

The complaint

Miss L complains that Barclays Bank UK PLC didn't do enough to protect her from the financial harm caused by an investment scam, or to help her recover the money once she'd reported the scam to it.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Miss L came across an online advert for a company which I'll refer to as "E", which was endorsed by a well-known celebrity. She did some basic research and noted generally positive reviews. She also checked the Financial Conduct Authority (FCA) website, noting the company wasn't listed because it was based overseas. She saw the company had mixed reviews but felt was usual for legitimate businesses and reassured by the celebrity endorsement.

Miss L paid an initial fee of £233.59 using a credit card. This gave her access to an investment platform which I'll refer to as "F" and she was assigned an account manager, who I'll refer to as "the scammer". The scammer told her she could make returns of 10-15% by investing in cryptocurrency and that she could make withdrawals at any time.

He asked her to first purchase cryptocurrency through a cryptocurrency exchange company I'll refer to as "B", and then load it onto an online wallet. She transferred £23,000 into "R" from Bank S, and £48,500 from Barclays. And between 31 January 2023 and 19 April 2023, she made sixteen transfers from R to B totalling £71,500. On 3 March 2023, she received £1,124.39 from B.

Miss L made withdrawals at the end of January 2023 and February 2023, but the scammer said she'd have to pay an insurance fee and taxes before she could make any more withdrawals, at which point she realised she'd been scammed.

Miss L complained to Barclays, but it refused to refund the money she'd lost. It explained the Contingent Reimbursement Model ("CRM") Code didn't apply to the payments because they were to an account in Miss L's own name. It also said Miss L sent the funds to an account in her own name and it wasn't responsible for what happened to the funds after that.

It said Miss L could have done more to protect herself and that she'd ignored red flags including the fact the profits were too good to be true. It also said there were negative reviews about E online, and information relating to the celebrity endorsement. And the fact E was based overseas didn't mean she didn't need to do proper checks.

Miss L wasn't satisfied and so she complained to this service with the assistance of a representative who argued that she made multiple payments in quick succession, which is a pattern of payments that is indicative of fraud. They said Barclays missed an opportunity to intervene and question Miss L about the payments, and had it done so it could have detected the scam.

Barclays explained that Miss L was asked to provide a payment purpose before she made the transfer of £20,000 on 21 February 2023. She selected 'paying own account' as that payment purpose and was shown a warning about safe account scams, which was relevant to the response she provided. It said that due to the response she gave, there was no reason to pick up the transfers as fraudulent.

It further commented that if a company isn't registered in the UK, it doesn't mean it's okay to invest if it isn't regulated, and there were negative reviews and warnings online about E which pre-dated payments, along with warnings about fake celebrity endorsements.

Our investigator thought the complaint should be upheld. He thought the first payment of £20,000 was high when compared to the normal spending on the account and he noted that funds had credited and debited the account in quick succession, and that the transfer was to a new payee. He noted Barclays had asked Miss L about the purpose of the payment and given her a warning based on the response she gave, but he didn't think it went far enough and that an opportunity was missed to discuss the payment in more detail.

He thought Barclays should have asked Miss L why she was sending such a significant payment, where she came across the investment, whether there was a celebrity endorsement, why she was transferring funds between her accounts, and whether she'd done any research.

He noted Miss L's version of events had been consistent and there was no evidence she'd been coached to lie, so he thought she'd have explained that she found an investment opportunity online and that the advert had featured a celebrity endorsement. He was satisfied this would be enough information for Barclays to have identified that she was being scammed and so it should have given her a warning tailored to cryptocurrency investment scams, and that this would have stopped the scam.

Our investigator explained he was satisfied that Barclays had failed to intervene in circumstances which would have prevented Miss L's loss and so it should refund Miss L's loss from the first payment onwards. He further explained that he didn't think the settlement should be reduced for contributory negligence because she was an inexperienced investor, and we wouldn't expect her to have known how to properly research the investment. He commented that she didn't see any warnings on the FCA website and was reassured by the celebrity endorsement, which he thought was reasonable.

He explained that as he was also recommending that the complaint against R should be upheld, he was satisfied that responsibility for funds that were sent from Barclays to R should be shared equally between both parties. And that the credit she received from B on 3 March 2023 should be deducted from the settlement.

Finally, he explained he was satisfied that if Barclays had contacted the receiving bank as soon as it was aware of the fraud, this wouldn't have made a difference because, Miss L sent funds to her own account and then on to the scam.

Barclays has asked for the complaint to be reviewed by an Ombudsman.

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 reached the same conclusion as our investigator. And for largely the same reasons.

The Contingent Reimbursement Model ("CRM") Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Miss L says she's fallen victim to, in all but a limited number of circumstances. Barclays has said the CRM code didn't apply in this case because Miss L paid an account in her own name, and I'm satisfied that's fair.

I'm satisfied Ms K 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although she didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of his bank account, Ms K is presumed liable for the loss in the first instance.

There's no dispute that this was a scam, but although Miss L didn't intend her money to go to scammers, she did authorise the disputed payments. Barclays is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

Prevention

I've thought about whether Barclays could have done more to prevent the scam from occurring altogether. Barclays ought to fairly and reasonably be alert to fraud and scams and these payments were part of a wider scam, so I need to consider whether it ought to have intervened to warn Miss L when she tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect Barclays to intervene with a view to protecting Miss L from financial harm due to fraud.

The first payment triggered Barclays fraud systems and Miss L was asked to give a payment purpose. I'm satisfied her response prevented Barclays from detecting the scam. However, I agree with our investigator that, given this was a high value payment which was unusual when compared to the normal spending on the account and funds had credited and debited the account in quick succession, it should have gone further and asked her some more probing questions. It should have asked her why she was making the payments, whether there was a third party involved, and, if so, how she met them, whether she'd downloaded remote access software, whether she'd been promised unrealistic returns, whether she'd been coached to lie, whether she'd done any due diligence, and whether she'd been advised to make an onwards payment from the cryptocurrency exchange.

Had it done so, I'm satisfied that as there's no evidence she'd been coached to lie (I don't consider the payment purpose she gave was untrue) and she believed the investment was genuine, she'd have disclosed that she was being assisted to invest in cryptocurrency by a third party who worked for a company she'd found online, and that the advert had featured a celebrity endorsement. I think this would have been enough information for Barclays to have identified that she was being scammed and so it could have given her a warning tailored to cryptocurrency investment scam and advice on due diligence, including checking for reviews online and reading the articles about fake celebrity endorsements.

I haven't seen any evidence that Miss L had been told to ignore any warnings, or that she had ignored any warnings and so I think she'd have realised the circumstances of the investment matched the circumstances outlined in the warning and followed Barclays advice to do some more checks. And I think this would most likely have uncovered the scam.

Consequently, I think Barclays failed to do enough in circumstances which would have prevented her loss and I agree with our investigator that it should refund her losses from the first payment onwards (subject to what I've said below about apportionment).

Contributory negligence

In recent years instances of individuals making large amounts of money by trading in cryptocurrency have been highly publicised to the extent that I don't think it was unreasonable for Miss L to have believed what she was told by the scammer in terms of the returns she was told were possible, notwithstanding the fact it was highly implausible.

Miss L hadn't invested in cryptocurrency before and so this was an area with which she was unfamiliar. She wouldn't have known the returns were unrealistic or how to check the information she'd been given. And she wouldn't have known the celebrity endorsement was a red flag without being alerted to this by Barclays. This unfamiliarity was compounded by the sophisticated nature of the scam, and the fact she trusted the scammer and believed the trading platform was genuine.

I accept there was information available online about celebrity endorsements being related to scams, but as Miss L thought the endorsement was genuine, there would have been no reason for her to search for this information. And she has explained that she saw mixed reviews online but was satisfied this was normal.

Consequently, whilst there may be cases where a reduction for contributory negligence is appropriate, I don't think this is one of them.

Apportionment

As the parties are aware, Miss L has also complained about the actions of R. Our service's ability to investigate complaints together and apportion the burden of redress between respondents is the subject of no specific rule and only limited guidance, which can be found in the FCA's Handbook at DISP 3.5.3G and DISP 3.6.3G, which say:

DISP 3.5.3G: *"Where two or more complaints from one complainant relate to connected circumstances, the Ombudsman may investigate them together, but will issue separate provisional assessments and determinations in respect of each respondent."*

DISP 3.6.3G: *"Where a complainant makes complaints about more than one respondent in respect of connected circumstances, the Ombudsman may determine that the respondents must contribute towards the overall award in the proportion that the Ombudsman considers appropriate."*

I've found there were failings not only by Barclays but also R in what reasonably could've been expected of them. And with respect to the £48,500, which was paid into Miss L's R account from Barclays before being paid to B as part of the scam, I think it's fair to ask each of them to pay half the loss they could've prevented.

I'm satisfied interest calculated at 8% simple per year is also appropriate to compensate Miss L for having been deprived of these funds.

Recovery

I don't think there was a realistic prospect of a successful recovery because Miss L paid an account in her own name and moved the funds onwards from there.

Compensation

The main cause for the upset was the scammer who persuaded Miss L to part with his funds. I haven't found any errors or delays to Barclays's investigation, so I don't think she is entitled to any compensation.

My final decision

My final decision is that Barclays Bank UK PLC should:

- refund 50% of £48,000.
- 50% of £1,124.39 should be deducted from the settlement to reflect the credit Miss L received from B on 3 March 2023.
- pay 8% simple interest*, per year, from the respective dates of loss to the date of settlement.

*If Barclays Bank UK PLC deducts tax in relation to the interest element of this award it should provide Miss L with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 17 January 2025.

Carolyn Bonnell
Ombudsman