

## The complaint

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

## What happened

Mr K is represented by a third-party firm of solicitors, but I will refer to Mr K as the complainant.

### *What Mr K says:*

In March 2022, Mr K saw an advertisement on social media for investment in crypto currency. The company claimed to be a well know crypto exchange (which I will call 'A'). He expressed some interest and was called by someone claiming to be from A. He was told he good get good returns and would make a profit on his investment within three to six months.

Mr K made four payments to A as shown:

Date	Payment	Amount
24 March 2022	Online payment to Mr K's account - A	£90
28 March 2022	Online payment to Mr K's account - A	£1,200
31 March 2022	Online payment to Mr K's account - A	£25
31 March 2022	Online payment to Mr K's account - A	£2,325
<b>Total</b>		<b>£3,640</b>

Mr K didn't receive any returns, and the scammer changed their phone number and email address. Mr K says he has no investment experience and had no reason not to trust what he was told. He is in financial difficulty, and his home is at risk of repossession.

Mr K says the scammer took control of his computer/device and the crypto wallet – he downloaded a remote access tool. He didn't see anything more – in terms of where the money went to.

Mr K says the payments were out of character with how he normally used his account and were to a new payee. He says Barclays should've realised this and done more to protect him. He says Barclays should refund the money he's lost, plus interest at 8% per annum, plus a payment for stress and inconvenience.

### *What Barclays said:*

Barclays wrote to Mr K in March 2023 and said their fraud team would investigate it. It's not

clear why no further fraud investigation was carried out by Barclays at the time. They didn't issue a final response but in their evidence to us said:

- The payments were to Mr K's crypto wallet in his name. Therefore it was out of scope to be considered under the Contingent Reimbursement Model (CRM) Code.
- Mr K should contact the provider of the crypto wallet (A), from where the funds were transferred to the investment firm.
- When Mr K made the payments, he selected the purpose as being for investment or crypto currency. He was presented with a suitable warning but went ahead anyway.

*Our investigation so far:*

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

- Mr K made similar withdrawals from his account in cash.
- The disputed payments were of low value and consistent with normal banking activity – therefore Barclays didn't need to stop the payments and/or speak to Mr K about them.
- Barclays gave Mr K an online warning on the first payment, but he ignored it and went ahead.
- The Contingent Reimbursement Model (CRM) Code didn't apply as the payments were to Mr K's own account.

Mr K didn't agree and asked that an ombudsman look at his complaint, and so it has come to me to make a final decision. He said:

- The payments were out of character and were to a well-known crypto exchange merchant.
- The cash withdrawals aren't the same as an online payment – so couldn't be considered as his normal banking activity.
- Mr K has no recollection of the online warning that Barclays said he was sent, but in any case, it was a generic one and didn't go far enough.

### **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'm sorry to hear that Mr K 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 K 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 K 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) 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 K's own account with A – his crypto wallet.

The first consideration here is: were the payments of a sufficient size and/or were out of character with how Mr K normally used his account. I looked at Mr K's account – and it is reasonable to say the payments were out of character with how he normally used it. He used his account for day to day living expenses and receipt of income.

I accept there were regular ATM cash withdrawals – for example, in November 2021 - £350, £200; in December 2021 - £250, £150, £300, £400; in January 2022 - £400, £400; in February 2022 - £1100, £400. But, I don't regard these as relevant to this complaint – as cash withdrawals are different to payments.

So – having said that, I considered whether it's reasonable to have expected Barclays to intervene in this case – and stop the payments and contact Mr K about them.

And here, there's a balance to be struck; Barclays has obligations 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. And here – there were four payments and for relatively low amounts. Therefore, in this case, I think Barclays acted reasonably in processing the payments – I don't think that I could reasonably say that Barclays should have stopped the payment for further checks. **(continued)**

I noted that Barclays say they sent an online warning to Mr K after he said the first payment was for investment. Barclays say this said:

*'Could this be a scam?'*

*Fraudsters fake documents and websites to look like genuine organisations, and post adverts on social media and search engines.*

*Search the FCA ScamSmart tool and look out for any warnings. If the company is genuine, you'll also be able to find their registered contact details.*

*If you're investing in crypto-currency, be extremely cautious. Don't continue if someone has control of your wallet, or you can't access it.*

*Speak to a financial adviser first - if the offer sounds too good to be true, it probably is.*

*Stop. Challenge. Protect.'*

I haven't seen the evidence that this was sent. But in any case, my final decision doesn't hinge on this communication – I'm satisfied that given the value of the payments, Barclays didn't need to intervene in any case.

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 money. Barclays told us that given the passage of time between the payments and the scam being reported to them (12 months) – it was unlikely that any funds would remain. I agree with that - as normally in such scams, funds are removed from the recipient bank immediately, or within a few hours.

Mr K has lost a lot of money. He's explained why the money was important to him, and the impact his losses have had. I was sorry to learn of his circumstances. He will therefore be disappointed by my decision, but I'm not going to ask Barclays to do anything here.

### **My final decision**

I do not 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 2 February 2024.

Martin Lord  
**Ombudsman**