

The complaint

Mr S complains that Barclays Bank UK PLC refuses to refund all the money he lost to an investment scammer.

What happened

In early 2019, Mr S was searching for cryptocurrency investment opportunities online. He came across a company I'll refer to as 'C' who offered Bitcoin trading investment opportunities. Mr S filled out an online form and was contacted by a representative of C who explained how they could offer their expertise to generate profits for him. As Mr S was an inexperienced investor, the idea of an expert assisting him sounded appealing, so he decided to invest with C.

On 2 February 2019, Mr S used his Barclaycard credit card to pay an initial deposit of £257.91 to his trading account with C. After seeing good returns, Mr S was contacted by another representative of C who advised they'd be able to make him more profits if he deposited more money. On 11 March 2019, Mr S made a further Barclaycard credit card payment of £1,500 (plus a transaction fee of £44.85). Mr S paid further funds on the same day of £18,051 via an international bank transfer (using his Barclays current account). One of C's representatives (who was trading on Mr S' behalf) placed trades that lost a substantial amount of Mr S' trading profits. Mr S was encouraged to put more money onto his trading account to help recover it. He declined and tried to recover the account himself to no avail.

Mr S tried to withdraw the funds he had left in the account but was unable to as he didn't meet C's terms for withdrawal. It was at this point that Mr S realised he'd been scammed. Mr S contacted Barclays for assistance with recovering his payments in 2019. Barclays reviewed Mr S' international bank transfer and sent a scam notification to the beneficiary bank but was unable to recover any funds. After some time, Mr S complained formally about Barclays' failure to protect him from falling victim to this scam. Barclays agreed it could have done more to prevent Mr S' loss and offered to refund 50% of the loss plus interest.

Unhappy with the outcome Mr S referred his complaint to this service. One of our Investigators looked into things. She didn't think Barclays could have dissuaded Mr S from investing as he'd completed his own due diligence checks and there was no credible adverse information about C at the time. She felt the offer from Barclays was more than fair. Mr S didn't agree. He said he was very grateful for Barclays' offer but he feels he couldn't have known about the intricacies of this type of fraud. He said this money was his life savings and he would have listened to a warning from his trusted bank of 20 years. The payments made via Mr S' Barclaycard were dealt with separately by Barclaycard (who are a separate entity to Barclays). Our investigator wrote to both parties highlighting that this matter wasn't referred to this service until January 2023 (more than six months after the date of Barclaycard's final response) and so, this service didn't have the jurisdiction to consider the disputed credit card payments. Neither party disputed this point, so my decision will only focus on Mr S' disputed international bank transfer from his Barclays current account.

The complaint was passed to me for determination and on 30 September 2023, I issued a provisional decision upholding this complaint. For completeness, I repeat my provisional findings below:

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

Having looked into things, I've reached a different outcome to that of our Investigator. I intend to uphold this complaint and I'll explain why.

It's common ground that Mr S authorised the scam payment in question here. He was tricked by the scammers into instructing Barclays to make the payment. I accept this was an 'authorised payment' even though Mr S was tricked. So, although he didn't intend the money to go to scammers, Mr S is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory 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 its customers were at risk of fraud (amongst 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; and*
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.*

Barclays has accepted that it ought to have intervened when the payment was made. It also feels it could have helped in preventing the scam. It however held that Mr S didn't do enough to protect himself.

I agree that the payment was out of character for Mr S. I've not seen that he made a payment of this magnitude in the statements I've reviewed, so I agree that Barclays should have paused the payment so that it could have had a conversation with Mr S to check that all was well.

I've thought about how this conversation would have likely gone. I think Barclays would have queried the purpose of the payment. I have no reason to doubt that Mr S would have explained that he was investing in cryptocurrency with C and that he'd found them online. I think he'd have explained that he had an account manager who was guiding him through his trades and he'd made good profits so far.

With this information, I think Barclays would have reasonably had concerns. Barclays had more information at its disposal about cryptocurrency fraud. This was because of credible warnings about this type of fraud that it ought to have been reasonably aware of; as a financial professional. It also would have been familiar with its own customer experiences which it had more insight of, than the average consumer. I think it could have shared its customers experiences with crypto fraud and it could have explained that merchants provide sophisticated websites that look legitimate but can provide fake data to make it seem like the customer is earning profits but it's no more than a simulation. It could have also explained that customers would often be prevented from withdrawing substantial funds. Given that

these funds were Mr S' life savings, I'm inclined to agree that he'd have most likely listened to a warning from his trusted bank.

Even if Mr S didn't realise this was a scam at the point of a warning, I think Mr S would have carried out more pointed research around the operation of crypto fraud and would have likely uncovered the various credible warnings about this type of scam. I don't think there needed to have been specific warnings about C for Mr S to have taken a meaningful warning from Barclays seriously.

I've also thought about whether Mr S' actions contributed to his losses. Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000).

I don't think that Mr S contributed to his losses. He says he carried out research on C and didn't find any negative reviews or adverse information at the point of his investment. I've also seen that he invested a small sum to start and watched his account perform for a few weeks before deciding to invest larger sums, so I think he was cautious. He was an inexperienced investor and was persuaded by C's professional website and representatives that appeared to be knowledgeable. I think this was a sophisticated scam and I think it would have taken a trusted financial professional (like Barclays) to assist in uncovering what had the hallmarks of a common crypto scam. So, I don't think Barclays' rationale for holding Mr S 50% liable is reasonable in this particular case.

Responses to my provisional decision

Mr S replied accepting my provisional decision. Barclays didn't respond.

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.

As Mr S accepted my provisional decision and Barclays provided no response, I see no reason to depart from what I said in my provisional decision.

My final decision

My final decision is, I uphold this complaint and Barclays Bank UK PLC should;

- refund the remaining loss totalling **£9,025.50**; and
- pay 8% simple interest, per year, on this amount from the date of the payment to the date the settlement is paid (less any lawfully deductible interest).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 21 November 2023.

Dolores Njemanze
Ombudsman