

## **The complaint**

D complains that Barclays Bank UK PLC didn't do enough to protect them when they were the victims of a scam.

D is being supported by a representative but for ease, I'll refer to D throughout this decision.

## **What happened**

The background to this complaint is well known to both parties and so I'll only refer to some key events here.

In 2021 a business associate (who I'll refer to here as 'S') offered D help in obtaining funds for a property investment opportunity. D was told that for a payment of £125,000 for an investment bond, they would receive a loan for £1,025,000.

D contacted Barclays on 27 June 2021 to ask about insurance for the payment. On 28 June 2021 D made an in branch international transfer for £125,000 to a company who I'll refer to here as 'M'. Before the payment was made, Barclays spoke to D about the possible risks involved.

When the loan funds weren't forthcoming, D suspected they'd been scammed and on 12 January 2022 D contacted Barclays about their loss. It attempted recovery but no funds remained.

D complained to Barclays, but it didn't uphold their complaint. It said there was no evidence they'd been the victims of a scam, and that it had spoken to D about the payment before processing it and recommended they get advice before proceeding.

D referred their complaint to the Financial Ombudsman. They said Barclays hadn't done enough to protect them and prevent their loss.

One of our Investigators considered the complaint but didn't uphold it. In short, she recognised that D and Barclays had spoken about the payment before it was processed. And based on that, she didn't think there was any reasonable basis for Barclays to have prevented the payment or to have had any concerns about its legitimacy.

D didn't agree, and so the case has been passed to me to decide.

D had concerns about the level of interaction in branch before the £125,000 payment was made and thought this was insufficient for the risk involved. D said Barclays didn't ask open and probing questions about the payment; nor did it refer them to the fraud team. Had it done so, they thought the scam would've been uncovered and their loss prevented. D also disputed that Barclays had provided warnings about the payment or questioned them about it. They said they were only asked to complete a form.

D maintained that Barclays' intervention had been disproportionate to the risks associated with a high value international payment to a new payee. They said Barclays should've

invoked the banking protocol – at which point D would've been open and honest about the nature of the payment and it would've come to light that they were the victims of an advance fee scam.

### **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 conclusions reached by the Investigator, and for largely the same reasons. I'll explain why.

But first, I'd like to say at the outset that I have summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there is a submission I've not addressed; it isn't because I've ignored the point. It's simply because my findings focus on what I consider to be the central issues in this complaint – that being whether Barclays could've reasonably prevented D's loss.

I should also add that where the evidence is incomplete, inconclusive, or contradictory, I must make my decision on the balance of probabilities – that is, what I consider is more likely than not to have happened in the light of the available evidence and the wider surrounding circumstances.

As a starting point, D doesn't dispute that the payment was made in line with their instructions to Barclays. In broad terms, the starting position in law is that a bank such as Barclays is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

However, I consider that as a matter of good industry practice at the time (and now) that Barclays ought to have taken steps to intervene prior to processing a payment instruction where it had grounds to suspect a payment might be connected to fraud or a scam.

The question then arises whether Barclays ought reasonably to have held such suspicions or concerns in relation to D's payment — and if so, what might have been expected from a proportionate intervention.

So, taking all of this into account, I need to decide if Barclays acted fairly and reasonably in its dealings with D when they made the payment. Specifically, whether it should've done more than it did before processing the payment – and if it had, would that have made a difference. I also need to decide if Barclays could've reasonably recovered the lost funds.

I don't dispute that D has lost a considerable amount on money. But whether D were the victims of a scam, or a failed investment as Barclays has suggested, is a difficult point to resolve conclusively in cases like this.

However, for the purpose of this decision I don't need to make a finding on that point. Instead, I'm focusing on whether action by Barclays *could've* prevented D's loss based on the information available at the time they made the payment.

Where there is interaction between a bank and its customer about a particular payment, we'd expect the bank to take that opportunity to find out more about the purpose of that payment.

Barclays spoke to D over the phone on 27 June 2021; and whilst in branch when D instructed the payment. So, the first issue for me to consider is whether that intervention went far enough.

I've listened to the telephone call between D and Barclays made on 27 June 2021. D explains that they are wanting to make a transfer to a 'new client' outside the UK and asks whether the funds would be covered by any insurance policy. Barclays confirmed that wouldn't be the case and asked D if they had any concerns about the payment. D said it was to secure a loan and was going to the United Arab Emirates (UAE). D said that an **'intermediary'** had assured them that the funds would be returned if the loan wasn't forthcoming.

Barclays asked D if they had concerns this was a scam. D said no it's not a scam – and the **'intermediary is a bona fide company based in the UK'** but the payment was going through a bank in the UAE which they were unfamiliar with. And so, they wanted to insure the funds in the event the loan was not forthcoming or the intermediary doesn't return them.

Barclays told D they should carry out due diligence before making the payment and get legal advice on the contractual obligations in securing the loan.

On 28 June 2021 – the day the payment was made in branch – Barclays' notes suggest there was a telephone call with the fraud team, which it says was likely made from within the branch. Unfortunately, a recording of that call isn't available. There is also the following note:

***'international payment made to UAE to an insurance broker, customer has received the details from a trusted employee of this company ... scam convo had and happy to proceed'.***

I've also been provided with the payment confirmation produced when the payment was made in branch, which could likely be the form D recalled completing.

This was a large international payment to a new payee and it's evident from both the telephone call on 27 June 2021 and the branch notes from 28 June 2021 that there were some scam warnings given to D. The telephone call also suggests to me that D had some concern over the risks of making such a large payment - and was looking to mitigate that in some way.

Barclays did suggest to D that they get advice before making the payment, and the branch notes indicate a conversation was had around the purpose of the payment; although I appreciate the notes are vague and incorrectly refer to 'S' as an employee, which I understand wasn't the case.

So overall, whilst I don't think Barclays' intervention about the £125,000 payment was wholly unreasonable or disproportionate, based on the information available, I accept D's point that Barclays could've asked more questions about the payment and probed more deeply. And had it done so, I have no reason to believe that D wouldn't have been honest with Barclays and provided all the necessary information.

But whilst there may now be significant concerns about the operation of 'M' - and the intentions of 'S' - I must consider what Barclays could reasonably have established from its interactions with D about the payment at the time. And I cannot apply the benefit of hindsight to this finding.

For me to find it fair and reasonable that Barclays should refund the payment to D, requires more than a finding that it should've done more to intervene when the payment was made.

A legitimate payment, particularly from a business account, could equally have been for a larger than usual sum and to a new payee. These factors need not necessarily mean a payment will result in loss to fraud or a scam.

I would need to find not only that Barclays should've intervened where it ought reasonably to have done so — but crucially, I'd need to find that but for this failure the subsequent loss would've been avoided.

That latter element concerns causation. A proportionate intervention will not always result in the prevention of a payment. And if I find it more likely than not that such a proportionate intervention by Barclays wouldn't have revealed the payment was part of a fraud or scam, then I couldn't fairly hold it liable for not having prevented it from being made.

I've thought very carefully about this point and taken account of all the wider surrounding circumstances to decide, on balance, what is most likely to have happened if Barclays had delved more deeply into the reason for the payment. And on doing so, I'm not persuaded that this would've made a difference and prevented D's loss. I'll explain why.

Firstly, I've thought about D's connection to 'S'. During a phone call on 13 April 2023 to Barclays – D explains that they've known 'S' for five or six years as a friend (and a business associate) and that they met at a property investment course in 2016. D also explains that they'd done previous legitimate business deals with 'S' and that they trusted her.

D explained to Barclays that they told 'S' they were looking for finance to buy land in the UK and 'S' said they needed another person to put money towards an investment bond in return for a loan. D said they stayed in contact with 'S' after making the payment – but that she used stalling tactics to reassure them the loan would be paid. D said they lost contact with 'S' in January 2022 – at the point they thought they'd been scammed.

This all suggests to me that D had no reason to doubt that 'S's intentions weren't genuine. They worked in the same industry; and D had been looking for funds to buy land – in other words 'S' was perceived as offering to help D, rather than specifically targeting them for illegitimate purposes. This would've likely reassured Barclays that the payment was genuine. But even if Barclays had raised any concerns with D, I think it's more likely than not that D would've sought assurances from 'S' – who they clearly trusted.

Secondly, D has said it had no concerns about 'M' at the time the payment was made. They said it was an insurance bond company and had a legitimate looking website. I think it's also likely D would've told Barclays that they had documents and correspondence confirming the terms of the loan, and the involvement of 'M', which all appeared entirely genuine.

Thirdly, and of particular significance, D has said that it got a solicitor to look over the loan agreement and supporting documentation – which made specific reference to the £125,000 payment - *before* the payment was made. This would've undoubtably reassured Barclays (and D) that the loan was genuine.

All things considered, I don't think it would've been apparent to Barclays or to D in June 2021 that 'M' or 'S' were anything other than genuine. I say that because I'm not persuaded that Barclays or D could readily have uncovered information – during a proportionate interaction about the payment - that would've led to significant doubts about the legitimacy of the payment at that time.

All this suggests to me that it's more likely than not D would've proceeded with the transaction – *even if* Barclays had alerted them to the risks involved and the checks they

should make (or if it had invoked the banking protocol). I think it would've taken something more credible, like regulatory warnings about the legitimacy of 'M', or information in the public domain suggesting 'M' (or 'S') weren't genuine, to have concerned Barclays or made D pause and think more about their decision to proceed.

In summary, I've considered everything submitted and the arguments made, but while there may now be concerns about the legitimacy of 'M' and 'S', everything I've seen indicates that those concerns *only* began to surface once the loan funds weren't received. With that in mind, I'm not persuaded that Barclays was at fault for carrying out the relevant payment instruction, or for not preventing D from making their payment.

Finally, I'd expect Barclays to attempt recovery of the funds at the point it's alerted to the loss, and I've seen that this was done throughout January and February 2022. But more than six months had passed by the time D contacted Barclays and, unfortunately, no funds were recoverable. So, I can't say Barclays did anything wrong here.

I have a great deal of sympathy for D and the loss they've suffered. It's clear that this understandably continues to cause them a great deal of worry and distress.

But it would only be fair for me to direct Barclays to refund D's loss if I thought it was responsible – and I'm not persuaded that this was the case. And so, I'm not going to tell it to do anything further.

### **My final decision**

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision **before 12 June 2024**.

Anna Jackson  
**Ombudsman**