

The complaint

Mr B is unhappy that Barclays Bank UK Plc haven't refunded money he lost as a result of a scam.

Mr B is being represented by a claims management company but for ease of reading I'll only refer to Mr B in my decision.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In 2021 Mr B saw an advert on social media about investing in forex. He was contacted by a merchant and started to invest via an account in his own name at a genuine forex trading platform. Mr B made four payments to the forex exchange of £2,500 on 26 October 2021, £2,500 on 03 November 2021 and two £5,000 payments on 29 November 2021. A £5,000 payment was then withdrawn by Mr B from his account at the forex exchange.

Mr B later logged in to his account to see that all his trades had been wiped. He contacted the merchant who left him a long voicemail explaining that the money would be refunded. But Mr B never heard from them again and realised he had been scammed. So, he raised a claim with Barclays.

Barclays considered the claim but didn't think it had done anything wrong. So, it didn't agree to refund the payments Mr B had lost.

Our Investigator didn't think the complaint should be upheld. He said Barclays hadn't treated Mr B unfairly by not attempting a chargeback on Mr B's debit card because the payments had been made to an account in his name with a legitimate forex exchange. And the investigator didn't think the payments that Mr B hadn't been refunded were unusual when compared to Mr B's previous account history.

Mr B disagreed and asked for an Ombudsman's review. He said it was unusual for him to send money to a forex exchange and the two payments of £5,000 on 29 November 2021 were unusual and should've been stopped by Barclays so it could warn him about these types of payments. If it had, then the scam would've been stopped.

I considered the complaint and was minded to reach a different outcome to the investigator. I said to Mr B and Barclays that I was minded to ask Barclays to refund £5,000 with 8% simple interest per year from the date of the payment to the date of settlement. I said that if Barclays had stopped the second £5,000 payment and asked some probing questions of Mr B, it would've more likely than not uncovered the scam and provided a warning to Mr B which he would've listened to. At that time, Mr B hadn't sent the first £5,000 from his account at the forex exchange to the scammers. So, I think that £5,000 would've been recoverable by Mr B from his account at the forex exchange.

Mr B said he felt the all the transactions were unusual but would be willing to accept an offer from Barclays of £5,000. Barclays didn't respond any further.

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.

Having done so, I'm upholding this complaint in part.

Recovery

I've thought about whether Barclays did enough to attempt to recover the money Mr B lost, as there are some instances where debit card transactions can be refunded through making a chargeback claim.

A chargeback wouldn't have been successful for the debit card payments to the account in Mr B's name at a legitimate forex exchange, as Mr B was able to move the money onto the scammers. So, Mr B duly received the service he paid for on his debit card. The money was subsequently lost when it was moved by the scammers. So, he couldn't claim that he didn't receive the goods or services paid for from his Barclays account to the forex exchange.

As a result, I don't think Barclays have acted unreasonably by failing to pursue a chargeback claim or try and recover Mr B's money here.

Prevention

While I don't think that Barclays could have done more with regards to the recovery of Mr B's funds once it was made aware of the situation, I've also considered whether it ought to have intervened before allowing any of the payments to be made.

Under regulations and in accordance with general banking terms and conditions, banks should execute an authorised payment instruction without undue delay. The starting position is that liability for authorised payments rests with the payer, even where they are duped into making that payment. There is no dispute that Mr B made the APP and debit card payments, and so they were authorised.

However, in accordance with the law, regulations and good industry practice, a bank has a duty to protect its customers against the risk of fraud and scams so far as is reasonably possible. If, in breach of that duty, a bank fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime, it might be liable for the losses incurred by its customer as a result.

What this means is that as a starting point Mr B is liable for these transactions unless there's evidence that Barclays could and should reasonably have done more to protect him and that this would have made a difference.

It isn't in dispute that Barclays has (and had) obligations to be alert to fraud and to act in its customers best interests. So, the starting point here is whether the instructions Mr B gave to Barclays when authorising the debit card payments were unusual in relation to the typical account activity.

I don't think the first three payments Mr B made to the scammers were sufficiently unusual at the time for Barclays to step in and ask more questions even if they were to a forex exchange in this instance. That's because the first two payments he made towards this scam

were in line with other payments he had sent in the past. I note from his statements he made similar payments before the scam started, ranging from £1,644 on 24 June 2021, £2,695,67 on 08 April 2021 and £3,566 on 22 March 2021. Although Mr B has said these previous payments weren't to a high-risk forex exchange, account use can change over time. And because the scam payments were made over the course of a number of weeks, I don't think Barclays has treated him unfairly by not stopping the earlier payments here.

Mr B has said that the second £10,000 that left his account on 29 November should've been flagged by Barclays for further checks. From reviewing Mr B's previous account activity, I think the second £5,000 Mr B attempted was sufficiently unusual for his account. In total £10,000 had left his account in a short space of time to a relatively new payee. I can see that the highest payment Mr B had made previously was around £3,500. So, I'm satisfied that this second £5,000 payment should've been flagged for further questioning.

If the second payment had been flagged, then I'm satisfied on balance that some probing questions would've uncovered that this was more than likely a scam and Mr B would've listened to the warning Barclays provided. That's because it was a typical scam where a consumer is contacted via social media and asked to invest by a third party working for an unregulated company where the funds are being moved through a genuine company. And with some probing questions Barclays would've seen that the company the scammer said he worked for had a warning published by the FCA from 12 November 2021 and was therefore live at the time of the £5,000 payments. I've not seen any evidence that suggests Mr B wouldn't have been truthful in his responses nor that he was being coached to tell the bank not to disclose any background information in relation to the payment and who was asking him to make it. So, I'm satisfied Mr B would've listened to any warnings Barclays provided.

I've also considered whether Mr B would've been able to recover the first £5,000 payment he sent just a few minutes earlier if Barclays had stopped and asked some probing questions about the second £5,000 payment. We've asked Mr B to provide screenshots of the deposits to his account at the Forex exchange. These show that both £5,000 payments were credited to that account on 29 November 2021. But only one £5,000 payment was forwarded to the scammers account and that wasn't done until the next day. So, if Barclays had warned Mr B that he was likely being scammed, I believe the first £5,000 payment would also have been recoverable at the same time Mr B withdrew the second £5,000 payment.

I've considered whether there should be a reduction for contributory negligence to the £5,000 payment. But I'm not minded to add any reduction here. I think Mr B was taken in by a persuasive scammer and he reasonably thought that it was a genuine investment opportunity that was being made via a genuine forex exchange. And I wouldn't expect him to have the same level of knowledge as a trained fraud call handler at the bank so that he reasonably should've been suspicious of how the scam unfolded.

Putting things right

As a result, I think Barclays should refund Mr B £5,000 with 8% simple interest per year on that payment from the date of the payment to the date of settlement. I make no other award against Barclays.

My final decision

My final decision is that I'm upholding this complaint in part. Barclays Bank UK PLC should refund Mr B £5,000 with 8% simple interest per year from the date of the payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or

reject my decision before 25 April 2024.

Mark Dobson
Ombudsman