

## **The complaint**

Mr T complains that Barclays Bank UK PLC didn't do enough to protect him from the financial harm caused by an investment scam, or to help him recover the money once he'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.

Mr T was the victim of an investment scam. In January 2018, he was cold called by someone who said he worked for an investment company I'll refer to as "S".

He had no investment experience, but he looked at the reviews of the company, which were all positive and satisfied him that he was dealing with a legitimate company. Further, the broker seemed professional and gave Mr T confidence that the investment was genuine.

The broker told Mr T he could make a return of 20% by investing in cryptocurrency and in 2018 he made several payments to different companies from accounts he held with Bank H and Bank S.

Unfortunately, he was then contacted by scammers claiming they could recover his lost funds. Believing this to be a genuine opportunity to recover his losses, between 2 June 2020 and 24 May 2021, Mr T made multiple payments to three cryptocurrency exchange companies I'll refer to as "J", "C" and "P" totalling £96,969.50 using a debit card and faster payments from his Barclays account. From there he transferred the cryptocurrency to the scam recovery wallets to pay costs such as insurance, litigation fees and charges.

Mr T complained to Barclays when he realised he'd been scammed, and it agreed issue a partial refund. It explained the payments weren't covered under the Contingent Reimbursement Model ("CRM") code because the code doesn't apply to debit card payments or payments to accounts in the consumer's own name. But it accepted it should have intervened when Mr T made the third payment on 16 June 2020 and agreed to refund 50% of the loss from that point. It also offered to pay £150 compensation for delays in responding to the claim.

It explained it should have contacted Mr T to ask him how he came across the opportunity, what rates of return he was offered and what checks he'd done to protect himself and the conversations it did have weren't strong enough because he continued to make the payments. However, it said Mr T should share responsibility for his loss because he'd received a cold call and the rates of return were above market expectations, and he should have exercised greater caution, especially as he was unable to withdraw any funds and the correspondence didn't appear genuine or professional.

Mr T wasn't satisfied and so he complained to this service with the assistance of a representative who argued that Barclays should reimburse Mr T in full because it failed to provide effective warnings and advise him about safeguarding measures. They didn't accept

Mr T contributed to his own loss arguing he had no previous experience of online investing or knowledge or experience of buying cryptocurrency. They explained Mr T had trusted the scammer because the company was presented as a genuine investment platform and its agents encouraged him to trust their expertise and reliability. He wasn't aware of the risks associated with cryptocurrency and it's unreasonable to expect him to have protected himself. They argued Mr T wasn't careless and that Barclays should have invoked Banking Protocol which would have stopped the scam.

Our investigator didn't think the complaint should be upheld. He explained the CRM code wouldn't apply because all the payments were by debit card or transfers to accounts in Mr T's name.

He didn't think Barclays needed to intervene before 16 June 2020 and he was satisfied a reduction for contributory negligence was fair because there was no evidence to show Mr T had carried out sufficient due diligence before going ahead with the investment or making payments to the various recovery companies.

Mr T has asked for the 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 Mr T has been the victim of a cruel scam. I know he feels strongly about this complaint, and this will come as a disappointment to him, so I'll explain why.

The Contingent Reimbursement Model ("CRM") Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Mr T says he's fallen victim to, in all but a limited number of circumstances. Barclays has said the CRM code didn't apply to debit card payments or payments to accounts in Mr T's own name, and I'm satisfied that's fair.

I've thought about whether Barclays could have done more to recover Mr T's payments when he 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 (Mr T).

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 Mr T's payments, they converted and sent an amount of cryptocurrency to the wallet address provided. So, any chargeback was destined to fail, therefore I'm satisfied that Barclays' decision not to raise a chargeback request against either of the cryptocurrency exchange companies was fair.

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

### *Were the payments fraudulent?*

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).

Mr T has failed to show that the payments he made to “J” were fraudulent. He has explained he closed the account he held with J and is no longer able to access the account statements. Because of this I can’t conclude these payments were made to a scam.

There’s no dispute the faster payments to C and P were fraudulent, but although Mr T didn’t intend his money to go to scammers, he 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. It ought to fairly and reasonably be alert to fraud and scams, so I need to consider whether it did enough when Mr T tried to make the payments. If there are unusual or suspicious payments on an account, I’d expect it to intervene with a view to protecting Mr T from financial harm due to fraud.

Barclays has offered to refund the money Mr T lost from 16 June 2020. Because Mr T hasn’t shown any of the payments he made before that date were fraudulent, I haven’t considered whether Barclays ought to have intervened sooner, so I’m satisfied its offer to refund Mr T’s losses from 16 June 2020 is fair.

### *Contributory negligence*

Barclays has limited its offer to 50% to reflect the fact he’d failed to take reasonable care. There’s a general principle that consumers must take responsibility for their decisions and conduct suitable due diligence. Mr T hadn’t invested in cryptocurrency before and so this was an area with which he was unfamiliar. He wouldn’t have known it was a red flag to be asked to pay money to recover funds and this was compounded by the sophisticated nature of the scam.

However, Mr T contacted Bank H in 2019 to tell it he’d lost money to a scam, that he’d been contacted by a recovery agent and that he was worried it might be a scam. The call handler told him not to use the recovery agent and to instead contact Action Fraud. It’s clear from this exchange that Mr T considered he’d already been scammed and that he reasonably suspected he might fall victim to another scam, yet he went on to make further payments in an effort to retrieve his funds. He also took out loans to fund those payments.

Mr T also went ahead with payments to the scam after being warned during a call with Bank H on 9 October 2020 that the company had poor reviews and that he wouldn’t be granted a loan because it was likely he was being scammed. Critically, he was told at that point to attend the branch to discuss the payments, but he ignored that advice and made further

payments to the scam. I'm satisfied this exchange shows that Mr T made further payments in the face of a clear warning that he was being scammed. It's clear he was desperate to retrieve his money and that he was willing to risk further funds to do so. In those circumstances I'm satisfied he failed to take reasonable care and that Barclays's decision to reduce its offer by 50% for contributory negligence is fair.

### *Compensation*

Barclays offered Mr T £150 compensation and I'm satisfied that was fair and reasonable in the circumstances.

### *Recovery*

I don't think there was a realistic prospect of a successful recovery because Mr T paid accounts in his own name and moved the funds onwards from there.

Overall, I'm satisfied that Barclays's offer is fair, so I can't fairly tell it to do anything further to resolve this complaint.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 26 June 2024.

Carolyn Bonnell  
**Ombudsman**