

Complaint

S, a limited company, complains that Barclays Bank UK PLC hasn't reimbursed its full losses after it fell victim to an investment scam. S is represented by its director, Mr S and so I've generally referred to Mr S throughout the text of this decision.

Background

In April 2020, Mr S was invited to invest his money by an adviser who was recommended by a close friend. Unfortunately, he hadn't contacted a legitimate adviser, but a fraudster. The precise mechanics of the investment aren't clear. Mr S's representatives told us that the opportunity *"involved a banker's draft for €100 million and this was supposedly going to be invested and the scammer was facilitating the investment."* The formal documentation he was asked to sign appears to have involved a third party construction business and the document header describes it as a *"European Prime Bank Cashier's Cheque Investment"* suggesting it was a form of 'prime bank guarantee' fraud.

Mr S anticipated a return equivalent to 1% of the value of the banker's draft – so €1 million – although it's not entirely clear how long he was expecting to wait to earn such a return. He made payments to the adviser from his personal account and his business account. However, the payments from his personal account fall outside the scope of this complaint. He made a payment of £41,000 from his business account on 1 June 2020.

He eventually realised that it was likely a scam when he wasn't able to contact the adviser anymore. He notified Barclays on 3 February 2022. Barclays investigated and agreed to refund 50% of the money he lost. However, it said it wouldn't pay him a full refund on the basis that Mr S hadn't taken steps to check that the person he was paying was legitimate.

He was unhappy with this response and so he referred his complaint to this service. It was looked at by an Investigator who concluded that Barclays' offer was fair. She didn't think Mr S had a reasonable basis for believing that the investment was a genuine one and so she found it fair and reasonable for Barclays to only refund him in part.

Mr S's representatives disagreed with the Investigator's opinion. They argued that the payment was out of character and this should have prompted an intervention by Barclays. They added that, as Mr S was introduced to the investment by a close friend who he trusted, it was reasonable for him to believe the opportunity was a genuine one. The adviser also showed Mr S evidence that suggested he was putting his own money towards this investment opportunity which further persuaded him that it was likely authentic. Finally, they argued that, despite Barclays' conclusions, Mr S had carried out research on this type of investment opportunity and that he *"checked against Trustpilot which provided no negative reviews at the time."* The Investigator queried what research Mr S had done and whether he could provide any evidence of these searches and what he found. He couldn't provide any evidence of his research into this type of investment, but he did confirm that he *"didn't look at Trustpilot as I was dealing with an individual."*

As Mr S disagreed with the Investigator's opinion, the complaint has been passed to me to consider and come to a final decision.

Findings

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

In doing so, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The Lending Standards Board's Contingent Reimbursement Model (CRM) Code requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this, in all but a limited number of circumstances. It is for Barclays to establish that a customer failed to meet their requisite level of care under one of the listed exceptions set out in the CRM Code.

Barclays has accepted that it could've done more to protect Mr S from the scam. However, it has relied on the following exception to justify its decision to only refund 50% of his losses:

A Firm may choose not to reimburse a Customer if ... the Customer made payments without having a reasonable basis for believing that ... the payment was for genuine goods or services and/or the person or business with whom they transacted was legitimate.

There are further exceptions in the Code, but they aren't applicable in this case. That means the issue I need to decide is whether the above exception applies – in other words, did Mr S make this payment with a reasonable basis for believing the investment was genuine?

I've considered this point carefully and I'm afraid I don't find that he did. I've come to that conclusion for several reasons. First, the return he was promised was exceptionally generous. From the information I've seen, he transferred a little under £100,000 to the fraudster. He was anticipating a return of €1,000,000 without any obvious risk. I think such a return was too good to be true and ought to have put Mr S on notice of the risk that this opportunity may not be a legitimate one.

I've also looked at the legal documentation Mr S was asked to complete. I'm surprised he wasn't more concerned about transferring money on the basis of this document. It wasn't clear what the investment opportunity was or how it was intended to work. And while it aimed to look like an authentic legal document, it was littered with grammatical and typographical errors which one wouldn't typically expect in a formal document of that kind.

It also had several provisions that would clearly not be relevant in a document like this one – such as the parties waiving their right to a jury trial in any related litigation. I think that Mr S should have had concerns on reading this document. I'm surprised he didn't proceed more cautiously, particularly given that he had decades of experience as a chartered accountant at the time he chose to invest.

Overall, I think Mr S should've acted with far greater care than he did and so I find it was fair and reasonable for Barclays to have deducted 50% from any compensation paid. I understand it has already paid the remaining sum to S and so it does not need to do anything further.

Final decision

For the reasons I've set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 21 September 2023.

James Kimmitt
Ombudsman