

The complaint

Mrs M complains that Barclays Bank UK PLC (Barclays) won't refund money she lost in an investment scam.

What happened

What Mrs M says:

In February 2023, Mrs M was added to a WhatsApp group out of the blue – it was a trading discussion group, where people were giving each other tips and advice. The group appeared genuine. Mrs M was looking to increase her income given the unstable economy of the UK.

Mrs M messaged one of the 'financial assistants' on the chat and was introduced to a financial advisor from the scam company (which I will call 'A'). Mrs M looked at A's website and it seemed legitimate. She checked Trustpilot and there was nothing of concern about A.

A's 'advisor' sent Mrs M a lot of information about A and the trading process. She was introduced to the trading platform (which I will call 'B'), based in Hong Kong. Mrs M opened an account with B and went through Know Your Customer and Anti Money Laundering checks – which added credibility to B in her eyes.

Mrs M was told she would make quick profits and the trading would be in cryptocurrency. She was told she needed to send money to her crypto wallet (which I will call 'C'), and from there to the trading platform (B).

So - Mrs M sent money to her crypto wallet (C) from her Barclays account. Several payments were sent, and Mrs M was encouraged to send more money based on:

- She could see the performance of her funds in her account with B (which proved to be a fake trading website).
- She was offered, and took, an incentive programme.
- She was told (and could see) her investments were doing well and should therefore put more money in.
- Mrs M asked to withdraw some money and was told she needed to pay 30% of the profits to do that – so she sent more money for that.
- Then, as the withdrawal was over USD10,000, she was asked to pay further fees – and she made an additional payment on 6 April 2023.

The payments were:

Number	Date	Payment Type/ Beneficiary	Amount
1	6 March 2023	Faster Payment/ Crypto Wallet C	£300
2	15 March 2023	Faster Payment/ Crypto Wallet C	£950
3	15 March 2023	Faster Payment/ Crypto Wallet C	£5,000
4	15 March 2023	Faster Payment/ Crypto Wallet C	£14,500

5	17 March 2023	Faster Payment/ Crypto Wallet C	£21,000
6	20 March 2023	Faster Payment/ Crypto Wallet C	£8,500
7	24 March 2023	Faster Payment/ Crypto Wallet C	£16,200
8	24 March 2023	Faster Payment/ Crypto Wallet C	£200
9	31 March 2023	Faster Payment/ Crypto Wallet C	£830
10	3 April 2023	Faster Payment/ Crypto Wallet C	£24,200
11	3 April 2023	Faster Payment/ Crypto Wallet C	£500
12	6 April 2023	Faster Payment/ Crypto Wallet C	£12,300
13	6 April 2023	Faster Payment/ Crypto Wallet C	£12,000
14	6 April 2023	Faster Payment/ Crypto Wallet C	£100
15	6 April 2023	Faster Payment/ Crypto Wallet C – Credit	(£100)
	Total Loss		£116,480

Mrs M was then told she needed to pay tax to the Hong Kong government – she became suspicious and refused to do so. The scammers threatened her that she would be liable for liquidated damages and they would take her profits for themselves. She then realised she had been scammed.

Mrs M said she's lost her lifetime savings, and now has no money left to help pay bills. She has 'maxed out' her credit card and has had to take out a secured loan for £35,000. She has become very distressed about what happened, she is anxious and doesn't trust anyone anymore. She suffers from sleepless nights.

Mrs M says Barclays didn't question any of the payments and should've done more to protect her. She said they should refund the money, plus interest at 8% per annum.

What Barclays said:

Barclays said they weren't liable for Mrs M's losses as she'd made the payments to her crypto currency account with C. The claim should therefore be sent to C. And the Contingent Reimbursement Model Code (CRM) didn't apply for the same reason.

Furthermore, Barclays said:

- the payments were sent to Mrs M's existing crypto wallet account with C – and she'd made payments to it before. Barclays said she'd made 22 transfers to it between 24 January 2022 and 1 May 2022. So - the payments weren't out of character because they were to an existing beneficiary.
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- the value of the payments wasn't out of character either – as she'd made payments up to £18,000 and above in the previous six months.
- Mrs M was an experienced investor – because she had made crypto investments before and had liquidated an investment portfolio to make the disputed payments.

Our investigation so far:

Mrs M brought her complaint to us. Our investigator didn't uphold it. He said:

- Mrs M had invested in cryptocurrencies before and had sent money to her crypto wallet.
- Looking at her account, she had made several large payments before, including one for £18,731 on 19 January 2023.

Therefore, our investigator didn't think it was reasonable that Barclays should've intervened. Mrs M didn't agree. She said:

- The payment of £18,731 was to her solicitors in connection with her mortgage, so it wasn't relevant.
- The prior payments to C were for much larger amounts than before, and were made in a short period of time – so Barclays should've questioned what was happening, and asked questions.
- The onus was on Barclays to do that – they were the experts.

Our investigator didn't change his opinion, and so Mrs M asked that an ombudsman look at her complaint. So – it has come to me to do that.

I made a provisional decision which said:

I'm sorry to hear that Mrs M has lost money in a cruel scam. It's not in question that she authorised and consented to the payments in this case. So although she didn't intend for the money to go to a scammer, she is presumed to be liable for the loss in the first instance.

So, 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 Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. Taking into account the law, regulators 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 that its customers were at risk of fraud (among 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.
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- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make 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.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) doesn't apply in this case. That is because it applies to faster payments made to another UK beneficiary– and in this case, the payments were made to Mrs M's own account with C – her crypto wallet.

I need to decide whether Barclays acted fairly and reasonably in its dealings with Mrs M when she made the payments, or whether it should have done more than it did. I have considered the position carefully.

Barclays didn't intervene in any of the payments. The first consideration here is: if the payments were of a sufficient size and was out of character with how Mrs M normally used her account – then we would expect Barclays to have intervened and spoken to Mrs M about them. I looked at Mrs M's account for the previous 12 months, and it's fair to say that the larger payments were unusual compared to the way in which she used her account – which was to make day to day expenditures of fairly low value.

I can see she made fairly regular payments of £1,000 to £3,000, usually to her savings account. And a regular monthly credit card payment of around £1,000 to £1,200. There was one large payment of £18,731 on 19 January 2023– but other than that, there weren't any other large payments of a significant value, and I don't consider that the one high value payment, of itself, can lead to a conclusion that the scam payments weren't unusual.

First two payments: £300 (6 March 2023) and £950 (15 March 2023):

I considered the first two payments. And here, there's a balance to be struck: Barclays has obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. In this case, I think Barclays acted reasonably in processing these payments.

Payments 3 to 14: 15 March 2023 to 6 April 2023:

I consider that Barclays ought reasonably to have intervened in the payments with effect from the payment for £5,000 on 15 March 2023. I say that because:

- By then, this was the third payment within a few days to a cryptocurrency wallet – which was known to be the subject of possible scams.
- It was out of character with Mrs M's normal use of her account. While I accept there were some payments of £1,000 to £3,000, the payment of £5,000 was significantly more than that.
- I can see that each payment was preceded by a credit of a similarly high value – taken together with the large payments, they should've caused Barclays to ask questions. Between 15 March 2023, and 3 April 2023, such credits were £21,673, £20,457, £20,000, £7,800 £20,543 and £8,500.
- I've considered what Barclays said about the prior payments to Mrs M's crypto wallet Buut these were made more than a year before and were for amounts far less than the disputed payments – between £200 and £1,000, with the average around £700. So – I don't think that was a reason not to intervene in the higher value payments more than a year later.
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Barclays were the expert in such matters and if they'd intervened, held the payments, and contacted Mrs M we would have expected them to ask open questions such as:

- Why are you making the payment?
- Who to?
- For what purpose?
- How did you hear about the investment?
- How were you contacted about it?
- Where did the money come from that you're investing?
- What do you know about bitcoin investing?
- Have you made bitcoin investments before?

- How were you given the bank account details where the money was to be paid to?
- Have you given control on your devices to anyone else?

Barclays would've found out that Mrs M had been contacted 'out of the blue' via a WhatsApp chat, and the contact had originated from the internet. These were red flags and there was enough going on to persuade me that Mrs M would've been warned about the risks involved and wouldn't have made the payments from the third payment onwards.

I'm also not persuaded that the fact the payments were going to Mrs M's own account and so appeared to be going somewhere safe and within her control should have satisfied Barclays that she wasn't at risk of harm. This is because by January 2019, firms like Barclays had, or ought to have had, a good enough understanding of how these scams work – including that a customer often moves money to an account in their own name before moving it on again to the scammer - to have been able to identify the risk of harm from scams.

So – I consider Barclays should be liable for Mrs M's losses in the first instance.

Contributory Negligence:

But that's not the end of the story here. I also considered whether Mrs M could've done more to protect herself and whether she should therefore reasonably share some of her losses.

And I think she should. I say that as:

- It appears she did only limited research into the advisor company and the bitcoin platform. I can see there were some warnings about both A and B. Albeit dating from March 2023 - so it's inconclusive if they were live when Mrs M made the payments.
- She liquidated an investment portfolio to fund the payments to C. She provided evidence of it – and it comprised of (largely) equity shares. So – it does suggest she was a fairly experienced investor and should've been aware of the general risks of investing – to the extent that the claims of the advisor about making quick, substantial profits were likely to be too good to be true.
- She had invested in bitcoin before and maintained an existing bitcoin portfolio (which we've seen). Her bitcoin transaction history showed that in 2022 she made 44 buys in 26 different cryptocurrencies.
- So this leads me to say: 1) it would've been reasonable for her to see that the profits promised by the new bitcoin trader were too good to be true and 2) if she wanted to invest further in bitcoin, it would be reasonable to expect her to trade through her existing and known platform, rather than one she didn't know and which had originated through WhatsApp.

For all these reasons, I consider it's reasonable that Mrs M be responsible 50% of her losses. So – Barclays should refund £58,240 plus interest at 8% per annum simple.

Recovery:

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether Barclays took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost money. I couldn't see that they'd contacted the provider of Mrs M's crypto wallet – but I'm persuaded that had they done so,

no funds would've remained in any case – as she'd moved them into the bitcoin trading platform.

Responses to the provisional decision:

Both Barclays and Mrs M accepted the findings – so I now need to make a final 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.

As both Barclays and Mrs M accepted the findings, my final decision is the same as the provisional decision.

My final decision

I uphold this complaint. Barclays Bank UK PLC must:

- Refund £58,240, plus interest at 8% per annum simple from the date of the payments to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 30 November 2023.

Martin Lord
Ombudsman