

## The complaint

Mrs E complains that Barclays UK PLC didn't protect her from an investment scam.

Mrs E is being supported in making her complaint by a representative. But for ease, I'll only refer to Mrs E in this decision.

## What happened

Mrs E says that in 2018 she took redundancy from work and wanted to invest her pay out to settle her mortgage. She says she was introduced by *'an acquaintance of a friend'* to an investment, with a firm I'll refer to her as 'H', in relation to forex trading on the stock market. Mrs E says she was told by the acquaintance that the investment yielded *'huge returns'*.

Mrs E says she was then contacted by telephone by a senior representative of 'H'. She says she was told 'H' had been in business for several years and that its clients achieved significantly higher returns than *'normal'* investments. Mrs E says she was promised a return of between 5% and 10% a month.

Mrs E says she checked 'H' on Companies House and found it to be a listed company. She says she did query with 'H' why she was making a payment to an offshore account - but was assured this was for tax reasons.

Mrs E says the representative of 'H' then introduced her to another company (which I'll refer to here as 'G') to facilitate the payment towards the investment with 'H' and the distribution of the returns. Mrs E says the representative from 'H' told her 'G' was:

*'a bank that deals with [H's] client investment returns and that it was all above board and legal'.*

Mrs E says she carried out no checks herself into the legitimacy of 'G'.

Mrs E decided to invest and says she completed the necessary application forms and received a loan agreement from 'H' dated 21 November 2018. She then made the following online payment:

Date	Amount
29/11/2018	£50,000

Mrs E says the payment wasn't flagged by Barclays and that no warnings were provided to her, or questions asked about the payment purpose.

Mrs E was in contact with 'G' between 6 and 17 December 2018 about the payment not being correctly processed due to an admin error. Mrs E spoke to Barclays about this on 11 and 12 December 2018.

'G' confirmed to Mrs E that the funds had been credited to her account and she got a receipt for the £50,000 payment from 'H' on 17 December 2018.

'H' went into liquidation in June 2019 and allegations that 'H' was operating as a scam came to light during the liquidation process which included a court hearing in 2020. Mrs E has been unable to recover any of her funds.

Mrs E raised a fraud claim in October 2022, but Barclays didn't issue a response.

On 28 September 2023 Mrs E made a complaint to Barclays. In short, she said he'd been the victim of a scam and that Barclays hadn't done enough to protect her. Mrs E therefore held Barclays responsible for her loss. She wanted it to refund her the £50,000 together with 8% interest, as well compensation of £1,000 for the distress and inconvenience caused.

Barclays replied to say it had done nothing wrong. Essentially, it said it had spoken to Mrs E about the payment and she'd confirmed it to be genuine. It believed this to be a civil dispute.

Barclays did accept it hadn't replied to Mrs E when she first raised the dispute in 2022 – and offered her £100 by way of an apology.

Mrs E referred her complaint to the Financial Ombudsman. In summary, she said Barclays should've had concerns about the £50,000 payment, particularly as she'd recently had a large credit into her account. She thinks a warning by Barclays about the risks of her investment would've prevented her loss.

One of our Investigators considered the complaint but didn't uphold it. He found that it was likely Mrs E had been the victim of an investment scam and said the evidence suggested that Barclays had questioned Mrs E about the £50,000 payment before processing it, which she confirmed to be genuine.

But given the information available about 'H' at the time, our Investigator thought any further probing by Barclays before processing the payment was unlikely to have prevented Mrs E's loss. Our Investigator was also satisfied that Barclays had done all it could to try and recover the lost funds.

Mrs E didn't agree. In short, she said Barclays *hadn't* blocked the £50,000 payment nor questioned her about it. She said she only spoke to Barclays when it was identified there'd been a mistake on the payee details – at which point Barclays didn't question her about the legitimacy of the transfer. She said Barclays should've uncovered that 'H' was unregulated and warned her as such.

I've been asked to review everything afresh and reach a final decision.

### **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 decided not to uphold this complaint. I know this is not the answer Mrs E was hoping for and so this will come as a disappointment. I'm really sorry to hear about the situation she's found herself in, and I can understand why she'd want to do all she can to recover the money she lost. But I need to decide whether Barclays can fairly and reasonably be held responsible for Mrs E's loss. Overall, I've decided that it can't be. I'll explain why.

But first, I'd like to say at the outset that I've considered this case on its own merits and have summarised it in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. 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 prevented Mrs E's loss.

I accept the £50,000 transaction Mrs E made was an authorised payment. So, Mrs E is presumed liable for the loss in the first instance.

However, I consider that as a matter of good industry practice at the time (and now) that a bank, such as 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 a fraud or a scam. Any such intervention should've been in proportion to the level of risk perceived.

The question then arises whether Barclays ought reasonably to have held such suspicions or concerns in relation to Mrs E's £50,000 payment — and if so, what might've 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 Mrs E when she made the £50,000 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.

Whilst there is some dispute between Mrs E and Barclays as to the level of interaction between them before the payment was made; I don't think there is any disagreement here that the £50,000 payment was out of character for Mrs E — and posed an increased level of risk. Indeed, Barclays has confirmed that the payment was flagged as suspicious and referred for further checks. And contrary to Mrs E's recollection, I've seen evidence that she did speak to Barclays about the payment before it was processed (although the full call recording is unfortunately unavailable).

Further to that, where there is an interaction between a customer and a bank before a payment is processed, I'd expect the bank to take reasonable steps to understand the circumstances of that payment.

But for me to find it fair and reasonable that Barclays should refund the payment to Mrs E requires more than a finding that Barclays ought to have intervened.

I would need to find not only that Barclays failed to intervene 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.

In thinking about this, I've considered what a proportionate intervention by Barclays at the relevant time would've constituted, and then, what I think the result of such an intervention would most likely have been.

To reiterate, Barclays' primary obligation was to carry out Mrs E's instruction without delay. It wasn't to concern itself with the wisdom or risks of her payment decision.

In particular, Barclays didn't have any specific obligation to step in when it received a payment instruction to protect its customers from potentially risky unregulated investments. The investment in 'H' wasn't an investment Barclays was recommending or even endorsing.

Barclays' role here was to make the payment that Mrs E had told it to make. Mrs E had already decided on that investment. And I find that Barclays couldn't have considered the suitability or unsuitability of a third-party investment product without itself assessing Mrs E's circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request from Mrs E (which there was not here) would've gone far beyond the scope of what I could reasonably expect of Barclays in any proportionate response to a correctly authorised payment instruction from its customers.

That said, I think it would've been proportionate here for Barclays, as a matter of good industry practice, to have taken reasonable steps to establish more information about this payment when it spoke to Mrs E. What matters here is what those steps might be expected to have uncovered at the time.

While there may now be significant concerns about the operation of 'H', and the legitimacy of the investment, I must consider what Barclays could reasonably have established during a

proportionate enquiry to Mrs E about her payment back in November 2018. I cannot apply the benefit of hindsight to this finding.

Both 'H' and 'G' were genuine companies and there was no negative information about 'H' in the public domain until *after* it went into liquidation (June 2019). Having carefully reviewed all the material Mrs E has provided about 'H' and 'G', it appears that allegations that 'H' was operating as a scam *only* came to light during the liquidation process which included the court hearing in 2020. As such, this correspondence or information couldn't have been accessed by either Barclays or Mrs E at the time the £50,000 payment was made.

I think it's also likely Mrs E would've told Barclays that she'd checked 'H's details on Companies House and that she had a loan agreement from 'H' which appeared entirely genuine. And that she'd spoken about the investment with her acquaintance and a representative of 'H' who assured her of the high level of returns and answered her questions around the involvement of 'G'.

The evidence I've seen also suggests a sense of urgency on Mrs E's part to make the payment to maximize the investment potential. When talking to Barclays on 29 November 2018 – Mrs E says the payment must be made by a certain time. And when this doesn't happen, Mrs E makes a complaint to Barclays about the impact the delayed payment has had on her investment. This all suggests to me, on balance, that Mrs E was unlikely to have paused and carried out further checks before making the £50,000 payment, even if Barclays had advised her to do so.

In summary, I've considered everything submitted and the arguments made, but while there may now be concerns about the legitimacy of 'H', everything I've seen indicates that these concerns only began to surface in the public domain after the relevant payment was made by Mrs E. And even if Barclays had advised Mrs E to make further checks into 'H' or 'G', I think her keenness for the payment to be processed without further delay would've meant she'd have been unlikely to do so – but even if she had – she'd have been unlikely to have found anything of concern.

I can't therefore say, on balance, that any further probing by Barclays in November 2018 is likely to have prevented Mrs E's loss.

I've also considered how Mrs E found out about the investment. Her recollection is understandably a little vague given the passing of time, but it doesn't appear that Mrs E obtained advice from a regulated broker - instead speaking directly with a representative of 'H', and then with a representative of 'G' before deciding to invest. And she's said that she wasn't aware 'H' was unregulated until after the payment was made. But this type of unregulated investment could be entered into without obtaining regulated financial advice; and might be made available to clients without the advice of a regulated broker (as is what seems to have happened in Mrs E's case).

So, how Mrs E was introduced to the investment wasn't something that would necessarily have indicated 'H' was fraudulent (or that the unregulated investment was a scam) at the time Mrs E asked Barclays to make the payment.

All things considered; I don't think it would've been readily apparent in November 2018 that 'H' might be fraudulent rather than a higher risk investment. From the evidence I've seen, I simply don't think Barclays could readily have uncovered information – especially through proportionate enquiry of Mrs E in response to the £50,000 payment - that would've led to significant doubts about the legitimacy of 'H' at that point in time. Neither do I think Mrs E could've uncovered such information at the time – she'd done all she could to assure herself of 'H's legitimacy and wasn't at fault here.

In terms of trying to recover the lost funds; I'd expect Barclays to attempt this at the point it is first alerted to the loss (October 2022). But almost four years had passed by the time Mrs E contacted Barclays. Furthermore, 'H' had gone into liquidation by this point.

Therefore, I don't think Barclays had any reasonable prospect of recovering the lost funds in 2022 given the passing of time; and because 'H' had gone into liquidation more than three years before.

I have a great deal of sympathy for Mrs E and the loss she's suffered, and it has clearly had a significant impact on her and her family. But it would only be fair for me to direct Barclays to refund Mrs E'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**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision **before 26 December 2024**.

Anna Jackson  
**Ombudsman**