an employee of the bank that he'd been targeted by a fraudster.

However, I'd also agree that Mr R can fairly be considered partially responsible for his losses here. I've explained above that I've found Mr R should've been more sceptical at the unrealistic returns promised to him by the scammer. For the same reason, I'm satisfied that Barclays should be free to make a deduction of 50% on the grounds of contributory negligence.

Final decision

For the reasons I've set out above, I uphold this complaint. If Mr R accepts my decision, Barclays Bank UK PLC should:

- Refund him 50% of the funds he transferred to the scammer, less the credits that the scammer paid back into his account.
- For the first payment, add 8% simple interest calculated to run from 15 days after the date it was notified of the scam until the date any settlement is paid.
- For payments 2,3, 4 and 5, add 8% simple interest calculated to run from the date the payments were made until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 8 March 2024.

James Kimmitt
Ombudsman