

The complaint

Ms K complains that Barclays Bank UK PLC (“Barclays”) hasn’t refunded her after she fell victim to an investment scam.

What happened

The background to this complaint is well-known to both parties. So, I won’t explain it all in detail again here. However, in summary, Ms K says she has been the victim of a scam.

A close friend of hers informed her of an investment opportunity with a company I’ll refer to as “L”. Ms K said she did some research on L online and found some positive reviews. Keen to get involved, Ms K reached out to L.

L sent Ms K some promotional literature and explained how its business worked. The premise was that Ms K was paying towards goods online: the merchant she was transacting with would use her funds to fulfil and dispatch orders, without Ms K having to be involved herself. When these goods were sold on, Ms K would receive some of the profits. Before investing, Ms K received contracts and paperwork in relation to some of her investments, but not all.

Initially, all seemed to be going as planned but then L started to give excuses on why it wasn’t providing the expected returns. Eventually all contact with L ceased and Ms K reported that she’d been scammed to Barclays.

By this point, Ms K had made numerous payments towards her supposed investment contracts from her Barclays account and from two other accounts she held with third-party banks too. Ms K had also received significant returns. In total, she’d paid £135,239 towards her investments and received £82,166.40 in return – leaving her with an overall loss of £53,073.60.

From her Barclays account, Ms K had paid out £68,000 and received £53,349.40 in returns, leaving her with a loss of £14,650.60.

Barclays said it wouldn’t offer Ms K a refund of the amount she had lost. It said it didn’t think she’d been the victim of a scam and instead said she had a civil dispute with L. To support its position, Barclays pointed out the significant returns received by Ms K.

Unhappy with Barclays’ response, Ms K brought her complaint to this service where one of our Investigators looked into things. Our Investigator thought it was more likely than not that Ms K had been the victim of a scam and because of this she was due a full refund under the provisions of the CRM Code – taking into account the returns she had received into her other accounts.

Barclays did not agree with our Investigators opinion and maintained that Ms K’s circumstances amounted to a civil dispute with L. It also said the returns Ms K had been

promised could be considered too good to be true and that it wasn't possible to rule out that Ms K was aware she was involved in a Ponzi scheme.

As an informal resolution could not be reached, the complaint has been passed to me to decide.

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.

Ms K did authorise the payments made toward the scam. And so, under the Payment Service Regulations (in this case the 2017 regulations), she is generally presumed liable for them in the first instance. But that isn't the end of the story. Barclays is a signatory to the Lending Standards Board's voluntary Contingent Reimbursement Model (CRM) Code.

Broadly speaking, the Code looks to see the victims of scams reimbursed by their account provider. But the Code only applies to instances where an authorised push payment (APP) scam has taken place. It doesn't apply to civil disputes. Barclays says that Ms K has a civil dispute with L, rather than it being a case of her having been scammed. But I don't agree.

I've seen significant and persuasive evidence from the firm Ms K sent money to as part of this scam. This firm has confirmed the closure of the account it held for L because of the significant volume of scam reports received all alleging the same thing. Such reports are also evident online. It's also clear from the account statements provided by the firm that L wasn't engaged in any legitimate economic activity. It wasn't doing what was promised and instead it was repaying existing investors with the funds of newer investors – which does suggest L was being run as a Ponzi scheme.

I understand that Barclays has argued Ms K can't have been the victim of a scam because she received so much of her investment back. I agree it's uncommon to see so much money returned. But that doesn't mean a scam hasn't taken place. And one of the characteristics of a classic Ponzi scheme is that victims are persuaded to continue to invest because they continue to receive "returns", but they are actually being paid using the payments made by new investors and no actual investments are taking place. I'm satisfied that this is more than likely what happened in this case. Ms K has been fortunate to have not lost more to the scam than she did but doesn't preclude her from receiving a refund of her remaining losses under the CRM Code.

With all of the above in mind, I'm satisfied Ms K has fallen victim to a Ponzi scheme and so ought to benefit from the protection of the CRM Code. I haven't seen any persuasive evidence that Ms K encouraged others to enter into the scheme and profited from it as Barclays have suggested.

The Code does state that there are exceptions to reimbursement that a firm like Barclays might rely on. But it must establish that one of the exceptions stated in the Code applies. Barclays has failed to do so, largely because it's refused to accept Ms K was the victim of a scam.

The first exception for me to consider is whether Ms K ignored an effective warning. It's unclear to me when or how often Barclays might have presented Ms K with any warnings about scams because there's almost no relevant evidence submitted by Barclays. Given the

lack of evidence provided, I'm not persuaded it's been able to establish that this exception to reimbursement applies.

Barclays has said that one of the other exceptions set out in the code does apply: it doesn't believe Ms K held a reasonable basis for believing she was engaging with legitimate parties for legitimate purposes. However, I don't agree. I agree that the returns on offer here were high, but I don't think this outweighs the fact that otherwise the scam appears to have been quite sophisticated. It appears that this particular scam caught a lot of people out and there have been many victims. And it's also clear that a lot of people were receiving returns throughout their engagement with L - receipt of returns will understandably have been very convincing in showing L to be legitimate. Indeed, in this case, it was a recommendation from a close friend who was able to vouch for returns being received that persuaded Ms K that the investment was legitimate. I've also reviewed the promotional literature sent to Ms K before she decided to invest and it all seems professional and above board. And so, overall, I'm not persuaded Barclays has demonstrated that this exception to reimbursement can be relied upon either.

Customer service

Ms K also complained that her account was blocked by Barclays in June 2023. Her account was blocked because one of her other current account providers mistakenly raised payments to her Barclays account as fraudulent. I've looked into whether Barclays has made any errors in blocking Ms K's account after this notification, and I can't see that it has. It received a report that payments being made into this account were fraudulent, so it had to investigate this. I appreciate this did take some time, but I can also see that Ms K was allowed access to some of her funds to ensure she wasn't overly inconvenienced. For this reason, I won't be recommending Barclays pay Ms K any additional compensation.

Putting things right

Barclays should refund Ms K's loss in full, which stands at £14,650.60. It should also add interest at 8% simple per year, calculated from the date it declined Ms K's claim under the Code until the date settlement is paid.

Ms K received a total of £7,203 in excess back into one of her third-party accounts as a result of the scam. I agree with our Investigator that it would be fair for Barclays to deduct half of this amount from the refund now due here. This is to ensure Ms K doesn't ultimately profit from her involvement in the scam.

My final decision

My final decision is that I uphold this complaint about Barclays Bank UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 24 January 2025.

Emly Hanley Hayes
Ombudsman