

The complaint

Mr D complains that Barclays Bank Plc trading as Barclaycard didn't do enough to protect him from the financial harm caused by an investment scam, or to help him recover the money once he'd reported the scam to it.

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 2014, Mr D invested £7,800 in a company I'll refer to as "E". When E was later dissolved, he was contacted by someone from a company I'll refer to as "C" who claimed they could recover his investment in return for a fee. Believing this to be true, he paid £2,831.13 via a payment service I'll refer to as "B" on 4 December 2019 (£81.13 was B's fee) and £2,500 to "CA", (which he understood was C's holding account) on 29 January 2019. Both payments were made using his Barclaycard and he made some other payments from an account he held with another bank.

Mr D complained to Barclaycard in 2020 when he realised he'd been the victim of a recovery scam. Barclaycard said the claim hadn't been reviewed under Visa's chargeback scheme because he didn't provide it with any information around the time of the transaction. It explained it was unable to pursue a claim for the first payment under Section 75 of the Consumer Credit Act 1974 ("Section 75") because there was no valid 'debtor-creditor-supplier' ("DCS") agreement as B weren't the merchants on the documentation, and as B is a third party online payment provider, it had fulfilled their obligations by passing on the funds. It also said it was unable to find a link between CA and C, so there was no valid DCS agreement for the second payment either.

As a gesture of goodwill Barclaycard agreed to share responsibility with Mr D by refunding 50% of his loss plus £3,200 to cover the interest applied to the account from the date of the first transaction. It explained that in 2017 the Financial Conduct Authority ("FCA") had advised investors to act diligently when entering into transactions with unregulated investors and so he should share responsibility for his loss.

Mr D wasn't satisfied and so he brought his complaint to this service. He said he didn't receive a letter from the FCA in 2017 and that Barclaycard should refund the remaining 50% of the settlement.

Barclaycard further commented that its offer was a gesture of goodwill and not because the claim was valid under the protection afforded to Mr D by his credit card. It said that due to the length of time he took to report the scam, the timescales for a chargeback had been exceeded. It said there was no evidence to show whether it contacted Mr D before the transactions were authorised but he was warned by the FCA that he might be contacted by scam merchants, yet he still authorised the payments.

Our investigator was satisfied Barclaycard's offer was reasonable. She didn't think the payments were unusual or suspicious, so she didn't think it missed an opportunity to

intervene when Mr D made the payments. She explained it's not unusual for consumers to make one-off large purchases using their credit card and the two payments were made over a month apart, so they weren't made in quick succession.

She noted the 120-day deadline for a chargeback would've expired in May 2020, so a chargeback would have been out of time in August 2020. She also agreed that as the first payment was made via B, a claim under Section 75 wouldn't have been successful as there was no DCS agreement and, similarly, there was no DCS agreement for the second payment as there was no connection between C and CA.

Mr D has asked for his complaint to be reviewed by an Ombudsman. He's said he did send further information to Barclaycard and that he had believed C was genuine because it was providing escrow services. He's also said he wasn't told that E was dissolved in Summer 2018 and he has highlighted messages between himself and the scammer which discuss the fact the payment of £2,500 was declined by Barclaycard. He has also explained that he didn't report to scam to Barclaycard until August 2020 because he didn't realise he'd been scammed and that C had told him CA was their holding account and he'd trusted that was correct.

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've reached the same conclusion as our investigator. And for largely the same reasons. I'm sorry to hear that Mr D has been the victim of a cruel scam. I know he feels strongly about this complaint and this will come as a disappointment to him, so I'll explain why.

Barclaycard has already refunded 50% of the payments Mr D lost to the scam and the interest applied to those payments. In order to decide whether this offer is fair, I need to consider if Barclaycard took the correct steps prior to the funds being released – as well as the steps it took after being notified of the potential fraud.

I'm satisfied Mr D 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although he didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of the account, he is presumed liable for the loss in the first instance.

There's no dispute that this was a scam but although Mr D didn't intend his money to go to scammers, he did authorise the disputed payments. Barclaycard is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

Prevention

I've thought about whether Barclaycard could have done more to prevent the scam from occurring altogether. Barclaycard ought to fairly and reasonably be alert to fraud and scams and these payments were part of a wider scam, so I need to consider whether it ought to have intervened to warn Mr D when he tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect Barclaycard to intervene with a view to protecting Mr D from financial harm due to fraud.

There's no evidence that either payment was flagged as suspicious on Barclaycard's systems, so I've considered the nature of the payments in the context of whether they were unusual or uncharacteristic of how Mr D normally ran his account and I don't think they were. The first payment was to B, which wouldn't have been concerning. And even though the second payment was to a new payee, there was nothing to suggest it might be associated with an investment or a scam. Neither payment was for a particularly large amount, and they weren't made in quick succession, so I don't think they were suspicious or unusual therefore I don't think Barclaycard missed an opportunity to intervene.

Chargeback

I've thought about whether Barclaycard could have raised a chargeback request when Mr D reported the scam to it. Chargeback is a voluntary scheme run by Visa whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed. Our role in such cases is not to second-guess Visa's arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. Barclaycard) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder (Mr D).

Mr D has said he couldn't have reported the scam to Barclaycard sooner because he didn't know about it. I also accept he did send some documents to Barclaycard which it says it didn't receive. But the scheme sets the rules and there are specific time limits that must be applied. Those rules state that a claim can be brought no later than 120 days than the date of the transaction. In Mr D's case, the claim was referred to Barclaycard after this time, so this wasn't an option.

Section 75

I've also considered whether Barclaycard ought to have refunded either of the transactions through Section 75 claims. I don't find that it could have. For Section 75 to apply, there must first be a DCS agreement. Secondly, the transaction in dispute must have financed that agreement and ultimately there must be a valid claim of misrepresentation or breach of contract in relation to the transaction. Consequential losses (like transaction fees) can also be considered.

Here, Mr D's agreement was with C who he says was operating a scam. But as Mr D didn't use his Barclaycard credit card to pay C directly – the first payment was to B and the second payment was to CA - his claim fails at the first hurdle. That is the DCS agreement he seeks to rely upon doesn't include C as they weren't the 'supplier' in any of the transactions he made.

There are some situations whereby the use of a payment processor can create a four-party agreement and therefore not break the debtor-creditor-supplier agreement. But I don't think that happened here. I've noted that B offers a money remittance service for payers, rather than a payment processing facility for payees. There is also no credible evidence that would suggest CA offers a recognised payment facilitation service and therefore I'm satisfied a four-party agreement was not created when Mr D paid B and CA.

So, even though I accept Mr D was told by the scammers to make the payments to B and CA, I'm satisfied Barclaycard's decision not to pursue a claim under Section 75 in respect of either payment was fair.

I'm sorry to hear Mr D has lost money and the effect this has had on him. But for the reasons I've explained, I don't think Barclaycard is to blame for this and so I can't fairly tell it to do anything further to resolve this complaint.

Compensation

Mr D isn't entitled to any compensation.

Recovery

Because of the delay in reporting the scam to Barclaycard, I'm satisfied there wasn't a realistic prospect of recovering the funds from the recipient accounts.

My final decision

For the reasons I've outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 25 March 2024.

Carolyn Bonnell
Ombudsman