

## **The complaint**

Ms S complains that Barclays Bank UK PLC (“Barclays”) won’t refund money she lost when she fell victim to an investment recovery scam.

## **What happened**

Ms S fell victim to an investment scam in 2017. Between 2020 and 2021, she sent money to a company who led her to believe that she would recover the money previously lost. Unfortunately, Ms S had fallen victim to a scam once again. Her complaint about Barclays’s actions in relation to these two scams have already been considered by this service.

In 2022, Ms S was contacted by an individual “B” who offered their services in recovering money she had previously lost. Between May and June 2022, under B’s instructions, Ms S sent over a £100,000 from her Barclays bank account to her account with an electronic money institution (“EMI”). From there, the funds were sent to a cryptocurrency exchange for conversion into cryptocurrency, before being sent on to cryptocurrency wallets as instructed by B.

Some of the funds Ms S sent from her Barclays account to her account with the EMI came from a third party. She believed that by putting funds into her account B was helping her continue making payments (fees etc.) which were needed for recovering her losses. When Barclays questioned her about the credits, Ms S replied that the payments had come in from a friend who had owed her money, which she quickly transferred to her account with the EMI. Concerned about Ms S’s response, Barclays decided to close her account. It also recorded a marker against her at CIFAS, the national fraud database.

Unfortunately, B turned out to be a scammer and Ms S ultimately reported the matter to Barclays. Subsequently, she also contacted the EMI. This decision solely relates to Ms S’s complaint about Barclays. Her complaint about the EMI has been considered separately.

When Barclays refused to refund her loss or remove the CIFAS marker, Ms S referred her complaint to our service. Following our involvement, Barclays said it would agree to remove the CIFAS marker despite Ms S providing misleading information when it had questioned her at the time. But it maintained its position that it hadn’t done anything wrong in preventing her from falling victim to a further scam.

Our investigator thought it was fair that the CIFAS marker had been removed, given Ms S hadn’t received any benefit from the funds which credited her account. But they agreed with Barclays that it couldn’t reasonably have prevented Ms S from sending the payments in connection to the scam. They noted that she hadn’t been honest about the credits into her account, and she had previously misled the bank. This suggested she was willing to mislead the bank again had it intervened and made enquiries about the payments which were sent as part of the scam.

Ms S didn’t agree with the investigator’s findings and requested an ombudsman’s decision on the matter.

## **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.

I'm sorry to hear that Ms S's health continues to be impacted by multiple scams she's fallen victim to over the years. In deciding what's fair and reasonable in all the circumstances of this complaint, I've considered information our service has received on Ms S's other cases. I realise that this will come as a considerable disappointment to her but having carefully considered everything I agree with conclusions reached by the investigator. In fact, there's very little I can add to what they have already said in their assessment.

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 an authorised payment rests with the payer, even where they are duped into making that payment. There's no dispute that Ms S made the payments using her security credentials, and so they are authorised.

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

I've considered the operation of Ms S's account in the year leading up to the disputed transactions. While I don't consider the first few transactions were particularly unusual or suspicious for the usual account spending, it's arguable that the transaction for £9,900 on 30 May 2022 could be seen as out of character. Although Ms S had previously sent amounts higher than that figure, they were transfers between her Barclays accounts. But this transaction was a payment to an account with another business – the EMI. I think it ought to have flagged as suspicious on Barclays's systems, considering the increase in payment amounts, and that it should have made further enquiries before releasing it. We know that Barclays didn't intervene at the time of the said transaction. So, I've gone on to consider whether making enquiries would have led to a different outcome.

I can't know for certain what would have happened if Barclays had questioned Ms S about the disputed transaction. In such situations, I reach my conclusions not based on mere possibilities but rather on what I find most probable to have happened in the circumstances. In other words, I make my decision based on the balance of probabilities – so what I consider most likely to have happened considering the evidence and wider circumstances of the case.

I've thought very carefully about this, and I'm not convinced that Ms S would have stopped from going ahead with that transaction. I say this because I'm more persuaded that she would not have been forthcoming about the true nature of the transaction. In reaching that conclusion, I've kept in mind that this is what happened the year before, when Ms S first attempted to recover her losses. She had been coached into lying by the scammer at the time and she misled a different bank when it had questioned her.

Despite having fallen victim to a recovery scam once before, I can see that also only weeks after making the transaction which I think Barclays ought to have questioned, Ms S wasn't honest with the bank when it asked her about the third-party credits into her account. She later admitted to Barclays that B had given her a cover story in case the bank questioned her about the credits.

These actions show that Ms S continued misleading the bank as instructed by the scammer. Given this, I think it's unlikely that she would have been honest about the true purpose of the transaction had Barclays questioned her about the £9,990 payment on 30 May 2022. Or, for that matter, any other payment in dispute. That means I don't think Barclays could reasonably have done anything more to prevent or limit Ms S's losses.

In terms of recovery, the funds went to Ms S's own account with the EMI. And we know that she sent them on from there. Under the circumstances, Barclays would not have been able to recover funds from the EMI had it attempted a recall.

In summary, I know that Ms S will be disappointed with this outcome. Not least because the matter has been ongoing for some time. I fully acknowledge that there's a lot of money involved here. Despite my natural sympathy for the situation in which she finds herself, for the reasons given, it wouldn't be fair of me to hold Barclays responsible for Ms S's loss.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 3 March 2024.

Gagandeep Singh  
**Ombudsman**