

The complaint

Mr Y complains that Barclays Bank PLC won't refund all the money he lost to an investment scammer.

Mr Y is represented by a third party, but for ease of reading, I'll refer to Mr Y alone in this decision.

What happened

Around September/October 2020 Mr Y was searching for investment opportunities online and came across an investment trading company I'll call 'N'. Mr Y found N's website professional and informative. He also searched N's details online and didn't find anything untoward to indicate that they were a scam. Mr Y emailed N for further information. Shortly after, he was contacted by a representative of N and was offered the opportunity to trade in cryptocurrency with an expert that would assist him.

Over the next several months, Mr Y used his Barclays current account to purchase cryptocurrency to deposit onto his trading account and he saw his investment fluctuating with market trends. Mr Y asked N's representative if he could withdraw some of his profits and he was permitted a withdrawal of £4,899 on 6 November 2020. This prompted Mr Y to deposit larger sums onto his trading account.

In December 2020, Mr Y received another small withdrawal, which prompted larger deposits. When Mr Y requested further withdrawals, he was told he'd need to pay fees. He refused to do so and subsequently discovered his trading account was in a minus balance. It was at this point that Mr Y realised he'd been the victim of a scam.

Mr Y contacted Barclays disputing 12 debit card payments towards the scam taken between 3 November 2020 to 15 January 2021 totalling £144,312 (less the withdrawals). He asked Barclays to reimburse his total loss of £139,399.

Barclays issued its final response on 6 December 2022 stating it missed an opportunity to intervene earlier on in the scam (specifically from payments after 30 November 2022). But it noted it had a long detailed conversation with Mr Y on 6 January 2021 where it provided a scam warning but this didn't dissuade him from paying further funds to the scammer.

Barclays said there was a lot of adverse information about N at the point of Mr Y's investment and if he'd carried out more due diligence checks, he'd have likely seen the scam reviews. It paid Mr Y 50% of the value of the disputed transactions from 30 November 2020 to 4 January 2021 (based on what it considered to be unusual account activity), plus interest. Barclays said it wouldn't be refunding any payments after the scam warning was provided. Unhappy with Barclays response, Mr N referred his complaint to this service.

One of our Investigators reviewed the complaint and didn't think Barclays scam warning was meaningful. He felt Barclays point where it deemed Mr Y's transactions as unusual was fair. He also felt Barclays offer to refund 50% of Mr Y's losses was fair, but he felt this refund should apply to the disputed transactions from 30 November 2020 to 15 January 2021.

Mr N replied accepting our Investigators view. Barclays requested additional time and provided a copy of the call it had already provided. It provided no further commentary.

The complaint has therefore been passed to me for determination.

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 uphold this complaint in part for largely the same reasons as that of our Investigator.

Although I've considered all of the evidence raised by both parties, I may not comment on all the points raised as I'll focus on what I think the key points remaining in dispute are.

It is common ground that the disputed payments were 'authorised' by Mr Y for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. This is because they were made by Mr Y using the legitimate security credentials provided to him by Barclays. These must be regarded as 'authorised payments' even though Mr Y was the victim of a scam. So, although he did not intend the money to go to scammers, under the Regulations, and under the terms and conditions of his account, Mr Y is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory 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 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.

Barclays accept it should have intervened at the point of Mr Y's disputed payment of £28,400 taken on 30 November 2020. It doesn't think earlier payments were all that unusual when considering Mr Y's normal account activity. Mr Y accepted our investigator's view on this point.

As neither party disputes this particular point, I don't need to make a finding on whether earlier payments ought to have triggered as I agree with our Investigator and Barclays consideration of earlier payments and why this particular payment was unusual for Mr Y.

Barclays further accept that it 'missed an opportunity to provide an effective warning' in relation to the payments from 30 November 2020 to 6 January 2021. Which is what prompted it to refund 50% of Mr Y's payments – taking into consideration its failings as well as Mr Y's. It says there were multiple credible scam reviews published online about N and if Mr Y had carried out the research he describes, he ought to have seen the scam reviews which ought to have dissuaded him from investing with N. This isn't disputed by Mr Y. I think

Barclays' assessment on these points are fair. I think Barclays ought to have provided a meaningful scam warning and given Mr Y's lack of experience in this type of investment, I think an earlier warning would have likely prevented him from paying further funds to the scammers. But I also think Mr Y ought to have reasonably seen the negative reviews about N if he carried out the searches he said he carried out. Multiple credible scam reviews pre-date his investment with N. And upon seeing these (which I think Mr N ought reasonably to have seen) they should have dissuaded him from investing with N. I do however accept this was a very sophisticated scam and I think it would have taken a financial professional (like Barclays) to explain the way in which these scams operate to Mr N, particularly with the use of fake trading platforms and permitting early withdrawals to make everything seem credible.

What is in dispute is whether or not Barclays acted fairly when choosing not to refund the remaining disputed transactions taken after 6 January 2021.

In Barclays final response and submission to this service, it says it 'held a very long and detailed conversation' with Mr Y where it identified and informed Mr Y that this was a scam. It says it strongly advised not to send anymore money to the scammers. But Mr Y proceeded to issue further payments.

Barclays has not provided any evidence to support this claim. Barclays has provided calls (in four parts) where it spoke with Mr Y on 6 January 2021 but there was no scam warning provided in any of the calls. I've carefully checked Barclays' notes recorded during this time and I've not seen any supporting evidence that Mr Y was provided with meaningful warnings on this particular date. And so, I don't think Barclays has substantiated its assertion that it gave Mr Y a detailed warning.

Barclays notes indicate it intervened in other payments and its fraud team blocked payments towards the scam on 14 December 2020, 17 December 2020, 4 January 2021 and 22 January 2021. Upon the first block, Mr Y was asked to visit a branch with two forms of identification. However, this doesn't evidence that a meaningful warning was given and in my judgement, all Barclays did was sought to verify Mr Y's identity and that he'd authorised the payments. There is a script quoted upon further blocks but none of these are particularly meaningful to the investment scam Mr Y found himself the victim of. So I cannot agree Barclays provided Mr Y with a meaningful warning. Barclays has had the opportunity to provide the evidence it has relied upon but it has failed to do so.

And so, I think it would be fair and reasonable for Barclays to pay Mr Y his remaining losses covering the period from 6 January 2021 to 15 January 2021, plus interest.

My final decision

My final decision is, I uphold this complaint in part. Barclays Bank UK PLC should;

- Refund Mr Y 50% of his disputed payments from 6 January 2021 to 15 January 2021
- Pay 8% simple interest per year, on the above amount from the respective dates of payment (less any lawfully deductible tax)

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 3 January 2024.

Dolores Njemanze
Ombudsman