

Complaint

Mr S is unhappy that Barclays Bank UK PLC didn't reimburse in full him after he fell victim to a scam.

Background

In 2022, Mr S's business faced cash flow problems. During this time, he discussed his financial difficulties with Mr D, a neighbour in the same building, who claimed to have extensive experience in commodity trading. Mr D assured Mr S that he could generate a 10% return on any funds invested within 4-6 weeks. Over a period of several months, Mr S made multiple payments to Mr D totalling just under £83,000. These payments included funds borrowed from a friend and a business loan. Additionally, Mr S appointed Mr D as a director of his business.

Mr S alleges he was pressured by Mr D to invest more, under the threat that failing to do so would risk the funds he had already invested. However, the investment did not proceed as promised, and Mr S's suspicions grew. Upon investigating Mr D's background, he became concerned that he had been scammed. He reported the matter to Barclays and requested a refund.

Barclays declined to fully reimburse Mr S. The bank argued that he *"did not demonstrate a sufficiently high level of diligence or caution prior to sending the disputed funds to your neighbour. You were mainly convinced of the apparent investment's legitimacy by the image of wealth and success projected by the scammer, who lived in the same luxury apartment complex as you, drove a Lamborghini and wore expensive clothes."* Nonetheless, it acknowledged that it could have done more to protect him and refunded 50% of Mr S's losses. It maintained that Mr S's belief in the legitimacy of the investment opportunity was not reasonable.

Mr S wasn't happy with that and so he referred the matter to our service. An Investigator reviewed the complaint but did not uphold it, agreeing with Barclays' assessment. Mr S did not accept the Investigator's findings, so the complaint has been passed to me for a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (in this case, the 2017 regulations) and the terms and conditions of the customer's account.

However, that isn't the end of the story. Barclays is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code ("the CRM code"). This code requires firms to reimburse customers who have been the victim of authorised push payment ("APP")

scams in all but a limited number of circumstances. Under the CRM Code, a firm may choose not to reimburse a customer if it can establish that *“the customer made the payment without a reasonable basis for believing that ... the person or business with whom they transacted was legitimate.”*¹

Barclays has already reimbursed 50% of his losses. However, it continues to argue that the exception quoted above is applicable to this case. Having carefully reviewed the evidence, I agree with Barclays’ position that Mr S’s belief in the legitimacy of the investment was not reasonable in the circumstances.

I don’t have much evidence from the time to show exactly what was agreed between Mr S and Mr D. Nonetheless, the returns Mr S says he was promised weren’t realistic. A 10% return within 4-6 weeks is an exceptionally high and unrealistic rate of return, particularly without any supporting documentation or contractual agreement. Such promises should have raised significant red flags for Mr S. Additionally, Mr S made a substantial investment without conducting any meaningful checks on Mr D’s background or credentials. No formal documentation or contracts were in place to support the agreement. Mr S was also pressured into borrowing additional funds to continue investing. This pressure should have caused him to question the legitimacy of the arrangement. While I accept that Mr S sincerely believed the investment was legitimate, I don’t think that belief was reasonable.

For the sake of completeness, I also considered whether Barclays did everything it needed to in respect of recovering Mr S’s funds from the receiving bank – i.e., the bank that operates the account controlled by the fraudster. I can see it did attempt to do so promptly after Mr S told it what had happened – but unfortunately, its efforts were unsuccessful.

I don’t say any of this to downplay or diminish the fact that he has fallen victim to a cruel and cynical scam. I have a great deal of sympathy for him and the position he’s found himself in. However, my role is limited to looking at the actions and inactions of the bank and I’m satisfied it didn’t do anything wrong in only refunding half of his losses.

Final decision

For the reasons I’ve set out above, I don’t uphold this complaint

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S to accept or reject my decision before 16 January 2025.

James Kimmitt
Ombudsman

¹ There are further exceptions within the CRM code, but they don’t apply here