

The complaint

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

What happened

I issued a provisional decision in December 2023 to explain why I thought Ms M’s complaint should be partially upheld. And I said I’d consider anything else anyone wanted to give me before proceeding with my final decision.

This is an extract from my provisional decision:

“The background to this complaint is well-known to both parties, so I won’t repeat it all in detail here. However, in summary, Ms M has been the victim of a scam. In early 2021, Ms M was approached by a friend who had recently invested with a mutual acquaintance who attended the same local church. Ms M’s friend told her that this person was looking for people to invest in her payday loan business and that she had already invested and seen significant returns.

Ms M then arranged a telephone conversation with the person running the payday loan scheme, who we now know to be a scammer. The scammer told Ms M that she was lending money at high interest rates and that she had a lot of people requesting loans from her. Ms M was told her rate of return would be between 5% – 6.5% per month should she choose to invest.

The scammer went on to tell Ms M that she had been working in financial services for a number of years and was able to show Ms M a professional looking website. She also drew up what appeared to be legitimate business loan contracts. So, having decided to invest, Ms M was sent a contract to sign.

Ms M signed the contract and then proceeded to make the following payments to the scammers account. I have also noted any incoming credits from the scammer too:

Date	Time	Debits to scammer	Credits from scammer
18 March 2021	17:34	£2,000	
18 March 2021	17:36	£2,000	
18 March 2021	17:36	£1,000	
31 March 2021	N/A		£108.33
1 April 2021	11:10	£5,000	
6 April 2021	14:20	£4,000	
19 April 2021	N/A		£546
19 May 2021	N/A		£910
24 May 2021	N/A		£2,000
1 June 2021	N/A		£2,000

21 June 2021	N/A		£500
20 July 2021	N/A		£580
9 August 2021	21:29	£2,500	
21 September 2021	N/A		£565
	Total	£16,500	£7,209.33

Ms M told us that for the first couple of months, she received returns amounting to £1,500 but these quickly tailed off and after 12 months, and numerous attempts to get her money back, Ms M realised she had likely been the victim of a scam and reported what had happened to her to Barclays.

Barclays said it had reviewed Ms M's complaint under the Contingent Reimbursement Model (CRM code) but didn't uphold it. It said Ms M didn't undertake enough research before making the payments to the scammer. It also said it wasn't able to provide her with an effective scam warning at the time the payments were made as she hadn't told it the correct reason for making the payments.

Ms M didn't agree with Barclays' position and she brought the complaint to our service with the help of a professional representative.

One of our investigators looked into things but he didn't uphold the complaint. He said he didn't think Ms M had a reasonable basis for believing that the investment she had entered into was legitimate. Specifically, he said the returns she had been promised were too good to be true and she hadn't done enough checks before entering into the investment. He also agreed that Barclays had been unable to provide Ms M with an effective scam warning as Ms M hadn't told Barclays she was making the payments for investment purposes when asked at the time.

Ms M didn't agree with our investigators view. In summary, she said that even if she hadn't completed the necessary checks, Barclays still had an obligation to provide her with an effective scam warning so she should be offered at least a partial refund of her loss now.

As an agreement couldn't be reached the complaint was passed to me for a decision.

What I've provisionally 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 am currently minded to disagree with the outcome reached by our Investigator and say this complaint should be partially upheld. I'll explain why in more detail below:

The CRM Code

Barclays has agreed to adhere to the provisions of the Lending Standards Board Contingent Reimbursement Model (the CRM code) which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this, in all but a limited number of circumstances.

A customer who has fallen victim to a scam should, under the CRM Code, be refunded in full in most circumstances. But the Code does set out exceptions to reimbursement which a business can choose to rely on, if it can evidence that they apply.

Barclays has said that two such exceptions apply in Ms M's case. Barclays says that:

- It wasn't able to provide Ms M with an effective scam warning at the time the payments were made because Ms M didn't pick the correct reason for the payments she was making when asked; and*
- Ms M lacked a reasonable basis for believing she was dealing with a legitimate person for legitimate purposes.*

So, it is now for me to decide whether these exceptions to reimbursement can be fairly relied on.

It is not in dispute that Ms M has been the victim of a scam. But I then need to consider the merits of Ms M's individual case, taking into account her specific circumstances.

Did Ms M have a reasonable basis for belief when she made the payments?

Taking into account all of the circumstances of this case, including the characteristics of Ms M and the complexity of the scam, I think the concerns Barclays has raised about the legitimacy of the transactions Ms M made are enough to support its position that she failed to meet her requisite level of care under the CRM Code.

Whilst I understand Ms M had seen her friend receive returns on their own investment, I don't think she had a reasonable basis for believing the scammer was the person she held herself out to be or that the investments on offer here were genuine. In reaching this conclusion I have taken into account the following:

- It is against the law, in the UK, to lend money or provide credit facilities without an authorised license to do so. But I haven't seen anything that persuades me Ms M took any steps to ascertain whether the scammer was operating a legitimate business in providing high interest-bearing loans or that the business she was entering into was legitimate.*
- Whilst I appreciate that Ms M has said the majority of the conversations about the investments took place in person, it also appears that some took place over a text-messaging service - which is not a method used to arrange and discuss legitimate investments. The language used by the scammer also isn't professional.*
- The investment Ms M was offered did not sound genuine and the rate of return she was offered was too good to be true. Ms M was offered 5-6.5% return on her capital investments per month and I'm not persuaded that this rate of return is plausible. I'm satisfied that these rates of return were unrealistic enough that Ms M ought reasonably to have had significant concern about the legitimacy of the opportunity that was presented to her. That, in turn, ought to have led to a greater degree of checking on her part.*
- Ms M has said she did carry out some checks on the scammer, including checking that the company she said she was running was registered on Companies House. However, the company registration on Companies House refers to the business being related to business support services and software and not any kind of financial services.*

Overall, I'm satisfied that all of these things should have been significant red flags for Ms M. And I'm not persuaded that she completed enough research before deciding to go ahead and invest - particularly given the significant red flags in this case and the sums involved.

Did Barclays provide Ms M with an effective warning/warnings?

The CRM Code also sets out standards for firms – that is, what firms are expected to do to protect customers from the risk of fraud and scams. One of those requirements is that, where the firm has (or should have) identified that its customer is at risk from a scam, it should provide that customer with an “effective warning”, within the meaning of the CRM Code.

Ms M says Barclays didn’t provide her with effective warnings before she made the payments now in question here.

However, I have been provided with evidence that shows me a warning was presented to Ms M at the time the first payment was made. However, this warning wasn’t specific to the type of investment scam Ms M was falling victim to. It described how scammers can pretend to be people you may know online. And so, I don’t consider the warning provided to Ms M was effective within the meaning of the Code. However, the Code says where it is possible to tailor the warning, this should be based on the specific scam risk identified by the information the customer input into the bank’s payment systems at the time.

So, if the customer entered information that steered the bank in the wrong direction about the purpose of the payment, this can sometimes impede the bank’s ability to give a relevant effective warning. And in the particular circumstances of this case, when Ms M was asked to confirm the reason she was making the payments now in question, she chose the payment reason “friends and family” rather than the more applicable payment reason of “investment” which was available to her.

When asked about this, Ms M said she hadn’t realised this would make a difference and this is why she chose the option she did. I’ve taken on board what Ms M has told me but there wasn’t anything else about the payments that would’ve indicated to Barclays that these payments were being made as a result of an investment. And the bank can only give a warning based on the scam risk it could’ve reasonably identified at the time. Given the information input by Ms M at the time of making the payments alongside the characteristics of the payments themselves, I don’t think it would be reasonable to say that in this particular case, Barclays should’ve identified that Ms M was about to fall victim to an investment scam. And so whilst I agree here that Barclays should’ve provided Ms M with an effective warning, and it has given a warning that wasn’t specific to the actual underlying scam that occurred, I don’t think it would be fair and reasonable to conclude that it failed to meet its standards under the Code and therefore that it should be held partially liable for Ms M’s loss for this reason.

Should Barclays have done anything more to protect Ms M?

Barclays should have been on the lookout for unusual and out of character transactions. And I consider that by the third payment on 18 March 2021, the activity on Ms M’s account had started to look suspicious.

The this was the third high value payment being made to a new payee within a two-minute period. And so, I think this payment ought reasonably to have caused Barclays to have some concerns that Ms M might be at risk of financial harm – a pattern of fraud was emerging. So I’m satisfied Barclays should’ve contacted Ms M to discuss the payment before it left her account.

Had Barclays contacted Ms M to discuss the payment, I’m satisfied that it’s more likely than not that the scam could’ve been uncovered. Ms M hadn’t been given a cover-story by the scammer and would’ve had no reason to lie to the bank. And I’m satisfied that had Barclays, after asking relevant probing questions, identified that Ms M had been promised such

significant returns by a person who could not lawfully provide credit and who was not registered with the FCA, it would've fairly quickly identified that Ms M was about to fall victim to a scam and could've prevented any further payments from leaving her account.

For this reason, my starting position here is that I am currently minded to say that it would be fair and reasonable for Barclays to take responsibility for 50% of Mrs M's overall loss from the third transaction onwards. For the reasons, I've set out above, I think Ms M should also bear some responsibility, amounting to 50%. However, I also have to bear in mind the substantial returns Ms M received as part of her involvement in this scam.

Ms M's total loss

Ms M initially told us that she invested £16,500 with the scammer and received returns amounting to £1,500. This brought her total overall loss to £15,000. However, having reviewed Ms M's account statements, I can see she received incoming payments amounting to £7,209.33 from the scammer between March and September 2021. So, it appears Ms M has received £7,209.33 as a result of her involvement in this scam and it wouldn't be fair for me to ignore this now.

So, taking everything into account, it appears that Barclays could've prevented £12,500 of Ms M's loss had it stepped in and uncovered the scam from the third payment made on 18 March 2021 when I'm satisfied it reasonably should've. I also think Ms M could've done more to protect herself at the time and I also have to bear in mind that Ms M also received returns amounting to £7,209.33 after this date. So, Ms M's total overall loss from the third payment on 18 March 2021 amounts to £5,290.67 and I'm satisfied that Barclays is therefore liable for half this amount."

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.

Ms M responded to my provisional decision to say she agreed with my findings. Barclays did not respond to my provisional decision.

So, as neither Ms M nor Barclays has provided any new evidence or submissions that have changed my mind, I see no reason to depart from the conclusions I reached in my provisional decision.

Putting things right

In order to put things right for Ms M, Barclays Bank UK Plc should:

- Refund Ms M 50% of her overall loss from the third payment made on 18 March 2021 - amounting to £2,645.34
- Pay interest on that amount at a rate of 8% simple from the date each payment left the account to the date of settlement.

My final decision

My final decision is that I partially uphold this complaint against Barclays Bank UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 23 February 2024.

Emly Hanley Hayes
Ombudsman