

The complaint

Mr A complains about Barclays Bank UK PLC.

He says that Barclays didn't do enough to protect him when he became the victim of a scam and would like Barclays to refund him the money he has lost.

What happened

In February 2022, Mr A's wife saw a post on an Instagram account of a beauty influencer that she followed offering a lucrative investment opportunity in cryptocurrency.

Mrs A's wife believed that the opportunity was genuine as she had purchased beauty products from this influencer previously and had online conversations through Instagram. However, this was not the case, and a scammer had taken over the Instagram account.

Mrs A's wife was then contacted by the scammer (who she still believed to be the genuine account holder). The scammer explained how the investment opportunity worked and told her that she could make a profit in one day.

Mr A then took over correspondence with the scammer and was persuaded to invest. However, before he could make a withdrawal from his supposed profit, the scammer asked him for more money as his account needed to be 'upgraded' due to the high balance – and then more money again to obtain a 'pin'. Finally, the scammer then told Mr A that he needed to pay commission, which Mr A did.

The scammer then kept making excuses as to why the withdrawal was unsuccessful, and Mr A came to the realisation that he had been scammed.

Mr A complained to Barclays, but it didn't uphold his complaint. So he brought his complaint to this Service.

Our Investigator looked into things but didn't think that the complaint should be upheld.

Mr A asked for an Ombudsman to review the complaint, so it has been passed to me to make a final decision.

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 decided not to uphold this complaint for broadly the same reasons as our Investigator. I know that this will be disappointing for Mr A, so I'll explain why.

Was Mr A the victim of a scam?

I don't think that it is in dispute here that Mr A has been the victim of a scam – it appears that

the scammer took over control of a genuine Instagram account and was using this to try and trick followers into paying into the scam.

Did Mr A authorise the payments?

In line with the Payment Services Regulations 2017 (PSRs), Mr A isn't liable for payments he didn't authorise, unless he failed with gross negligence or intent to comply with the terms of the account or keep his personalised security details safe. Accordingly, I've considered whether Mr A authorised the payments in question here.

Having done so, I'm satisfied that Mr A did authorise the payments. They were made by him using his debit card. I understand that Mr A had been tricked by the scammer into instructing Barclays to make the payments – but while Mr A never intended the payments to go to the scammers, this doesn't change the fact that he authorised them and is therefore presumed liable for the loss in the first instance.

Recovery of the payments Mr A made

After the payments were made, I wouldn't reasonably expect Barclays to do anything further until it had been notified there was a scam. Mr A made a total of four payments as part of the scam, all by debit card.

The only recourse for potential recovery of the funds for the payments made by debit card would be via the chargeback scheme. Chargeback is a process by which disputes are resolved between card issuers (here, Barclays) and the merchant (here, C and M).

However, a chargeback in these circumstances would likely never have been successful. This is because C and M are legitimate crypto exchanges and provided the services that Mr A had requested of them – the purchase of crypto. The subsequent transfer of the crypto to a different wallet is therefore a separate matter – and so a successful chargeback would likely never have been possible – and so I don't think that these payments were recoverable once they had been made.

Should Barclays have reasonably prevented the payments in the first place?

I can only uphold this complaint if I think that Barclays reasonably ought to have prevented some or all the payments Mr A made in the first place – therefore preventing the loss before it happened.

Mr A authorised the scam payments in question here – so as I've explained above, he is presumed liable for the loss in the first instance.

That said, as a matter of good industry practice, Barclays should have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction.

Taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider having been good industry practice at the time, I consider Barclays should fairly and reasonably:

- Been monitoring accounts – including payments made and 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 its customers were at risk of fraud (amongst 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; and
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made 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.

So, I've carefully considered what this means for Mr A and the payments in question here.

Having reviewed Mr A's account, I'm not persuaded that Barclays should have become involved at any point when he was making the payments. I say this because as I've explained above, there is a balance to be struck. I've reviewed Mr A's account transactions and activity and I don't think that the payments he made are sufficiently unusual or uncharacteristic to have triggered Barclays into taking extra steps before processing Mr A's payment instructions.

I understand that Mr A believes that Barclays should have intervened when he made the payment of £4,500 – however while this payment was larger than his day to day spend, I am still not persuaded that Barclays needed to get in touch with him about it as Mr A had made payments of a similar size previously.

I also understand that Mr A says he contacted Barclays when he made the first payment and that he provided information to Barclays, saying that he was paying C – a crypto exchange. Mr A says that he wanted to make sure that Barclays didn't block the payment as he had issues previously. He says that Barclays should have questioned him in light of the information he gave to it.

But I disagree. As I have explained above, there was no reason that Barclays should have intervened with the payments Mr A was making – so it was under no obligation to provide him with any more information than what he asked for during the call, which was to check that the payment had been successful.

I do have a great deal of sympathy for the situation Mr A finds himself in. He has been the victim of a cruel scam and has lost a significant amount of money as a result of this. However, the loss suffered was ultimately caused by the scammers themselves, not Barclays. And I can't ask Barclays to refund the money lost when I don't think that it has done anything wrong.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 6 September 2023.

Claire Pugh
Ombudsman