

The complaint

Mr D complains that Barclays Bank UK PLC (Barclays) is refusing to refund him the amount he says he lost as the result of a scam.

Mr D is being represented by a third party. To keep things simple, I will refer to Mr D throughout my decision.

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Mr D found an advert online for a business called 24 Option Trading/Rodeler (X). Interested in the advertisement which appeared professional and legitimate Mr D did some online research into the business and says he came across positive reviews. Mr D therefore clicked on the advertisement and completed an online data capture form with his personal information.

Mr D was then contacted by X and the investment opportunity was explained to him in more detail. X started to build a trusting rapport with Mr D and X answered all the questions Mr D asked which gave Mr D confidence he was dealing with a genuine business.

X directed Mr D to open an account on its trading platform and as part of the process Mr D had to provide identification documents.

Confident Mr D was dealing with a genuine business he made an initial payment of £250 to it, followed by several more payments over the following weeks. Mr D then found his investment had decreased significantly in value and was told this was due to oil prices at the time.

After the investment value decreased and some communication with X, Mr D found he was no longer able to access the trading platform or contact X. However, Mr D did receive a credit from X of £249.55.

Mr D is disputing the following payments made from his Barclays credit card:

<u>Date</u>	<u>Payee</u>	<u>Amount</u>
25 March 2020	24 Option	£250
27 March 2020	Rodeler Ltd	£1,000
31 March 2020	24 Option	£2,800
31 March 2020	24 Option	£1,240
31 March 2020	Rodeler	£2,800
14 April 2020	24 Option	£850

Our Investigator considered Mr D's complaint and thought it should be upheld. Barclays disagreed, so this complaint has been passed to me to decide.

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.

The evidence provided by both Mr D and Barclays sets out what happened. What is in dispute is whether Barclays should refund the money Mr D lost.

Recovering the payments Mr D made

Mr D made payments into the scam via his credit card. I have considered whether Mr D should have received a refund of the payments he made via chargeback.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. Time limits also apply.

Unfortunately, Mr D made his complaint to Barclays outside of the allowed time to raise a chargeback and therefore Barclays has been unable to attempt a chargeback for the payments Mr D made into the scam.

Section 75

As Mr D made the disputed payments via his credit card Section 75 of the consumer credit act applies.

Section 75 says:

75(1) If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor...(3) Subsection (1) does not apply to a claim...

- a. under a non-commercial agreement,*
- b. so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000*

To summarise there must be:

1. a debtor-creditor-supplier agreement falling under section 12(b) or 12(c); and
2. a transaction financed by the agreement; and
3. a claim for misrepresentation or breach of contract related to that transaction;
4. but not a claim which relates to any single item which the supplier has attached a cash price below £100 or in excess of £30,000

I will go through each point:

Firstly, I am satisfied that a credit card account is a relevant debtor-creditor-supplier agreement under the Act. And I'm satisfied here there is nothing that 'breaks' the debtor-creditor-supplier chain.

1. Mr D (the Debtor)
2. Barclays (the creditor)
3. X (the supplier)

I'm further satisfied that the payments to X were financed by the agreement and that no single payments to them were below £100 or more than £30,000.

Misrepresentation

At the time Mr D made payments to X it was regulated by CYSEC and had passporting rights with the Financial Conduct Authority (FCA) to trade in the UK. But having considered what Mr D has told us, consistent online reviews and that it's no longer approved by the FCA I think it's very unlikely that X was operating a legitimate enterprise and was misrepresenting that it was.

I don't think it was possible for Mr D to ever receive back from the investment more than he put in. This amounts to misrepresentation given the statements made by X that Mr D could make money from the investments. I think that these misrepresentations induced Mr D entering the contract with X and he would not have done had he been given the correct information.

Breach of contract

Mr D made payments via his Barclays credit card so they could be traded on an online trading platform on the basis that he could also make withdrawals. Given the exchange of funds in return for certain contractual promises – I'm satisfied there was a transaction (the deposit-transaction) as defined by Section 75.

So, X had contractual obligations to allow Mr D to use the amounts he had deposited on the platform, and to enable him to make withdrawals when he wanted to.

However, Mr D was not given access to the credit balance created by the payments he made. With this in mind I am satisfied that X breached its contractual obligations and it follows that as a breach of contract can be identified and that Mr D's loss amounts to the full amount of the payments made via his Barclays credit card.

With the above in mind, I think Mr D should have received a full refund of the payments he made via his credit card under Section 75 of the consumer credit act.

Barclays has argued that it doesn't feel a claim under Section 75 exists, among other things Barclays has told us that Mr D was kept up to date with relevant information from X and that negative reviews online were to be expected when an investment doesn't work out.

Barclays has also pointed out that X complied with the FCA's order when it was told to stop trading, and that the warning published by the FCA does not confirm Mr D was scammed.

I have thought about what Barclays has said but for the reasons explained above I still think Mr D had a claim under Section 75 for both misrepresentation and breach of contract. Barclays comments have not changed my decision.

Putting things right

To put things right I require Barclays to:

- Refund the full amount of the payments Mr D has disputed, less the amounts credited by X
- Rework Mr D's account, refunding any payments made by Mr D towards these transactions along with any interest and charges that was caused by them.
- Pay 8% interest on those sums from the date they were paid to the date of settlement.

Barclays may make a tax deduction in relation to the interest element of this award. If Barclays does make a deduction, it should provide Mr D with the appropriate tax deduction certificate.

My final decision

I uphold this complaint and require Barclays Bank UK PLC to put things right by doing what I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 24 May 2024.

Terry Woodham
Ombudsman