

The complaint

Mr C is unhappy that Barclays Bank UK PLC ("Barclays") has not refunded the money he lost after he fell victim to an investment scam.

What happened

I issued a provisional decision in early March 2024 to explain why I thought Mr C'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:

"Between August 2019 and January 2020, Mr C says he was involved in a scam. He was persuaded to send £13,086 from his Barclays account to someone who purported to be operating a business that sold tickets to high profile events but who now appears to be a scammer.

Mr C was introduced to the scammer by one of his friends who worked for the person in question. Mr C was told that there was an investment opportunity available with his friends employer that involved the bulk buying of tickets and then selling them on for a profit. Mr C was told by his friend that some of his family members had invested and received a good return. Mr C was persuaded, alongside others, to go to meet the scammer at a restaurant business he appeared to own. The investment was discussed and Mr C was told he would likely make around 100% returns on his investment which could be re-invested into future events. Mr C decided to go ahead and invest.

Mr C initially received regular correspondence on behalf of the scammer but this tapered off during the national Covid-19 lockdown and eventually all correspondence stopped. It was at this point that a number of victims reached out to each other and Mr C realised he had likely been the victim of a scam.

Mr C then contacted his bank, Barclays, for help. But this was around 12 months after he had made his last payment to the scammer. Barclays looked into what had happened to Mr C but it didn't offer him a refund of the funds he had lost. It said it had contacted the receiving bank, but it hadn't been able to retrieve any of Mr C's funds. And it went on to say that it would not look to assume liability for Mr C's loss as it didn't think he had done enough checks to satisfy himself that the investment was legitimate before going on to make payments to the scammer.

Unhappy with Barclays' response, Mr C brought his complaint to our service. An investigator looked into things but they didn't uphold the complaint. He said he there wasn't enough evidence to say Mr C had been the victim of a scam and this was more likely a genuine investment that had gone wrong.

Mr C disagreed. He provided further information to show that the scammer had been

involved with similar scams previously and that the police were now involved. He also pointed out that he had a friend who had fallen victim to the same scam who had received a full refund from Barclays.

As an agreement could not be reached, the case was passed to me for a decision.

Having reviewed all of the evidence available to me at the time, I wrote to Mr C, who by this stage was being represented by a family member, to clarify some of the incoming payments into his account that took place before the payments went out to the scammer.

I have detailed the payments made to the scammer in the table below alongside any payments into Mr C's account that were used to facilitate the payments out. I've also included a brief description of what Mr C said the incoming payments were for. Payments to the scammer have been highlighted in bold:

| Date | Payment type | Amount | Reason |
|-------------------|-----------------------|---------------|-------------------------------------|
| 13/08/2019 | Outgoing debit | £2,000 | Payment to scammer |
| 13/08/2019 | Outgoing debit | £200 | Payment to scammer |
| 13/08/2019 | Outgoing debit | £800 | Payment to scammer |
| 14/08/2019 | Incoming credit | £1,500 | Payment from Person A for jewellery |
| 14/08/2019 | Outgoing debit | £1,500 | Payment to scammer |
| 19/11/2019 | Incoming credit | £2,000 | Payment from Person B for Jewellery |
| | Reference "gift" | | |
| 19/11/2019 | Incoming credit | £2,000 | Gift payment from Person C |
| 19/11/2019 | Outgoing debit | £6,786 | Payment to scammer |
| 29/11/2019 | Outgoing debit | £800 | Payment to scammer |
| 03/01/2020 | Incoming cash credit | £900 | Payment in branch |
| 03/01/2020 | Outgoing debit | £1,000 | Payment to scammer |

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 say this complaint should be partially upheld - subject to further information being provided. I'll explain why in more detail below:

Has Mr C been the victim of a scam?

Barclays doesn't appear to dispute that Mr C has been the victim of a scam and I am inclined to agree.

There are a number of people who have fallen victim to the same scam and I understand that there is an ongoing Police investigation. Overall, I think there's enough evidence to suggest, on the balance of probabilities, that the person Mr C was dealing with was operating a Ponzi scheme or the suchlike. Having reviewed all the relevant information, I'm satisfied this was a scam and Mr C's circumstances can therefore be considered under the CRM Code.

The CRM Code

When thinking about what is fair and reasonable in this case, I've considered the Lending Standards Board's voluntary Contingent Reimbursement Model (the CRM Code) which Barclays is a signatory of.

There's no dispute that Mr C was tricked into making the payments. But this isn't enough for him to receive a full refund of the money he lost under the CRM Code. The Code places a level of care on Mr C too.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that:*

- *The customer ignored what the CRM Code refers to as an "Effective Warning" by failing to take appropriate action in response to such an effective warning*
- *The customer made payments without having a reasonable basis for believing that:*
 - *the payee was the person the Customer was expecting to pay;*
 - *the payment was for genuine goods or services; and/or*
 - *the person or business with whom they transacted was legitimate*
- *The customer has been grossly negligent*

**Further exceptions are outlined in the CRM Code but do not apply to this case.*

Did Mr C have a reasonable basis to believe he was making legitimate payments?

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

I don't think he had a reasonable basis for believing the payments were for a genuine investment or that the person he transacted with was legitimate. This means that Mr C isn't entitled to a full refund of his loss under the CRM Code now. I'll explain why I have reached this conclusion in more detail below:

- *Mr C appears to have been persuaded to become involved in the investment following a conversation with the scammer in a fast-food restaurant that the scammer said he owned – this is not the usual way people are approached to discuss high value investments and the business in question doesn't appear to have anything to do with what Mr C thought he was investing in.*
- *The investment Mr C was offered did not sound genuine and the rate of return he was offered and the timescale to receive this rate of return was too good to be true. It appears that Mr C was essentially offered a guaranteed return on his initial investment with the average rate of return being 100% or more over a four-month period. This rate of return and timescale was unrealistic and so Mr C ought*

reasonably to have had significant concern about the legitimacy of the investment opportunity he had been presented with. And it does appear that Mr C did have concerns at the time. In a text message conversation between Mr C and one his friends, when discussing the investment, Mr C says:

"I'm embarrassed. I knew it was too good to be true in the first place. Everyone told me not to do it."

This suggests to me that Mr C knew at the time of making the payments that what he was being told was too good to be true but he proceeded to make the payments regardless.

Overall, I'm satisfied that the implausible rate of return ought to have led to a greater degree of checking on Mr C's part but it doesn't appear that he carried out any checks on the person he was dealing with or the company he was supposedly investing in other than listening to the opinion of his friend. In the same text message conversation I have referred to above, Mr C also says he should've carried out more checks on the company before making the payments. But it doesn't appear that Mr C checked whether the company was legitimate or that he sought any independent financial advice.

So, whilst I acknowledge the situation is finely balanced and that Mr C was ultimately convinced to invest following a recommendation from a trusted friend and after he was able to meet the scammer face to face, I'm not persuaded Mr C's actions and assessment of the situation can be considered to be reasonable here to the point that it would be fair and reasonable for Barclays to offer him a full refund under the terms of the CRM code – especially given the sums involved. And weighing everything up, I think it should have been evident to Mr C that there was a considerable degree of risk associated with this investment at the time. I don't think it's unreasonable for Barclays to have found that Mr C's actions fell below the level of care expected of him in this situation.

However, even though I don't think Mr C had a reasonable basis for believing the investment was legitimate when he made the transfers, he may still be entitled to a partial refund if Barclays didn't meet its obligations under the CRM Code either.

Did Barclays need to provide Mr C with an effective warning/warnings?

The CRM Code sets out standards for firms – that is, what firms are expected to do to protect customers from the risk of fraud and scams. Where those standards are not met, the firm may be expected to compensate its customer. 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.

In this particular case, I'm not persuaded that the first four payments sent to the scammer were out of the ordinary and so I don't think Barclays ought to have identified a scam risk here to the point it needed to provide Mr C with an effective scam warning. The amounts sent weren't particularly large and I'm not persuaded that there was anything inherently suspicious about them at the time either. They appeared to be genuinely authorised payments and there was no reason why they wouldn't have seemed genuine. However, I do consider Barclays should have provided Mr C with an effective warning when the fifth payment of £6,786 was made and as far as I am aware, no warning was given.

Increasing payments like this are a common feature of investment scams like this one and this payment was of unusually high value when compared to previous payments that had left Mr C's account.

Because I don't believe Barclays provided Mr C with an effective warning when it should've done, my starting position here would be to recommend that Barclays should refund 50% of the last three payments Mr C made (for £6,786, £800 and £900) if I was satisfied that these transfers were made up of Mr C's own funds. But at the moment, I'm not persuaded that this is the case here. I'll explain why.

Source of funds

As detailed in the table above, the payments Mr C made to the scammers account on 19 November 2019 and 3 January 2020 were funded by large payments into his account.

I questioned Mr C about these incoming payments, and he told me, via his representative, that one of the incoming £2,000 payments on 19 November 2019 was in relation to the sale of some jewellery and the other was a gift from his grandfather. Mr C also confirmed that the £900 cash paid into the account was from a series of funds he'd been able to pull together to further facilitate his investment payments.

It is important for me to clarify these incoming payments as in his submissions, Mr C included a text message conversation between him and his friend discussing the fact that he hadn't heard from the scammer and how much they'd invested. During this conversation, Mr C says:

"Nothing yet mate, got the email saying we would hear back the next day but heard nothing yet lol lv got like 15k on Madonna Paris alone, not all my money either so people are asking me where there money is as well"

This message suggested to me that some of the funds sent from/invested from Mr C's account belonged to other people who are now contacting him for an update. This assumption also appeared to be supported by the large incoming payments into his account. And this is important because Mr C cannot claim back funds that weren't his to begin with, such as if he was investing money for others on their behalf. And he can't claim back money on their behalf now either without their consent, even if it was sent from his account. When I questioned Mr C about what he meant by the above statement, Mr C told me that all the money invested from his account was his and that he had been referring to others who had invested in the same scam talking to each other.

I've thought carefully about what Mr C has told me about the payments coming into the account and his explanation as to the text message conversation and I'm not persuaded that I can safely conclude that Mr C is entitled to the whole amount being claimed as part of this complaint. Whilst I am satisfied that has been able to provide me with a reasonable explanation as to one of the £2,000 payments (a gift from his grandfather) and the £900 cash payment in, he hasn't provided me with any evidence to support that the other £2,000 payment was in relation to a jewellery sale and this explanation seems to be at odds with the text message from around the time and the reference included for the payment too.

I'm also not persuaded that the text message between him and his friend can be read as others talking about their investments. The message reads that Mr C has invested £15,000 and not all of this is his money and that people are asking him where their money is. So, as it stands, I'm not persuaded that it would be fair and reasonable for me to recommend that Barclays should refund 50% of these payments now.

Based on Mr C's account activity it appears that:

- the payment of £6,786 on 19 November was facilitated by a £2,000 unsubstantiated payment into the account. Therefore, I can only safely conclude that Mr C would be entitled to 50% of the amount remaining amount once this £2,000 has been deducted from any redress now due - £2,393*
- Mr C would be due 50% of the £800 payment made on 29 November - £400*
- Mr C would be due 50% of the £1,000 payment made on 3 January - £500.*

When Mr C made the above payments, Barclays should fairly and reasonably have had systems in place to look out for unusual transactions or other signs that might indicate that he was at risk of fraud (among other things). As I consider the £6,786 payment was unusual and out of character for the reasons set out above. I'm satisfied that had Barclays intervened when Mr C made the £6,786 payment as I think it should have (for the reasons set out above) the scam would have been uncovered. Mr C had been promised an implausible rate of return, it was unclear how this investment could produce such high rates of return and Mr C had not withdrawn any actual funds. All of these factors would have been red flags for Barclays. Given that Barclays could have prevented the loss, interest should be paid at a rate of 8% simple on the above funds from the date of loss to the date of settlement.

I'm satisfied Barclays contacted the bank that received Mr C's funds within a reasonable time after the scam was reported but no funds remained.

If, in response to this provisional decision, Mr C can provide any evidence to support that the additional £2,000 payment made on 19 November 2029 relates to the sale of jewellery, I will reconsider the redress aspect of this complaint and the amounts recommended above. But as it stands, I don't think I can conclude that the total amount transferred to the scammer from the fifth payments onwards all belonged to Mr C.

Finally, I want to acknowledge Mr C's arguments that Barclays refunded his friend, who had fallen victim to the same scam, in full. I understand that Mr C's friend has given me permission to compare the two cases. I need to stress here that each case is assessed on its own merits and I am not satisfied that it would be fair and reasonable to recommend that Barclays refund Mr C in full based on the particular circumstances of his complaint as I've set out them out above."

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.

Barclays responded to my provisional decision to say it agreed with my findings.

Mr C responded, via his representative, and made the following additional points:

- Mr C said that him saying the investment opportunity was "too good to be true" was after the scam had come to light and with the benefit of hindsight. He said, at the time, he clearly thought the investment opportunity was legitimate otherwise he wouldn't have invested.
- The text message about other people's money was being misinterpreted. Mr C reiterated that he had only invested his own funds.

- Mr C maintained that he felt he had carried out sufficient research in relation to what was being offered and had been satisfied the investment was legitimate. He pointed out that the scammer was a professional conman and so had been very convincing at the time. Mr C also highlighted that there were social media posts about the scam that looked very convincing.
- Finally, Mr C pointed out that it would be difficult for him to obtain proof that the £2,000 payment paid into his account on 19 November 2019 was in relation to the sale of jewellery some years later. He said the sale had been an informal sale between two private individuals and he was now no longer in contact with the person in question and no receipts had been exchanged at the time.

I have taken on board what Mr C has said about his text message comments being said after the fact and with the benefit of hindsight and I don't doubt what he has told me. However, my findings as to whether Mr C had a reasonable basis for believing the scam was legitimate or not, were, in the main, informed by the rates of return on offer, rather than the text message itself. And whilst I have no doubt that Mr C believed what he was being told at the time, I need to consider whether this belief was reasonable and I'm still not persuaded that it was given the significant returns being put forward.

I have also thought carefully about what Mr C has said about the text message referencing other people's money. But I'm afraid that I cannot interpret the message in the way he is asking me to for the reasons I explained in my provisional decision. Furthermore, even if I were to put the text message to one side, Mr C's statement evidence shows me that the payments out to the scammer are being facilitated by large payments into the account by other people on the same day. And the incoming payment that Mr C has told me was in relation to the jewellery sale also has the reference "gift". Which doesn't support a sale of any kind either. And so, as Mr C hasn't been able to provide me with any further evidence in relation to this payment, I see no reason to alter the redress recommended in my provisional decision.

I've thought about what Mr C has said about the checks he carried out prior to making the investment payments. But as I said in my provisional decision, I haven't seen evidence of any checks that supported this was a legitimate investment - such as financial advice being sought or the FCA register being checked. I also haven't seen any evidence of a conversation with the bank either and I'm not persuaded that looking at information on social media is enough to satisfy someone of an investment's legitimacy. And I have to take all of this into account alongside a rate of return that was implausible. And so, this doesn't change my overall conclusion.

Finally, I want to say how sorry I am that Mr C has lost money and I can understand why he would like to be compensated in full for all his losses. There is no dispute that he has been the victim of a horrible scam. I am sorry to hear about what happened to him, but Mr C being the victim of a scam, doesn't automatically mean Barclays is liable for all of his losses now.

I realise my decision will be a significant disappointment to Mr C. However, despite my natural sympathy for the situation he finds himself in and the further arguments he has put forward, ultimately, I'm still satisfied that he should bear some responsibility the success of the scam and I see no reason to depart from the conclusions reached in my provisional decision now.

Putting things right

In order to put things right for Mr C, Barclays Bank UK Plc should therefore:

- Refund Mr C £2,393 in relation to the £6,786 payment made on 19 November 2019
- Refund Mr C 50% of the £800 payment made on 29 November 2019 - amounting to £400
- Refund Mr C 50% of the £1,000 payment made on 3 January 2020 - amounting to £500
- Pay interest on the above amounts 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 Mr C to accept or reject my decision before 23 April 2024.

Emly Hanley Hayes
Ombudsman