

The complaint

Mr K complains that Barclays Bank UK PLC (“Barclays”) won’t refund money he lost when he fell victim to an investment scam in May 2020.

Mr K is being represented by solicitors in his complaint.

What happened

The detailed background to this complaint is well known to the parties and has been previously set out by the investigator. The facts about what happened aren’t in dispute. So, I’ll focus on giving my reasons for my decision.

The complaint concerns several transactions totalling around £63,000 which Mr K made using his Barclays debit card in May 2020 in connection with an investment opportunity provided by a forex and contracts for difference (CFD) broker, “R”.

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 agree with the investigator’s conclusions for the following reasons –

- Not every complaint referred to us and categorised as an investment scam is in fact a scam. Some cases simply involve high-risk investments that resulted in disappointing returns or losses. Certain high-risk investment traders may have promoted these products using sales methods that were arguably unethical and/or misleading. However, whilst customers who lost out may understandably regard such acts or omissions as fraudulent, they don’t necessarily meet the high legal threshold or burden of proof for fraud, i.e., dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself, or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).
- I’ve paid particular attention to the official organisations that publish warnings about merchants that operate in the UK and abroad. I’ve searched the Investor Alerts Portal of the International Organization of Securities Commissions (“IOSCO”), the international body that brings together the world’s securities regulators. And the Financial Conduct Authority (as the UK financial services regulator) also has its own warning list, which is in place to share alerts and insight about merchants that have been identified as potentially being fraudulent or unauthorised. I can’t see any warnings being published about R prior to or since Mr K’s payments. What I can see is that at the time of the payments, R was regulated in another country and had passporting rights to offer financial services to UK customers.
- I understand that in 2022 R reached a settlement agreement with its regulator following concerns about possible regulatory compliance violation between July 2020 and October 2021. But this in and of itself doesn’t mean that R was set up with the

specific purpose of defrauding its clients. And the possible breaches being investigated occurred after Mr K's payments. That R subsequently renounced its authorisation in that country, and its passporting rights to offer financial services in the UK also came to an end in 2022 isn't conclusive evidence that it operated a scam.

- Banks and other Payment Services Providers have duties to protect customers against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering. But when simply executing authorised payments, they don't have to protect customers against the risk of bad bargains or give investment advice. As I'm not persuaded that Mr K fell victim to a scam, I don't consider Barclays acted unreasonably or unfairly in executing his authorised instructions.
- I would add, if only for the sake of completeness, that even if Barclays had intervened at the time of the payments and told Mr K about the due diligence he could carry out, he simply would have discovered that R was regulated in another country and had passporting rights to offer financial services to UK customers. I'm not persuaded anything about that would indicate to either the bank or Mr K that he was investing into a scam.

In summary, I realise that Mr K will likely be disappointed with my findings. But for the reasons given, I don't find that Barclays has acted unfairly or unreasonably. So, I won't be making an award against it.

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 Mr K to accept or reject my decision before 15 November 2024.

Gagandeep Singh
Ombudsman