

## **The complaint**

Mr E complains that Barclays Bank UK PLC ('Barclays') won't refund money he lost as the result of a scam.

## **What happened**

In 2021, Mr E became interested in cryptocurrency trading. He joined a group on a messaging app and was approached by an individual I'll refer to as D. D recommended that Mr E open a cryptocurrency wallet through a specific cryptocurrency exchange and sent Mr E a link to do so. Mr E used the link and opened a crypto wallet in his name.

Mr E says he was aware of scams and sent screen shots to a friend who regularly invested in cryptocurrency. They told Mr E the crypto exchange was a genuine company and that it was safe, as long as Mr E opened the account himself. Mr E's friend also recommended that he initially only send small payments to his crypto wallet.

Mr E sent his first two payments to his crypto wallet on 28 May 2021 for £50 and £500. Between May 2021 and November 2022, Mr E sent over 50 payments totalling more than £84,000. During this time, Mr E bought and sold cryptocurrency on the exchange, based on guidance given by D. Mr E says he made losses on some of his trades and that D was constantly telling him to invest more money. Mr E was able to successfully make withdrawals from his crypto wallet, which were paid into his Barclays account.

In November 2022, Mr E tried to access his crypto wallet and found that it was restricted. He contacted the crypto exchange and was told that the full balance of his crypto wallet had been withdrawn.

Mr E says that shortly after opening his crypto wallet, malware was detected on the device he used to open the account, and that malware was removed. D later recommended that Mr E download an extension for his search engine, which he did. D said this extension would allow him to give Mr E real time suggestions on when to buy and sell cryptocurrency to make the most profit. Mr E believes that the link D initially sent him to open his crypto wallet and the later extension he downloaded, allowed D access to his crypto wallet and that it was D who withdrew his funds.

Mr E raised a fraud claim with Barclays, asking them to refund him.

Initially Barclays incorrectly opened a recurring payment cancellation request, rather than a fraud claim. Barclays apologised for not following the right process and paid Mr E £100 compensation. Having raised a fraud claim and investigated his case, Barclays declined to refund Mr E for his loss. Barclays explained that Mr E's payments weren't covered by the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code) because the payments went to an account in Mr E's own name. They also told Mr E to raise a complaint with the cryptocurrency exchange, saying the loss occurred from the crypto wallet he held with them, not from his Barclays account. So, he should seek to recover his funds from the crypto exchange.

Mr E wasn't happy with Barclays' response, so he brought a complaint to our service.

An investigator looked into Mr E's complaint but didn't recommend that Barclays refund him. Ultimately the investigator agreed that Mr E's loss occurred at the cryptocurrency exchange. They said that even if Barclays had intervened when Mr E made the payments, it was unlikely that the scam would've been discovered or that the loss would've been prevented.

Mr E disagreed with the investigator's opinion, raising the following points:

- His loss didn't occur at the cryptocurrency exchange and Barclays should be liable for his loss.
- Other decisions have been issued by our service which suggest intervention by the bank would've uncovered the scam.
- In August 2022, Mr E was cautious and was wanting to withdraw his funds. So, any red flags raised by Barclays would've stopped him from sending any further payments and resulted in him withdrawing the balance of his crypto wallet – preventing his loss.

As the case couldn't be resolved informally, it was passed to me to review.

### **My provisional decision**

On 26 September 2023, I issued a provisional decision explaining I intended to reach the same outcome as the investigator. But, as I was going to cover the customer service element of Mr E's complaint which hadn't previously been addressed, I wanted to share my reasoning with both parties and give them the opportunity to respond before I issued a final decision.

In my provisional decision I said:

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

Usually as part of a scam, the customer moves the money to a crypto wallet and then immediately onto the scammer – which results in their loss. In this case, Mr E moved the money to his crypto wallet, where the money remained for several days until the scammer accessed Mr E's crypto wallet and withdrew the balance. This is important as it means that the loss Mr E suffered wasn't when he moved the money from his Barclays account, instead the loss came from unauthorised access to his cryptocurrency wallet.

However, I did consider whether intervention by Barclays when Mr E made the payments would've made a difference and prevented Mr E's loss. Based on the circumstances of this case, I'm not satisfied it would have and I'll explain why.

#### *Would intervention have made a difference?*

In broad terms, the starting position in law is that Barclays are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. And it's not disputed that Mr E made and authorised these payments, although I accept that he did so, not realising that his funds were at risk.

Based on Mr E's previous account usage, the size and frequency of the payments he made to his crypto wallet and the specifics of the payments – I wouldn't have expected Barclays to

have identified a potential scam risk or intervene until October 2022, when Mr E made a payment of £18,000.

Initially the payments Mr E made to his crypto wallet were all for under £1,500, and even where he made two or three payments on one day – they weren't for a significant total value. By November 2021, Mr E was sending larger payments and sent up to £2,000 on one day. However, based on this being an existing payee and considering the previous payment pattern, I'm still not satisfied that Barclays should've identified a scam risk. Mr E then didn't make any payments between January 2022 and 24 March 2022. The payments he made in March, May and June 2022 were for larger amounts again, but still weren't significantly larger in value or frequency that meant they were unusual or out of character for his account.

I appreciate that it constituted a lot of money for Mr E, but a balance has to be struck between Barclays identifying potentially concerning payments, and responding appropriately to any concerns, and minimising disruption to legitimate payments.

But the payment Mr E made on 26 October 2022, was for £18,000. This was significantly higher than any other payment he had previously made, and it was the second payment on that day, which meant the total he had sent was over £23,000. So, I would've expected Barclays to intervene and ask Mr E some questions about the payment to satisfy themselves he wasn't potentially the victim of a scam.

At this point, Mr E had been making payments to his crypto wallet for over 18 months, been able to successfully withdraw funds from his crypto wallet into his Barclays account, had been making his own trades (albeit on the advice of D) and hadn't had any funds 'stolen' from him. While he had made some losses based on the trades he made, he hadn't been scammed out of any money at that point and he wasn't aware that D had access to his crypto wallet. Based on the type of questions I think Barclays should've asked and the information they would've been given, I think it's unlikely they would've identified Mr E as a potential scam victim. I don't agree with Mr E that they would've identified red flags or raised concerns with him. All of Mr E's interactions with D up to that point, weren't consistent with a typical scam – although I accept that Mr E had found malware on the device he used to open his crypto wallet. I think it's easy with hindsight to draw inferences as to what happened, but I'm not satisfied that it would've been easily identifiable in a conversation between Barclays and Mr E prior to the unauthorised withdrawal of Mr E's funds from his crypto wallet.

Mr E has referenced other decisions issued by our service about cryptocurrency scams, which he feels suggest that he should be refunded his loss. However, I can only reach an answer based on the circumstances and evidence specific to Mr E's complaint. And, having carefully considered all of the points Mr E has raised, I'm not satisfied that I can fairly hold Barclays liable for his loss.

For completeness it's worth adding that I wouldn't expect Barclays to have attempted to recover Mr E's funds. I say this because they could only contact the cryptocurrency exchange to try and return any money left in Mr E's wallet. As all of the funds were removed from the wallet, there wasn't anything further that Barclays could've done.

#### *The level of service Mr E received in raising his fraud claim*

Barclays have acknowledged that they didn't follow the correct process when Mr E contacted them to raise a fraud claim and paid him £100 compensation for the poor service.

When Barclays incorrectly opened a recurring payment cancellation, Mr E was told that any funds lost would be recovered, referring to any payments taken after the payment instruction had been cancelled. However, this wasn't clear and meant Mr E thought that he was getting

back the funds he lost from his crypto wallet. I can see that Barclays realised a mistake had been made and contacted Mr E within a week, letting him know what happened and providing him with contact information so he could raise a fraud claim.

It's important to explain that I can't make an award against Barclays for the distress that Mr E experienced as a result of losing his funds to a fraudster, and that the awards we make are modest. But I can appreciate that being given the wrong information raised Mr E's hopes and added to the distress he experienced as a result of the scam. Because it was rectified so quickly, I think the £100 Barclays has already paid is fair.

I appreciate that Mr E has lost a substantial amount of money which has severely impacted him financially and taken a toll on his health. However, having carefully considered all of the evidence, I can't fairly ask Barclays to refund him.

My provisional decision was that I didn't intend to uphold this complaint against Barclays Bank UK PLC.

### **Responses to my provisional decision**

Barclays responded accepting my provisional decision. However, Mr E disagreed with the outcome I'd reached and raised the following points:

- Barclays should've asked questions like; whether he was asked by someone to download software without knowing what it does and whether he'd been in contact with an advisor or investment advisor. Then, based on the answers he gave, asked him follow up questions. If they had done so, it would've been easy for them to uncover the scam.
- Barclays should've queried the £18,000 transfer.
- Mr E referenced specific cases that have been brought to our service where a consumer lied in answering the banks questions, but it was decided that questioning still would've uncovered the scam. Also, he referenced several cases where he says triggers were considered/applied differently than in his case.
- Barclays ignored repeated large transactions.
- Barclays should be liable at least from the payment of £18,000 onwards.

### **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.

I've carefully considered the points that Mr E has raised, however they haven't persuaded me to reach a different outcome than I did in my provisional decision. I'll explain why.

I appreciate that Mr E has viewed numerous decisions on our website and believes these suggest I should reach a different answer on his case. As I explained in my provisional decision, each case is considered on its own merits. Whether or not a payment should have been identified as a potential scam risk will vary on each case depending on numerous factors, not limited to but including; the size of the payment, whether it's unusual compared to the consumer's previous account usage and whether it's part of a series of payments.

Having reconsidered the payments in Mr E's case, I'm not satisfied that Barclays should've been concerned or identified a scam risk before Mr E made the payment of £18,000 in

October 2022. I say this taking into account the size and frequency of the payments made over the 18-month period as well as the payment pattern and account usage.

I've also reconsidered the questions that I would've expected Barclays to ask and whether I think they could've uncovered the scam based on those questions and the information that was available at the time Mr E made the £18,000 payment.

Mr E's case is unique, in that he didn't lose any money until 18 months after he made the first payment to his crypto wallet. During that period of time, he was completing trades from his crypto wallet, with the only losses being those caused by the trades he was making. He was also able to successfully withdraw funds from his crypto wallet into his Barclays account. This does not fit with the usual pattern that we see in cryptocurrency investment scam cases and impacts on the types of questions that I would expect Barclays to ask if they had intervened in October 2022.

Mr E thinks Barclays should've asked if he had downloaded any software. However, that is a very specific question which I think is easy to highlight with the benefit of hindsight.

The information available at the point Mr E made the £18,000 payment included:

- The cryptocurrency wallet was in his name and no funds had been "stolen" during the time he had been using it.
- Mr E was completing the trades himself, albeit with the advice of someone he'd met online.
- While he had made some losses, this was as a result of the trades he made, not due to someone taking his money.
- He had shared screen shots with a friend of the cryptocurrency exchange with whom he was opening his wallet and they confirmed it was a genuine company.
- Mr E had retained access and control of his crypto wallet up to the time he made the £18,000 payment.

I accept that questions are likely to have highlighted that Mr E met the person who was giving him trading advice online, and that they were pressuring him to continue investing. However, I'm not convinced that balancing these two pieces of information against the ongoing control he had over his crypto wallet, his trades and the funds/balance held in his crypto wallet would've concerned Barclays whereby I would've expected them to not follow Mr E's payment instructions.

I'm not convinced that questioning would've led to them asking about whether Mr E had downloaded any software. I think it might've led to them asking how he had set up his crypto wallet and whether he had control over his crypto wallet. But at that point in time, I'm not convinced that questioning is likely to have highlighted that he was potentially the victim of a scam or that Barclays could've foreseen what was to happen a few weeks later when his crypto wallet was accessed without his knowledge and the balance was removed.

I'm also not persuaded that Barclays are likely to have raised red flags that would've resulted in Mr E not making any further payments. At the point he made the payment of £18,000 he had already made payments of over £45,000 over the 18-month period and withdrawn over £10,000 from his crypto wallet which was paid back into his Barclays account.

So, having considered the information that was available and the types of questions that Barclays should've asked when Mr E made the £18,000 payment – I'm not satisfied that they would've uncovered the scam or could've prevented Mr E's loss.

I realise that Mr E is going to be extremely disappointed, but having carefully considered all the points he's raised, I'm not satisfied that I can fairly ask Barclays to refund him.

### **My final decision**

My final decision is that I don't uphold this complaint against Barclays Bank UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 13 November 2023.

Lisa Lowe  
**Ombudsman**