

The complaint

Mrs C complains Barclays Bank UK Plc won't refund money she lost to a scam.

What happened

Mrs C fell victim to a crypto investment scam. She was introduced to an investment opportunity by a friend who had successfully invested with a firm, which I'll refer to as "VC". Mrs C was instructed on how to set up an account on VC's platform and how to open a crypto wallet on a legitimate crypto exchange. Mrs C purchased crypto from the crypto exchange in a series of debit card transactions, and then transferred the crypto on to her account with VC. The relevant payments are:

Payment number	Date	Amount
1	17 March 2021	£76.49
2	17 March 2021	£152.96
3	18 March 2021	£4,060.51
4	26 March 2021	£7,105.88
5	2 April 2021	£203.03
6	10 April 2021	£203.03
7	10 April 2021	£203.03
	Total	£12,004.93

Mrs C says before making the fifth payment she chose to do further research on VC, searching online and looking at reviews from others. She says she didn't find anything that gave her reason to doubt what she'd been told and only found information that corroborated what her friend had told her.

Mrs C realised she'd been scammed in mid-April 2021 after she was unable to withdraw her investment profits despite repeated contact with VC through multiple channels.

In July 2023 Mrs C instructed a professional representative ("C"), who wrote to Barclays to complain. C said the payments from Mrs C's account were significantly out of character and unusual, and so Barclays ought to have intervened before processing the payments. It said it should therefore reimburse Mrs C for her losses, plus interest, and compensation.

While Barclays accepted that Mrs C had been the victim of a scam, it refuted that it was responsible for her loss. It noted that prior to passing into the control of the scammers, Mrs C had first transferred the funds to an account in her own name and control (that being her wallet account with the crypto exchange).

Mrs C referred her complaint to the Financial Ombudsman. She accepted that she had authorised the payments and that they were transferred to her own crypto wallet before being transferred to the scammers. But she maintained that Barclays had a duty to protect her and should have intervened and stopped the payments.

Our Investigator didn't uphold the complaint. He didn't think there was any requirement on Barclays to intervene on the first three payments Mrs C made. He considered that Barclays ought to have intervened before processing the fourth payment (£7,105.88), but he concluded that even if Barclays had intervened, it would most likely not have prevented Mrs C's loss as she had already conducted her own research and satisfied herself that the investment opportunity was legitimate. He also concluded that Mrs C would have taken reassurance from the fact her friend had successfully invested.

Mrs C disagreed and so the case has been referred to me to reach a final decision.

What I've decided – and why

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Having done so, I'm not upholding this complaint and for largely the same reasons as our Investigator. I realise this will be extremely disappointing for Mrs C. I don't underestimate the financial and emotional impact falling victim to this scam has had on her. I can appreciate why she wants to do all she can to recover the money she lost. But I can only direct Barclays to refund her losses if it can fairly and reasonably be held responsible for them, but for the reasons I'll go on to explain, I don't think it is.

The starting position under the relevant regulations, the Payment Services Regulations 2017 ("PSR 2017"), is that Mrs C is responsible for payments she's authorised.

So, I'm left to consider whether, taking into account regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, Barclays should have identified any of the transactions as particularly suspicious, such that some form of intervention ought to have taken place before the transactions were allowed to debit Mrs C's account.

Ultimately, there is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. It would be very onerous and impractical for banks to intervene in all payments, and to do so would result in the warnings having less impact as they would be seen as 'the norm'.

Barclays has suggested it was not responsible for the losses Mrs C incurred, as she first transferred funds to an account she held with a legitimate crypto provider before they were transferred out and lost to the scammers. But whether the loss occurred directly from Mrs C's account with Barclays, or at a later stage, does not absolve it of its responsibility to intervene if it had grounds to believe its customer was at risk of financial harm from fraud. By the time of Mrs C's payments, Barclays ought to have been aware of the risks presented by multi-stage frauds, where money is passed through more than one account under the consumer's control before being sent to a scammer. So, I've considered whether I think Barclays ought to have recognised Mrs C was at risk of financial harm from fraud based on what it knew about her payments at the time.

Whilst I have set out in some detail the circumstances that led Mrs C to make payments from his Barclays account and the process by which that money ultimately fell into the hands of the scammer, I am mindful that Barclays had much less information available to it upon which to discern whether any of the payments presented an increased risk that Mrs C might be the victim of a scam.

Like our Investigator, given their relatively low values, which were in keeping with Mrs C's normal account activity, I don't think Barclays needed to intervene before processing the first two payments. Although these payments were being made to a crypto provider, which Mrs C had not done before, the payments themselves were not so unusual or suspicious that I think Barclays ought to have intervened. Similarly, while the third payment (£4,060.51) was for a more substantial sum, that wasn't entirely in keeping with Mrs C's day-to-day spending, it also wasn't so large or unusual that I think it ought to have aroused Barclays suspicions on the basis of that payment alone. The payment didn't drain Mrs C's account and there were no other key indicators at that time that Mrs C was falling victim to a scam. And it isn't unusual for a customer to make a larger one of payment to a new payee in the course of normal account activity.

But I think the fourth payment (£7,105.88) was significantly larger than any payment Mrs C had made on her account in the preceding 12 months, and so I think it ought to have stood out as unusual enough to warrant Barclays' intervention before it processed the payment instruction.

In the circumstances, I think Barclays ought to have spoken to Mrs C to ask for more information about her intended payment. Had it done so, I would have expected Mrs C to have revealed that she was investing following a tip from a friend, who'd successfully invested, and that she was making payments to a crypto exchange. At this stage, I would have expected Barclays to provide Mrs C with warnings about the risks of crypto investments and advised her to conduct her own research before continuing to make the payment. I would not have expected it to stop the payment, given what it knew. So, it would have been up to Mrs C whether to continue with the payment or not.

Although I consider Barclays ought to have intervened and provided a warning, it does not automatically follow that I think it should therefore be held responsible for any losses that occurred after that point. To hold Barclays responsible for the losses I would also need to be satisfied that its intervention would, more likely than not, have prevented Mrs C's future losses, and I'm not persuaded it would have.

While I accept there were features of the proposed investment with VC that may have given Barclays cause for concern that it was a scam – in particular, the fact it involved crypto and there was a third party involved – there was no specific evidence that confirmed that it was indeed a scam at the time – for example warnings from the Financial Conduct Authority (FCA) or other regulatory bodies. There were also features that didn't fit a typical scam pattern – for example an introduction by a close friend, who was an experienced investor, rather than a targeted contact from VC itself.

I must therefore weigh up whether a proportionate intervention from Barclays would, more likely than not, have resonated with Mrs C more than her own research, experience, and recommendation from her friend. And I'm not persuaded it would have.

As part of her complaint submissions, Mrs C explained that prior to investing she'd carried out some research but found no negative information about VC. She said she was also reassured by various features of VC's website and its use of sophisticated software, which further persuaded her it was legitimate. Having purchased crypto and transferred it to VC, Mrs C says she saw the money credit her account. She was then instructed on how to trade and saw immediate profits, which were reflected on her investment platform balance. This would no doubt have reassured her that the investment was legitimate and achieving what she'd been promised.

C has suggested that Barclays' intervention would have made Mrs C aware of scam risks, which she had otherwise not contemplated. But I'm not sure that's the case.

I'm mindful that Mrs C has said that after making her fourth payment she chose to do further research into VC, which included reading reviews from other investors. It's unclear exactly what motivated Mrs C to conduct further research at this late stage in the investment, but it seems likely that she was aware that there was a chance what she was being told wasn't legitimate and so wanted to reassure herself before making any further investments. So, I can't agree that Mrs C had not contemplated the possibility that what she was being told may not be genuine. But I must also take into account that, having conducted her own research, Mrs C found no negative information and was in fact reassured by what she had seen and felt it corroborated what her friend had told her.

I'm also mindful that Mrs C was in regular contact with the scammers and noted that she had built a particularly trusting relationship to the extent she *"trusted the scammer implicitly"*. Given Mrs C had put so much trust in the scammers, this further compounds my view that she would have continued to invest in VC despite any warning she received from Barclays, as her friend and the scammer are both likely to have reassured her the investment was legitimate.

Taking everything into account, I can't fairly conclude that it's more likely than not that reasonable intervention from Barclays would have stopped Mrs C from making future payments. I think when balanced against all the information she had gathered herself, as well as the lack of warnings or adverse information about VC at the time, Mrs C would have likely felt reassured that the investment was legitimate. Any further research she may have carried out would've been unlikely to yield any results that would have led her to believe she was falling victim to a scam.

So, while Barclays should have intervened before processing Mrs C's fourth payment, I'm not persuaded it would have prevented Mrs C's loss. As such, I can't reasonably hold it responsible for her loss.

I've considered whether, on being alerted to the scam, Barclays could reasonably have done anything to recover Mrs C's losses, but I don't think it could. The only possible option for recovery here, given the payments were made by debit card, would have been via chargeback claims. But given the payments went towards purchasing crypto from a legitimate firm, any chargeback claims would have been unsuccessful as Mrs C received the service she paid for.

I have a great deal of sympathy for Mrs C and the loss she's suffered. But it would only be fair for me to direct Barclays to refund her loss if I thought it was responsible – and I'm not persuaded that this was the case. For the above reasons, I think Barclays has acted fairly and so I'm not going to tell it to do anything further.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 18 April 2024.

Lisa De Noronha
Ombudsman