

## Complaint

Mr and Mrs B are unhappy that Barclays Bank UK PLC didn't refund their losses after they fell victim to a scam. Although these payments were made from a joint account, it was Mr B who interacted with the scammer and so I've generally referred to him in the text of this decision.

## Background

In May 2022, Mr B fell victim to an investment scam. He saw an advert promoting investment opportunities based around cryptocurrency. It suggested the investment was endorsed by a well-known public figure. I understand Mr B knew someone who had invested in cryptocurrency in the past and earned good returns and so this opportunity interested him.

He contacted the company promoting the investment. I'll refer to that company as K. I understand K had a seemingly professional looking website and Mr B found that they came across as credible when he spoke to them on the phone.

In order to trade, he was asked to set up an account with a third-party cryptocurrency exchange that I'll refer to as G. From there, he would be asked to transfer cryptocurrency to a wallet belonging to K and therefore putting that cryptocurrency under its control. Unfortunately, it wasn't a legitimate investment opportunity, but a scam.

He used his Barclays account to make the following payments:

	Date	Value
1	17-May-22	£50
2	18-May-22	£50
3	18-May-22	£1,000
4	19-May-22	£750
5	23-May-22	£300
6	25-May-22	£3,500
7	08-Jun-22	£2,000
8	13-Jun-22	£5,000
9	13-Jun-22	£1,000
10	13-Jun-22	£1,000
11	13-Jun-22	£4,000
12	14-Jun-22	£1,000
13	15-Jun-22	£1,000
14	15-Jun-22	£3,000
15	30-Jun-22	£11,350
16	05-Jul-22	£9,900
17	06-Jul-22	£5,000
18	06-Jul-22	£5,000
19	06-Jul-22	£200

20	08-Jul-22	£9,000
21	19-Jul-22	£7,000
22	22-Jul-22	£5,700
23	26-Jul-22	£13,000
24	08-Aug-22	£16,000
25	08-Aug-22	£2,200
26	08-Aug-22	£200
27	15-Aug-22	£12,500
28	19-Aug-22	£1,900
29	31-Aug-22	£7,000
30	01-Sep-22	£2,500

On 25 May, Barclays spoke to Mr B while carrying out fraud checks on payment 6. That conversation is important to the outcome here so I've reproduced the key sections of it below.

*Barclays: It's just regarding the transaction that was made on your account not long ago today. The payment was delayed as it was picked up on our monitoring system used to prevent scams and fraud, so we just wanted to make sure everything was ok. Have you made that payment yourself on the account?*

*Mr B: Yeah. I've transferred it from one of my non-Barclays accounts and then I'm transferring it on somewhere else.*

*Barclays: Ok, I just wanted to ask ... what was the payment for?*

*Mr B: The payment was to go into .... Just moving it around into different accounts to a company called [G]*

*Barclays: Ok, what is it? Is it a savings account or ...?*

*Mr B: It's a trading account that I have.*

*Barclays: And is that a crypto platform?*

*Mr B: It is.*

*Barclays: And the account details for the account which you're transferring to ... how is it that you've obtained the bank details for that account?*

*Mr B: I've set up an account with them and they give you a sort code and an account number.*

*Barclays: Ok, right. And I can see you've made some payments into the same account before - have they all come through?*

*Mr B: They have, yep, they have.*

*Barclays: What is it that you're investing in? Have you done your own research?*

*Mr B: I have. I'm also using another company as well just as a check to be perfectly honest and some I've put into other trading options as well.*

*Barclays: And are there any other third parties involved? Any financial advisors or brokers in terms of this payment to [G]?*

*Mr B: If I'm going to do a referral then I send it on from [G] to a company called [K] but they don't do anything with [G]. I move it on from [G], if you will*

*Barclays: So is that another platform that you're using?*

*Mr B: Yes ... I go straight from [G] to [K].*

*Barclays: And how long have you been using them for?*

*Mr B: About a month.*

*Barclays: Have you withdrawn any funds out of the account? Have you been able to take money out?*

*Mr B: Yes. From [G], it's gone back and forth just a few times to check it and from [K], I've done it back into [G].*

*Barclays: Have you done any research on them to ensure that you're not being scammed? Have you looked at the companies themselves? Have you done any research yourself?*

*Mr B: I have, and they seem to be very good. I've got a personal contact who's used them. And again, they seem sensible. For example, I know that the crypto market is a bit .... How can I put it? ... unstable at the moment. And that helps with the investment side if I buy low. I used to work for an investment bank if that helps. I understand there are risks associated with it.*

*Barclays: Has anyone else, I mean, asked you to download remote access on any of your accounts or any of your devices?*

*Mr B: No.*

*Barclays: Has anyone contacted you in terms of this or did you click on any links or advertisements or have you just gone through with this yourself?*

*Mr B: I've gone through this myself. There is an account manager I can ask questions of if I want to query things, I'm able to contact them directly.*

*Barclays: Ok, before I put the payment through I need to confirm that, once the transaction has been released, if it turns out to be a scam, there's no guarantee that we'll be able to recover your money. Can I confirm that you understand this?*

*Mr B: I do understand that, yes.*

*Barclays: Ok, do you need more time to research who you're paying or are you happy to continue?*

*Mr B: No, I'm happy to continue. I have made payments over there already. As I say, I've been able to go forwards and backwards to [G] and backwards from [G] to Barclays.*

*Barclays: Are you satisfied you've completed enough checks on the account that you're paying?*

*Mr B: Yeah ... I've actually asked [K] about them. A number of their clients use it. And I've asked people that I know who've used it.*

*Barclays: Ok, I'll pop the payment through for you - it should reach the account within two hours*

On 13 June, Barclays spoke to Mr B in connection with a £5,000 payment:

*Barclays: Now, I know you have made payments to this beneficiary before. It's [G], the exact same sort code and account number ... All the other payments, once we released them, they all arrived ok?*

*Mr B: They did, yep.*

*Barclays: This one's £5,000, is that right?*

*Mr B: Yes, that's correct.*

*Barclays: And from last time we spoke I believe that basically the main points are ... it's your own decision, there's nobody else involved with any advice, say, brokers or advisors, nobody has access to the funds on there, it's basically just a personal investment – does that all sound about right?*

*Mr B: Yes.*

Barclays spoke to Mr B again the same day in connection with a £4,000 payment:

*Barclays: Have you spoken to a broker or a third party at all?*

*Mr B: No*

*[...]*

*Barclays: Can I just ask – are you intending to transfer this to another exchange or another wallet outside of [G]?*

*Mr B: Well, no – because I want to explore the current dip in the crypto market*

On 19 July, similar checks were conducted on payment 21:

*Barclays: I can see you've got quite a few payments to [G] – would you say you're an experienced crypto investor?*

*Mr B: Yes, I am.*

*Barclays: How long have you been doing it for?*

*Mr B: Since May .... two and a half-ish months.*

*Barclays: Is it something that you're doing on your own?*

*Mr B: It is, yes.*

*Barclays: So, you haven't been approached by anyone who's telling you what to do or anything like that?*

Mr B: No.

Barclays: So, you set up the account yourself, are you the only one with access to the account?

Mr B: I am, yes

Barclays: And you haven't given remote access to anyone of your devices..?

Mr B: No.

[...]

Barclays: And you're not dealing with a broker or investment company?

Mr B: No.

Barclays: The majority of scam that we see involve someone who claims to be a broker or an investment company or they could just be someone who says they can help you ... what they'll do is they'll ask for access to your crypto account, whether that be your [G] account or any other platforms that you have and say that they'll invest for you through there or they'll get your money through access to that account or they'll ask you to send money to them directly to their account in order that they can invest for you ... what they'll say is, in a certain amount of time 'I've turned your initial £5,000 investment into fifty grand – in order to access that you have to pay me £10,000 up front. Does that sound like anything that's happening with yourself?

Mr B: No

Once Mr B realised that he'd fallen victim to a scam, he notified Barclays. It didn't agree to refund his losses. It said that, as he'd made payments to an account in his own name with G, it wasn't liable to pay him a refund. It said that he should raise a claim with the cryptocurrency platform itself. Barclays did, however, offer £400 in recognition of the distress and inconvenience caused by the way it had responded to his complaint.

Mr B wasn't happy with that response and so he referred his complaint to this service. It was looked at by an Investigator who upheld it in part. He thought that Barclays ought to have spotted the fraud risk and done more to protect Mr B. However, he also thought that Mr B should bear some responsibility for his own losses by way of contributory negligence.

Barclays disagreed with the Investigator's view and so the complaint has been passed to me to consider and come to 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.

I issued provisional findings on this complaint on 27 September 2024. I wrote:

*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 and the terms and conditions of the customer's account.*

*However, that isn't the end of the story. Good industry practice required that Barclays be on the lookout for account activity or payments that were unusual or out of character to the extent that they might indicate a fraud risk. On spotting such a payment, I'd expect it to take steps to warn its customer about proceeding. Where the risk is particularly clear, I'd expect it to make enquiries with the customer to satisfy itself that they weren't at risk of financial harm due to fraud.*

*In this instance, Barclays stepped in at the point Mr B tried to make payment 6. The Investigator thought this was an appropriate point to intervene and I'd agree with his conclusions on that point. I do have some concerns about the way this call was handled. While I accept Mr B gave the impression of being an individual who had done his own research and knew what he was doing, some of the things he said during this call were clear indicators that there was a significant fraud risk.*

*He told the call handler that he intended to make payments to G, a legitimate cryptocurrency exchange, and that he would be using his funds to buy cryptocurrency. However, he also made it clear that he would then be transferring those assets on to K in the belief that K would be managing the investment for him. I accept that in the later calls, Mr B told Barclays that there was no third party involved. But in the call on 25 May, he was clear that there was.*

*In view of the information that Mr B volunteered during this call, I don't think there was any realistic prospect that this proposal was anything other than a scam. I think the call handler needed to warn him that investments under which customers transfer cryptocurrency into the hands of third parties are invariably scams. That didn't happen here. I'm satisfied that, if it had done so, it would've prevented Mr B from going ahead with the subsequent payments.*

*I've also considered whether Mr B can fairly be considered partially responsible for his own losses. In doing so, I've taken into account what the law says about contributory negligence while keeping in mind that I must decide this complaint based on what I consider to be fair and reasonable in all the circumstances. The Investigator concluded that, by the time Mr B attempted payment 15, he had sufficient doubts about what he was being asked to do by K that he shouldn't have proceeded with those payments. For that reason, the Investigator said that Barclays should be entitled to make a 50% deduction from any compensation payable from that point on.*

*However, I'm concerned that in the two calls Mr B had with Barclays on 13 June, he was asked again whether there was a third party involved and he answered in the negative. This was in contrast to the information he shared in the call on 25 May. It's not entirely clear to me why he wasn't honest with the bank in those two calls (nor in the call on 19 July). Barclays didn't pick up on the significance of third-party involvement on 25 May, but by withholding that information in the subsequent calls, it meant there wasn't any chance it could do so in the later calls.*

*Mr B hasn't been able to explain why he answered the bank's questions as he did, although he has speculated that he might have been distracted by expecting a phone call from someone else. In any event, I think it was careless of him to have answered the questions in the way that he did. I can't, fairly and reasonably, disregard it when weighing up the extent to which he was responsible for his own losses here. Overall, I think the point at which he can be said to be partially responsible for his own losses was that first phone call on 13 June. I therefore find it fair and reasonable for Barclays to apply a 50% deduction from payment 8 onwards, rather than 15.*

### *Other issues*

*Before the payments set out in the table above, I understand Mr B made a payment to G using his Barclays credit card. This wouldn't be recoverable under the chargeback rules or in reliance on s75 Consumer Credit Act 1974. In essence, that payment was made to G, rather than the scammer, and Mr B's contract with G was to facilitate the conversion of fiat currency into cryptocurrency. That is what happened here. Even though that cryptocurrency was subsequently lost to the fraudster, G can't be said to have not performed its agreement with Mr B and so either of these claims would be certain to fail.*

*Finally, the way Barclays responded to Mr B's complaint clearly caused him some distress and inconvenience. By its own admission, it should've handled things better here. However, I can see that it has offered to pay him £400 in recognition of that and I think that's a fair sum in the circumstances.*

*I don't say any of this to downplay or diminish the fact that Mr B 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. Nonetheless, I'm satisfied this is a fair way of resolving this complaint.*

Mr B responded to say that he was willing to accept my findings. Barclays didn't respond before the deadline. In the absence of any further submissions from Barclays, I don't see any reason to depart from those findings. I'm therefore upholding this complaint for the reasons outlined in the provisional decision.

### **Final decision**

For the reasons I've explained, I uphold this complaint. If Mr and Mrs B accept my final decision, Barclays Bank UK PLC need to:

- Refund 100% of payments 6 and 7
- Refund 50% of payments 8 to 30
- Add 8% simple interest per annum to those sums calculated to run from the dates they left his account until the date any refund is paid.
- Pay £400 in distress and inconvenience (if it hasn't already been paid).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 28 October 2024.

James Kimmitt  
**Ombudsman**