DRN-5344001

The complaint

Mr T complains that Barclays Bank UK PLC (Barclays) won't refund money he lost in an investment scam.

What happened

What Mr T says:

Mr T was looking for an investment and came across several firms on Instagram. He was then contacted by a 'broker' who claimed to be able to make higher returns for him. The broker represented the investment firm (which I will call 'firm X'). He says his details may have been passed to this firm after he'd completed some online inquiry forms.

Mr T says he 'googled' the investment firm website – and this was professional and showed the returns being made. Firm X had a London address and phone number. He also attended 'Zoom' calls with the scammers, and they appeared knowledgeable and genuine.

The broker persuaded Mr T to invest in crypto currencies. He made the following payments to his own crypto wallet and then to firm X - which proved to be fake.

Date	**Barclays account no.**	**Payment**	**Amount**
16 May 2024	1	Faster payment to crypto exchange	£3,500
17 May 2024	2	Faster payment to crypto exchange	£3,000
11 June 2024	1	Faster payment to crypto exchange	£3,000
14 June 2024	*1*	*Credit*	*(£769.97)*
28 June 2024	2	Faster payment to crypto exchange	£50,000
18 July 2024	2	Faster payment to crypto exchange	£1,200
Net Total			**£59,930.03**

Mr T was shown fake real time returns, and he could see the money he had sent appearing in his 'account' on the website.

When Mr T wanted to withdraw money, the scammers then asked for money (23% of the fund 'value') to provide liquidity, and Mr T realised he had been the victim of a scam.

Mr T says he had very little investment experience and was not familiar with how things worked. He was attracted by the apparent returns that could be made – the scammers said he could make 5% per month.

He says the payments were out of character with how he normally used his accounts. He was making large payments into crypto currency and had never sent money before for this purpose from his Barclays accounts.

He says Barclays should've protected him. He says that the warnings didn't go far enough. He wasn't asked where he was sending the money to from his crypto wallet – had he been, the scam would've been uncovered.

Mr T says Barclays should refund the money he's lost plus interest at 8% per annum.

The Financial Conduct Authority (FCA) issued a warning about the investment firm on 19 July 2024 – after Mr T made the payments in question.

What Barclays said:

Barclays didn't refund any money and said:

- The Contingent Reimbursement Model (CRM) code didn't apply as the payments were to an account in Mr T's name – his crypto wallet.

- The bank intervened on 28 June 2024 when the payment of £50,000 was stopped and questioned. The bank gave him sufficient warnings on the call; and some of the information that Mr T gave wasn't consistent with what he said in his complaint letter.

Our investigation so far:

Mr T brought his complaint to us. Our investigator didn't uphold it and said:

- The payments were out of character, especially the large one for £50,000 on 28 June 2024.

- On the call on 28 June 2024, Mr T advised he had had a crypto account for two years; he was sending money onwards to buy crypto.

- He wasn't sending it to anyone else; no one else was involved in the decision.

- He hadn't been told he needed to put money in to get funds out.

- Nothing Barclays had said caused him a concern.

- He said Barclays had done enough to try to establish the scam risk. It was proportionate to the risk associated with the payments.

Mr T didn't agree. Through his advisors, he said:

- Barclays accepted everything he said at face value.

- The bank should have asked more open questions – they were the experts.

- He was mindful of the Consumer Duty – effective 31 July 2023 – which made it clear that banks should avoid foreseeable harm to customers.

- None of the answers given by Mr T on the calls were wrong – he had a crypto wallet for two years (since 2021) and had made some small investments through it.

- He hadn't (then) been asked to send money to get money out.

- The payment of £50,000 was a huge sum and proportionate intervention should have been made but wasn't. The bank didn't ask why Mr T was making such a large payment. The call handler didn't task any questions about his previous payments; or what research he had done.

- He should've been probed more fully about his knowledge of crypto.

Our investigator didn't agree and thought Barclays had done enough. So, Mr T asked that an ombudsman look at his complaint.

I reached a provisional decision which upheld Mr T's complaint. It said:

I'm sorry to hear that Mr T has lost money in a cruel scam. It's not in question that he authorised and consented to the payments in this case. So although Mr T didn't intend for the money to go to a scammer, he is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Barclays should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and 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 banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I need to decide whether Barclays acted fairly and reasonably in its dealings with Mr T when he made the payments, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides for refunds in certain circumstances when a scam takes place. But – it doesn't apply in this case. That is because it applies to faster payments made to another UK beneficiary– and in this case, the payments were made to Mr T's own account with the crypto exchange.

If the payments were of a sufficient size and were out of character with how Mr T normally used his account – then we would expect Barclays to have intervened and spoken to him about them. I looked at Mr T's accounts.

He used both his accounts to make regular small payments – under £1,000. The only unusually large payment was from account number (1) for £44,000 in April 2024. But I don't consider this as relevant as I will argue that the payments from that account were not of a high enough value in any case to warrant an intervention.

Looking at the first three payments between 16 May 2024 and 11 June 2024 – these were for relatively low values.

And – there's a balance to be made: Barclays has certain duties to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. In this case, I think Barclays acted reasonably in processing those first three payments.

But – I then considered the payment for £50,000. This was certainly out of character for Mr T to make. He had never made such a payment for this value from account number two in the previous months. And the payment was to a crypto exchange; and for a very high amount.

And **-** we expect that from January 2023, firms ought to recognise that cryptocurrency related transactions carry an elevated risk of the likelihood of the transaction being related to a fraud or scam. This is because, by this time many leading firms had appreciated this risk and placed blocks or restrictions on cryptocurrency related transactions, and there had been widespread coverage in the media about the increase in losses to cryptocurrency scams.

Barclays did hold the payment for £50,000 and contacted Mr T. In such circumstances – and given the value of the payment - we would have reasonably expected them to ask open, probing and proportionate questions.

With this in mind, I listened to the call on 28 June 2024, and note the relevant parts of it:

Barclays call handler: want to make sure you're not a victim of a scam. How long have you had an account at (crypto exchange)? Mr T: for a few years.

Barclays call handler: Anyone else have access? Mr T : no.

Barclays call handler: Where are you then making investments into? Mr T: Bitcoin and Etherium.

Barclays call handler: Are you sending money onto anyone else? Mr T: no, keep it in my wallet.

Barclays call handler: Is anyone else involved in the decision to make this payment today?: Mr T: no, just myself.

Barclays call handler: We see you've added remote access software to your computer (names the product)? Mr C: I added it, for my work.

Barclays call handler: This can be used by others to access your accounts. We see scammers doing this.

Barclays call handler: Do you recall the (scam warning) messages sent to you?

Barclays call handler: Do you know the person you're paying? You answered 'no' when making the payments – why? Mr T: it was a mistake…it was just that I don't know anyone at (crypto exchange).

Barclays call handler: Crypto is volatile don't invest anything you can't afford to lose. Mr T: I understand – I have been investing in crypto for a number of years now.

Barclays call handler: Has anyone told you to lie or asked you to put money in to get money out? Mr T: no.

Barclays call handler: Take time to think, once the money has gone, little chance of getting it back. Mr T: no, I want to continue.

The payment was then released.

I don't think this intervention went far enough. It was 'scripted' and didn't ask Mr T sufficient and proportionate open-ended questions – bearing in mind this was a payment for crypto currency for £50,000 – far more than he had ever made before. The call handler didn't ask enough about the end investment and left the conversation at where the funds were sent to the crypto wallet – rather than going further into it. She accepted everything Mr T told her and didn't then ask more questions on the back of his answers.

I think Barclays could reasonably be expected to have asked:

- How did you find the investment firm – the end investment (i.e. firm X)?
- How were you contacted about it?
- What returns are you promised? What are the returns to date?
- How are you seeing the returns – how do you know it's a genuine firm?
- What research have you done?
- What is your prior experience – how much money invested. What returns so far?
- What happened to the earlier payments made from the Barclays account? Returns so far?
- She should've asked Mr T about the screen sharing software – was it installed at the scammers' instructions and how was it being used?
- How was the money being moved from crypto wallet to the investments – it doesn't make sense to leave it in the wallet.

Barclays would've found out that Mr T had found the investment through a social media advert; the contact had originated from the internet. He had given control of his devices using a screen sharing software; he had been directed where to send the funds by the scammers.

Therefore, I think Barclays should be liable in the first instance for the last two payments - £51,200.

Contributory Negligence:

But that's not the end of the story here. I also considered whether Mr T could've done more to protect himself and whether he should therefore reasonably share some of his losses.

In thinking about this - we apply a test of what we would expect a reasonable person to do in the circumstances. We don't (for example) apply a test of what we would expect a finance professional to do.

And I think he should be partly responsible. I say that as:

- He did little in depth research – he told us he 'googled' the firm and found nothing of concern. I can see there were a couple of online scam warnings in around April 2024, but little else.

- That said, I would've reasonably expected a customer to do more that Mr T did, particularly when investing such a large sum of money. For example, ask to see firm X's performance over a period of time, client feedback and client returns, history of the firm.

- Mr T downloaded screens sharing software – although it's not clear if this was used by the scammers to control his devices.

- He invested a lot of money base on a contact made on social media – which was unwise.

- The 'address' of firm X was a well know street in the city of London – I couldn't see any evidence that Mr T used this to research the company or if it was an accommodation address.

For these reasons, I consider Mr T should bear responsibility for 50% of the last two payments. Which means Barclays should refund £25,600.

Recovery:

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether Barclays took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost money.

But here, the funds went from the bank account to a crypto currency merchant and the loss occurred when crypto was then forwarded to the scammers. In this case, as the funds had already been forwarded on in the form of cryptocurrency there wasn't likely to be anything to recover.

Responses to the provisional decision:

Mr T accepted the findings, as did Barclays. But in doing so, Barclays also said:

- The comment about the call being 'scripted' wasn't helpful. Call handlers need to start with set questions.
- Mr T was paying into his own wallet – which he had used before.
- Questioning about his experience could come across as rude and beyond what's reasonable.

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.

Because Mr T and Barclays accepted the findings, my final decision is the same as the provisional decision.

I reflected on the points Barclays made in its acceptance. Decisions such as this one come down to a balance of what I considered fair and reasonable. And as the provisional decision said, I considered that given the amount of the payment (and how unusual it was) – then it's reasonable to have expected Barclays to have asked more probing and open questions; rather than accepting what Mr T said in his responses.

My final decision

I uphold this complaint and Barclays Bank UK PLC must:

• Refund £25,600 plus interest at 8% per annum simple from the date of the payments to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 28 March 2025.

Martin Lord
Ombudsman