

The complaint

Mr J is unhappy that Barclays Bank UK PLC ("Barclays") won't refund the money he lost to an investment.

What happened

The full details of this complaint are well known to both parties, so I won't repeat them here. Instead, I'll recap the key points, and focus on giving reasons for my decision.

In July 2018, Mr J transferred £10,000 from his Barclays account to an organisation I will refer to as M. This was for the purposes of investing money with an organisation - I will refer to as G.

Our investigator did not uphold the complaint. He didn't think the amount stood out as unusual compared to Mr J's previous account history. But in any event, he didn't think any intervention by the bank would have made a difference in this case as G looked to be a genuine company at the time.

Mr J did not accept the investigator's conclusions, so the case has been passed to me for 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.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

I have carefully noted the representations made by all the parties, but I won't be addressing every single point that's been raised. No disrespect is intended, and it doesn't follow that the points haven't been considered, simply that I don't need to particularise every point in reaching an outcome I consider to be fair and reasonable in all the circumstances. I've instead concentrated on the issues I think are central to the outcome of this complaint.

I note G has been dissolved. However, it seems that the outcome to whether this is a scam or not is not currently known. But I don't need to wait for that outcome, nor do I need to make a finding on this - to reach an overall outcome that I consider to be fair and reasonable in this particular case.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. So, under the previous and current Payment Services Regulations (PSRs) and the terms of his account, Mr J 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 good industry practice, there are circumstances where it might be appropriate for a bank to take additional steps or make additional checks before processing a payment in order to help protect customers from the possibility of financial harm from fraud.

The investigator said the transaction wasn't unusual based on the account activity and I don't think that's an unreasonable conclusion to draw in this case. There had been similar sized transactions in the past and it was going to a genuine organisation – so I don't think it would have looked obviously suspicious. That said – even if Barclays had intervened on the payment, I don't think it would have made a difference in this case broadly for the reasons the investigator previously outlined – which I have expanded on below.

Causation is a critical determination factor in every fraud case. I need to be satisfied that suitable intervention would have made a difference to Mr J's decision making or that Barclays could have reasonably prevented the loss. In doing so, I reach my decision on the balance of probabilities – so what I consider more likely than not based on the evidence and wider circumstances of the case.

Mr J made the payment to M - a firm regulated by the FCA as a provider of payment services. So, the payment was going to a legitimate destination. If questions had been asked about the nature and purpose of the payment Mr J was proposing to make, I think it's more likely than not that Mr J would have explained he was investing in G - itself a UK registered company and making the payment via M - another genuine UK registered company.

Whilst I appreciate Mr J might have researched things more – I don't think the 'investment' would have been cause for concern at the point of transfer or the events that have now transpired with G foreseeable. Mr J was making a payment to M which appears – through its registration with Companies House (and incorporation in 1962) - to be legitimate and is still authorised by the FCA as a provider of payment services. If it had probed further, it might have discovered that Mr J was making an investment with an organisation (G).

Records held with Companies House indicate G was a genuine limited company that was incorporated in 2007 and was actively trading (with no suggestion of liquidation) at the time Mr J sent his money to M. So, the payment didn't look like fraud or a scam and it would have needed a considerable amount of investigation to unearth the facts about G that have now come to light (and which even now seem inconclusive after a considerable amount of time). So, I don't think Barclays ought reasonably to have cause for concern.

I'm sorry Mr J has lost a considerable amount of money and I can understand why he would like to be compensated for his losses. But I'm only considering whether the bank should be held responsible for what happened here, and I don't think that it should.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 27 December 2023.

Kathryn Milne
Ombudsman