

The complaint

Mr M complains that Barclays Bank UK PLC 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 October 2022, Mr M saw an advert on social media for an investment company I'll refer to as "C", which was endorsed by a well-known celebrity. He followed a link on the advert to C's website which included an about us section, FAQs, and a 24/7 live chat option. The website also provided details of the company directors, giving a brief synopsis of their experience, and confirmed traders can access currency pairs, stocks and nine different cryptocurrencies.

Based on the positive reviews he saw online and the company website, Mr M decided to complete an online enquiry form and was contacted the following day by someone who I'll refer to as "the scammer" who claimed to work for C. The scammer said he had experience working for various financial institutions and told Mr M he'd be given a trading account and would be given advice on what to invest in. He instructed him to open an account on C's trading platform which required him to provide two forms of photo ID as part of the KYC and Anti-Money Laundering (AML) regulations. He also told Mr M to download AnyDesk remote access software to his device, explaining it would allow him to trade on Mr M's behalf and guide him through the process.

The scammer gave Mr M login details for his trading account, which showed the fluctuating rates of various currencies. He also told him to open an account with an Electronic Money Institute ("EMI") I'll refer to as "W". He told him there was no minimum investment but the higher the deposit, the higher the profits.

Mr M was told to transfer funds from his Barclays account to the new W account. From there he would purchase cryptocurrency through a cryptocurrency exchange company and then load the cryptocurrency onto an online wallet. On 23 November 2022, the scammer used AnyDesk to process a payment using his Barclays debit card to make an initial payment of £250 for membership to C. Then, between 23 November 2022 and 19 December 2022 Mr M made thirteen faster payments from his Barclays account to his W account totalling £58,800.

In February 2023, Mr M told the scammer he wished to make a withdrawal. The scammer told him he'd have to pay a series of fees including insurance, a 25% liquidity fee, and capital gains tax and, trusting the scammer's explanation for why this was necessary, Mr M made further payments from his other accounts.

Upon processing the final payment, Mr M was asked to make a withdrawal and the scammer grew aggressive and suggested he was at risk of losing everything should he fail to pay the fees. At this point Mr M realised he'd been scammed and complained to Barclays.

His representative said Barclays should have intervened as the payments had the hallmarks of an investment scam and multiple known fraud indicators. The representative said the payments were unusual compared to the normal spending on the account stating that in September 2022 the largest payment was for £550 and all other payments were below £149.99. And in October 2022 the largest payment was a cash withdrawal of £151.55.

The representative accepted Barclays had contacted Mr M, but they argued the intervention was ineffective because he was only asked if he recognised the payment. They said the call handler should have asked probing questions about remote access software and the involvement of any third parties. He should also have been asked if he'd been told to lie to the bank, whether the rate of return was plausible and whether he'd made any withdrawals. Had it done so it would have discovered Mr M was being scammed because he was confident the investment was genuine and would have been open and honest in his responses. It should then have provided a scam warning, which would have prevented the scam.

Barclays refused to refund any of the money. It said it had several conversations with Mr M and he didn't want to discuss the payments. It said there were Financial Conduct Authority ("FCA") warnings and online articles which pre-dated the payments, but he wasn't cooperative when it intervened. Mr M wasn't satisfied and so he complained to this service stating he wanted it to refund the full £66,364 he'd plus £500 compensation and legal fees.

Our investigator didn't think the complaint should be upheld. He explained he'd listened to the calls Mr M had with Barclays and he denied any third party involvement. He also said he was transferring funds to an account in his own name and that he was supporting family abroad. Because of this, there was nothing further Barclays could reasonably have done to prevent the scam.

Finally, he said there was no prospect of a successful recovery because Mr M had transferred the funds to an account in his own name and they were moved on from there. And he didn't think he was entitled to any compensation.

Mr M has asked for his complaint to be reviewed by an Ombudsman arguing that Barclays ought to have frozen his account.

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 M 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.

The Contingent Reimbursement Model ("CRM") Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Mr M says he's fallen victim to, in all but a limited number of circumstances. But the CRM code wouldn't apply to these payments because Mr M was paying an account in his own name.

I've thought about whether Barclays could have done more to recover the debit card payment when he 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. Barclays) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder (Mr M).

We would only expect Barclays to raise a chargeback if it was likely to be successful. Based on the available evidence it doesn't look like a claim that would have been successful. This is because Mr M didn't make a direct payment to the scam company, meaning Barclays would have only been able to raise a chargeback against the merchant he paid. But in order to do this, Mr M would have needed to provide evidence that the merchant misrepresented their services or the services were not provided and as he didn't have this evidence, Barclays would have been unable to proceed with a chargeback. So I'm satisfied the decision not to raise a chargeback request was fair.

I'm satisfied Mr M '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 his bank account, Mr M is presumed liable for the loss in the first instance.

There's no dispute that this was a scam, but although Mr M didn't intend his money to go to scammers, he did authorise the disputed payments. Barclays 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 Barclays could have done more to prevent the scam from occurring altogether. Barclays 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 M when he tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect Barclays to intervene with a view to protecting Mr M from financial harm due to fraud.

Barclays contacted Mr M to discuss a payment he was trying to make to a cryptocurrency exchange on 8 December 2022. On that occasion, the call handler tried to ask him some questions about the payment and he did confirm he was buying cryptocurrency. But he refused to give any further information about the payment insisting it was private and that he didn't have to answer. Critically, Mr M didn't disclose any information about the investment and the call handler was prevented from asking any probing questions. The call ended with the call handler refusing to approve the payment, telling Mr M he would have to attend the branch.

Mr M's representative said he had genuinely believed he was acting independently and that Barclays failed to ask any probing questions. But I've considered what happened during this call and I'm satisfied he was asked relevant questions and that Mr M's refusal to engage meant the call handler was prevented from identifying that the payments were being made to a scam. This also meant the call handler was prevented from giving a tailored warning or providing advice on additional due diligence. In the circumstances I think the call handler was right to refuse to approve the payment and that there was nothing else he could have done to protect Mr M in the circumstances.

I've considered whether Barclays ought to have intervened before 8 December 2022 and I'm satisfied the first two payments were very low value and so even though Mr M was paying

new payees, there would have been no cause for concern. The rest of the payments were to Mr M's account with W, but he'd never paid the account before and some of the larger payments were unusually high, so I think there were earlier opportunities to intervene, in particular on 23 November 2022 and 2 December 2022.

However, based on what took place during the call on 8 December 2022, if Barclays had intervened sooner, I don't think Mr M would have disclosed that he intended to buy cryptocurrency. And as he was transferring money to an account in his own name, there would have been no reason to suspect he was being scammed or to provide a tailored scam warning. So, while I accept Barclays might reasonably have intervened sooner, I don't think it could have prevented his loss and so I can't fairly ask it to do anything to resolve this complaint.

Finally, I've considered whether Barclays ought to have intervened again after 8 December 2022, having blocked a payment to a cryptocurrency exchange. But by the time Mr M made the final three payments to W, it was an established payee that he'd been paying for several weeks. It was an account in his own name, there was nothing to suggest it was linked to the failed attempt to pay a cryptocurrency merchant and the final payments were lower than the transfers he'd already made to the account. So I don't think Barclays missed any later opportunities to intervene.

Compensation

Mr M isn't entitled to any compensation.

Recovery

I don't think there was a realistic prospect of a successful recovery because Mr M paid an account in his own name and moved the funds onwards from there.

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

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 M to accept or reject my decision before 24 April 2024.

Carolyn Bonnell
Ombudsman