

The complaint

Mr P complains that Barclays Bank UK Plc won't refund the money he lost when he fell victim to a scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But in summary and based on the submissions of both parties, I understand it to be as follows:

Between November and December 2022 Mr P was browsing on the internet and came across an article about trading which had celebrity endorsements. Mr P has said he also remembered during that period of time there was a lot of publicity about cryptocurrency and how it was the right time to invest.

At the bottom of the article, it had the scam company advertised so Mr P provided his contact details. Mr P was contacted and recalls the scammer being professional and friendly, as such he says he quickly built a rapport. The scammer explained that he was a manager from the company and explained that the process would involve him initially setting up with an account with the company and an investment portfolio. Then the scammer would be responsible for Mr P's trading account and would manage this on his behalf. Mr P was impressed but due to his inexperience, Mr P says he carried out some research on the company and the website and was reassured as it all looked legitimate.

Mr P and the scammer would correspond via text message, phone and he also received emails from the scammers and the company all of which were well-laid out and were signed off using the legitimate company logo. After signing up to the trading platform Mr P felt further assured by how professional it looked. He then opened another account, with a third party which I will refer to as 'B,' on 6 January 2023. He sent several payments from B to the scammer, before sending money from his account he holds with Barclays to account B. He sent his first payment from his Barclays account to his account with B on 27 February 2023.

Between 27 February and 9 March 2023 he sent several payments to the scammer. The transactions appeared on Mr P's statement as follows:

Date	Method of Payment	Amount
27/02/2023	Faster payment	£10,000.00
01/03/2023	Faster Payment	£10,000.00
01/03/2023	Faster Payment	£20,000.00
06/03/2023	Faster Payment	£40,000.00
07/03/2023	Faster Payment	£50,000.00
08/03/2023	Faster Payment	£50,000.00
09/03/2023	Faster Payment	£50,000.00

When Mr P attempted to make a withdrawal, he was told by the scammer there would be fees payable of around £60,000 for tax. In Mr P's submission to our service, he says that he challenged this as he had never been told this previously. However, under the spell of the

scammer he proceeded to open a third account with a third-party bank which I will refer to as 'C'. However, when Mr P attempted to transfer further funds from C, C intervened, and Mr P says due to his questions, he subsequently realised he'd been scammed. Mr P notified Barclays on 8 September 2023 that he had been scammed. Ultimately, Barclays didn't reimburse Mr P's lost funds, and Mr P referred his complaint about Barclays to us. As the complaint couldn't be resolved informally, the case was passed to me for a decision.

I issued my provisional findings on 3 December 2023 where I said the following:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider having been good industry practice at the time. Having done so, I'm minded to not uphold this complaint, for slightly different reasons to the Investigator.

The starting point under the relevant regulations (the Payment Services Regulations 2017) and the terms of Mr P's account is that he's liable for payments he's authorised. However, this isn't the end of the story. Good industry practice was that Barclays ought to have been on the lookout for transactions that were unusual or uncharacteristic to the extent that they might indicate a fraud risk. On spotting such a payment instruction, I would expect Barclays to intervene in a manner proportionate to the risk identified.

In reaching my decision, I have taken into account the Supreme Court's decision in Philipp v Barclays Bank PLC [2023] UKSC 25.

In that case, the Supreme Court considered the nature and extent of the contractual duties owed by banks when making payments. Among other things, it said, in summary:

- The starting position is that it is an implied term of any current account contract that, where a customer has authorised and instructed a bank to make a payment, the bank must carry out the instruction promptly. It's not for the bank to concern itself with the wisdom or risk of its customer's payment decisions.*
- The express terms of the current account contract may modify or alter that position. For example, in Philipp, the contract permitted Barclays not to follow its consumer's instructions where it reasonably believed the payment instruction was the result of APP fraud: but the court said having the right to decline to carry out an instruction was not the same as being under a duty to do so.*

In this case, Barclays terms and conditions gave it rights to block payments where it suspects criminal activity on the account, or to protect the customer from fraud. So, the starting position at law was that:

- Barclays was under an implied duty at law to make payments promptly.*
- It had a contractual right to block payments where it suspected criminal activity or to protect the customer from fraud.*

It could therefore block payments, or make enquiries, where it suspected fraud, but it was not under a contractual duty to do either of those things. Whilst the account terms didn't oblige Barclays to make fraud checks, but I don't consider any of these things (including the implied basic legal duty to make payments promptly) precluded Barclays from making fraud checks before making a payment.

And, whilst Barclays wasn't required under the contract to make checks, I'm satisfied, taking into account long standing regulatory expectations and requirements and what I consider to have been good practice at the time – that Barclays should fairly and reasonably have been on the look-out for the possibility of fraud before processing payments in some circumstances. In practice, this is something all banks, including Barclays, do.

Our Service has issued previous final decisions setting out the relevant considerations we take into account when deciding what's fair and reasonable in these types of cases. I don't consider it necessary to repeat them all again here, though Barclays will be able to review these through past decisions on our website if it wishes to do so.

To summarise, however, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider having been good industry practice at the time, I consider Barclays in February 2023 should fairly and reasonably:

- have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams.*
- have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which firms are generally more familiar with than the average customer.*
- in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.*
- have been mindful of (among other things) common scam scenarios, how fraudulent practices are evolving (including, for example, the common use of multi-stage fraud by scammers, the use of payments to cryptocurrency accounts as a step to defraud) and the different risks these can present to consumers, when deciding whether to intervene.*

Should Barclays have recognised Mr P was at risk of financial harm?

Having assessed Mr P's previous expenditure on his Barclays account I can see that payments one to three of the scam transactions were in line with Mr P's previous expenditure. Those payments in question ranged from £10,000 to £20,000. Looking at his expenditure in the six months prior to the scam payments, I can see Mr P regularly sent large transactions, and the largest at that time was roughly £19,996.00 in November 2022. So, I think it is fair to conclude these were all in line with his usual expenditure on the account. I am not persuaded this would have stood out as unusual or suspicious. There are many payments made by customers each day and it's not realistic or reasonable to expect Barclays to stop and check every payment instruction. There's a balance to be struck between identifying payments that could potentially be fraudulent, and minimising disruption to legitimate payments.

However, I do consider that the fourth payment Mr P sent on 6 March 2023 was a higher amount in regard to Mr P's average expenditure, significantly higher in value and I'm persuaded it was notably a different pattern of spending occurring. Therefore, in my view, there was enough about the characteristics of this transaction and the activity on the account that ought to have been concerning such that Barclays should have intervened.

However, I have listened to several calls between Mr P and Barclays, which occurred prior to Mr P transferring the £40,000 payment on 6 March 2023. On 1 March 2023, when Mr P

attempted to transfer £10,000 to B, Barclays stopped the payment and asked Mr P to call it. In doing so Mr P was asked a series of questions, what the transfer was for, what he was investing in, had he conducted research, was he recommended the investment, did he have a broker and the total amount he was investing. Having listened to Mr P's answers, it is clear he didn't provide the advisor with accurate information in relation to the question she asked.

He said he was investing in property and hadn't been recommended by anyone and he was investing £30,000 in his share of a property he had seen. It was also apparent Mr P was very upset and frustrated by the questions Barclays had asked. He asked to speak to someone more senior as he felt the questions were "stupid and intrusive" and said I am not a child" and at one point in the call told the member of staff to "mind her own business". It appears the call is terminated by the member of staff at Barclays and Mr P has to call Barclays back and the payment is then released.

On 6 March 2023 when Mr P attempts to send the £40,000 payment, Barclays did stop the payment and again asked Mr P to call it. Mr P again was asked what the payment was for. He explained he was unhappy with the service from Barclays and was transferring his money to another account he holds and was intending to gift his grandchildren money and invest in property. Again, during this call Mr P expresses his dissatisfaction with being questioned and explains he is "savvy" and "I haven't got dementia".

While I accept there was an intervention call regarding the £40,000 payment, I am not satisfied it was as effective as it ought to have been, considering the amount of money Mr P was transferring. I say this because, I would have expected further questions surrounding the transfer to his friends and family and more questions around the investment itself, similarly to the intervention call listed above, to ensure Mr P wasn't at risk of financial harm.

What kind of intervention should Barclays have provided

I am satisfied that it would have been proportionate for Barclays to have probed Mr P further surrounding the transfer to his friends and family and more questions around the investment itself. Such as, what are you investing in, where did you see it advertised, is there a broker involved, what is the total amount you are investing. In a similar way it intervened to the call listed above, to ensure Mr P wasn't falling victim of a scam. While I accept Mr P wasn't forthcoming with the answers he gave, I can't say the quality of Barclays' intervention call was what I expect and as such, the information it gathered as a result, didn't provide Barclays with the detail it required to establish if Mr P was at risk of financial harm.

If Barclays had asked further questions during the intervention call would that have prevented Mr P's further losses?

Whilst I am satisfied Barclays ought to have been more thorough in the questions it asked Mr P on 6 March 2023, I am not persuaded it would have made a difference. I say this because, on the call which took place on 1 March 2023, Mr P was asked clear questions and didn't provide accurate information. As such, he denied Barclays the opportunity to assess the risk and provide Mr P with the appropriate information about investment scams.

On 7 March 2023, when Mr P attempted to send a further payment of £50,000, Barclays stopped the payments and asked Mr P to call it to answer a series of questions. Again, in this call Mr P didn't provide accurate information to the questions he was asked. Therefore, even if it could be argued Barclays ought to have probed Mr P further on the call which took place on 6 March 2023, I am satisfied Mr P would have answered the question in the same manner he did prior to the call (on 1 March 2023) and after that call (On 7 March 2023). As such, denying Barclays the opportunity to identify Mr P could have been falling victim of a scam and preventing him sending further funds. Therefore, I can't reasonably hold Barclays

responsible for this.

I accept that Mr P's representative has made an argument to suggest, if Barclays intervention call had been as strong as C's it would have revealed the scam. However, I am not persuaded by this point. Putting aside the argument I have outlined above, regarding Mr P not providing Barclays with accurate information to the questions it asked. At the point C was involved in the scam, Mr P already had doubts. In his submission he outlined that he had questioned why he needed to pay tax to release his funds, which he hadn't been told previously. Therefore, I am satisfied that this was the first red flag Mr P had noticed and on balance, I think it is likely that he was more cautious and receptive to the questions asked by C oppose to those of B which was much earlier on in the scam process.

Could Barclays have done anything to recover Mr P's money?

I have gone on to consider if Barclays took reasonable steps to try and recover the funds. Mr P didn't report the scam to Barclays until 8 September 2023, six months after the last scam transaction was sent to B. However, it's important to note that Mr P didn't instruct Barclays to send the money directly to the scammers but instead to a crypto wallet in his name. And Barclays did as he requested. So, it was highly unlikely that Barclays would be able to facilitate the recovery of the payments after they were moved on from Mr P's EMI account to the scammers. It follows that I won't be asking Barclays to do anything further."

I went on to say that my provisional decision was that I didn't uphold Mr P's complaint. Both parties had until 17 December 2024 to provide any further comments for me to consider.

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 findings and said it had nothing further to add. Mr P's representative responded and said Mr P rejected my provisional findings. However, Mr P also responded and said:

"I want to make it clear to you that I do not hold Barclays in any way responsible"

As no further comments or further evidence was submitted, my final decision remains the same as outlined in my provisional decision.

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 Mr P to accept or reject my decision before 16 January 2025.

Jade Rowe
Ombudsman