

Complaint

Miss R is unhappy that Barclays Bank UK PLC didn't reimburse her after she fell victim to a scam.

Background

In late 2021, a friend of Miss R's recommended she invest her money with a particular broker. This broker claimed to use automated trading software to speculate on movements in foreign exchange. Her friend appeared to be earning very good returns on her investments and so Miss R was keen to invest too. Unfortunately, the company they were dealing with wasn't a legitimate broker, but a fraudster.

The following payments were made from her Barclays account to an account held with a cryptocurrency platform:

25-Nov 2021	£ -874.00 (<i>credit</i>)
02-Dec 2021	£ 4,000.00
06-Dec 2021	£ 7,000.00
06-Dec 2021	£ 100.00
06-Dec 2021	£ 150.00
06-Dec 2021	£ 500.00
13-Dec 2021	£ 14,100.00
13-Dec 2021	£ -309.00 (<i>credit</i>)
20-Dec 2021	£ 100.00
20-Dec 2021	£ 5,000.00
10-Jan 2021	£ 400.00
14-Jan 2021	£ 11,100.00
17-Jan 2021	£40.00
17-Jan 2021	£ 50.00
17-Jan 2021	£ 75.00
17-Jan 2021	£ 700.00
17-Jan 2021	£ 4,350.00
18-Jan 2021	£ 100.00
04-Feb 2021	£ 32.00
04-Feb 2021	£ 65.00
TOTAL	£ 46,679.00

When she wanted to withdraw her money from the investment, she was told that she'd need to pay fees and charges in order to do so. She realised at that point that she'd fallen victim to a scam and so she notified Barclays.

As far as I can see, she didn't receive a response to her complaint and so she referred it to this service. It was allocated to an Investigator who asked Barclays to provide evidence

supporting its position on the complaint. Unfortunately, it didn't submit a file to the Investigator. The Investigator therefore considered the complaint based on the limited evidence that he had available to him. He upheld it in part. He said that Barclays ought to have intervened and questioned the payments with Miss R before allowing them to be processed. If it had done so, it's likely that the scam would've been prevented.

However, he also thought that Miss R had acted carelessly when making the investments. She'd fallen victim to another scam several months earlier and he thought she should've acted more cautiously than she did. For that reason, the Investigator concluded that Barclays should be free to deduct 50% from any compensation due to her.

Barclays didn't respond to the Investigator's view and so the complaint was passed to me to consider and come to a final decision.

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 emailed Barclays on 20 December 2023 to set out my initial thoughts on the complaint. I wrote:

In the absence of a full file, it's not straightforward for me to reach a finding on this case. However, I'm satisfied that Barclays ought to have queried the first payment [Miss R] made on 6 December 2021. This was larger than the typical payments from her account and it shouldn't have been processed without Barclays first contacting her to ensure she wasn't at risk of fraud.

I'm also mindful of the fact that [Miss R] had fallen victim to another scam earlier the same year which Barclays has since settled. She wrote to it to tell it she'd fallen victim to that scam in August 2021. This scam involved her making payments via one of the same payees. I think it ought to have recognised she was at risk of fraud again.

If it had done so, I think it's likely that the scam would've come to light – the broker [Miss R] was using wasn't regulated by the FCA and was asking her to make deposits into her account via a cryptocurrency platform. There were no formalities to the arrangement (i.e. there was no written contract or set of terms and conditions) and [Miss R] had no real experience of investments like this one. Furthermore, she'd fallen victim to an investment scam earlier the same year.

Overall, I think that if Barclays had intervened at the point of the £7,000 payment, it's likely her subsequent losses would've been prevented. However, the Investigator also said that she should be considered partially responsible for her own losses here. The fact that she'd fallen victim to a similar scam earlier that year should've made her act more cautiously than she did. She was also willing to make payments without really having an understanding of what investment strategy the broker was using and there were no documents setting out the terms of her investment. The Investigator said that Barclays should be entitled to make a 50% deduction from any compensation payable to her and I agree with that conclusion.

Based on what I've seen so far, I'm likely to direct Barclays to pay [Miss R] £21,339.50 and to add 8% simple interest per annum to that sum calculated to run between the date the payments left her account and the date any settlement is eventually paid.

I will consider any arguments or evidence that Barclays would like to provide by 12 January 2024. After that date, I will progress the case accordingly by issuing a final decision.

I've not received a response to that email. I've therefore concluded that, in the absence of a response from Barclays, 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 my opinion and that of the Investigator. As a result, I'm upholding this complaint along the same lines as proposed by the Investigator and re-iterated in my email of 20 December 2023.

Final decision

For the reasons I've set out above, I uphold this complaint.

If Miss R accepts my decision, Barclays Bank UK PLC needs to pay her £21,339.50. It also needs to add 8% simple interest per annum to this sum calculated to run from the date each payment left Miss R's account until the date any settlement is paid to her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 14 February 2024.

James Kimmitt
Ombudsman