

The complaint

Mr K complains that Barclays Bank UK PLC (Barclays) will not refund him the money he believes he lost as the result of an investment scam.

Mr K is being represented by a third party. To keep things simple, I will refer to Mr K throughout my decision.

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Mr K was involved with an investment company called Karl Heinz Berndl (X). Mr K sent various payments into the investment via to two separate payees, that he has confirmed are part of the same investment with X. Below are the payments Mr K made:

<u>Date</u>	<u>Payee</u>	<u>Payment Type</u>	<u>Amount</u>
10 September 2019	Karl Heinz Berndl - KHB	International Transfer	£2,000.00
10 September 2019	Karl Heinz Berndl - KHB	International Transfer	£2,000.00
11 September 2019	Karl Heinz Berndl - KHB	International Transfer	£7,851.30
13 September 2019	Karl Heinz Berndl - KHB	International Transfer	£1,900.00
16 September 2019	Karl Heinz Berndl - KHB	International Transfer	£9,776.88
16 October 2019	Karl Heinz Berndl - KHB	International Transfer	£10,000.00
17 October 2019	Karl Heinz Berndl - KHB	International Transfer	£2,186.28
31 October 2019	EFS European Finance	Transfer	£2,000.00
1 November 2019	EFS European Finance	Transfer	£13,180.30
5 November 2019	EFS European Finance	Transfer	£5,180.30
5 November 2019	EFS European Finance	Transfer	£10,000.00

The investment didn't work out favourably for Mr K and he lost most of the funds he invested.

Our Investigator considered Mr K's complaint but didn't think it should be upheld. So, this complaint has now 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.

Having done so, I don't uphold Mr K's complaint and I'll explain why.

Not every complaint referred to us and categorised as an investment scam is in fact a scam. Some cases simply involve high-risk investments that resulted in disappointing returns or losses.

Certain high-risk investments may have been promoted using sales methods that were

arguably unethical and/or misleading. However, whilst customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud; i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself, or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

In simpler terms, some merchants may have used sales and promotional methods that could be seen to be unfair by consumers considering the losses they've incurred – but this does not always amount to fraud.

When considering this for Mr K's case, I've paid particular attention to the official organisations that publish warnings about merchants that operate in the UK and abroad. I've searched the Investor Alerts Portal of the International Organization of Securities Commissions ("IOSCO"), the international body that brings together the world's securities regulators. And the FCA (as the UK regulator) also has its own warning list, which is in place to share alerts and insight about merchants that have been identified as potentially being fraudulent or unauthorised.

Upon checking both, it's my understanding that X had no adverse information reported about them at the time Mr K authorised his payments to them.

What I have noted is that at the time Mr K started making payments into the investment with X it had passporting rights through the FCA - which meant it could offer services to UK customers. It would be unusual for a scammer to comply with all the various requirements of becoming regulated. It also means that Mr K may have the option to pursue a complaint against X directly – as they're ultimately who he says caused his loss.

The FCA cancelled X's ability to offer regulated services in the UK from 31 October 2019. But I'm not persuaded that's enough to show Mr K was scammed. The FCA may remove authority from companies whose actions fall short of being a fraud or scam. And I've seen no persuasive evidence that Mr K's funds weren't genuinely invested, or that the FCA has deemed X a scam.

Mr K was asked to sign a non-disclosure agreement by Alan Davis Management in October 2019. A warning has since been added to the FCA Register, advising that Alan Davis Management is an unauthorised clone firm. But Mr K didn't make any payments to this business and there isn't sufficient information linking this firm to the payments Mr K is disputing, or to conclude that they were fraudulent.

Mr K has provided several other arguments as to why Barclays should have stepped in to prevent him from losing his money to this investment, including that Barclays should have been aware that X was about to lose its passporting rights enabling it to offer services in the UK. But I don't think it's reasonable to expect Barclays to be aware of the operations of all genuine businesses its customers are sending payments to.

In addition to the above, without there being a scam to protect against, which I think is the case here, there's no obligation for Barclays to intervene with Mr K's authorised payment instructions. It's not expected to protect against bad bargains, nor to give investment advice.

With the above in mind Barclays is not responsible for Mr K's loss.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 20 February 2024.

Terry Woodham
Ombudsman