

The complaint

Mr W complains that Barclays Bank UK PLC won't refund money he lost when he was a victim of a scam.

What happened

The background to this complaint is well known to both parties and so I'll only refer to some key events here.

Mr W was the victim of a crypto scam after being contacted by the scammer in April 2022 on an instant messenger app. He made payments to a legitimate crypto exchange before sending the funds onto the scammer to be invested. After seeing profits from his investment in the trading account, Mr W tried to withdraw some of the funds but he was told this wouldn't be possible without paying a significant fee. At this point, Mr W realised he'd been scammed.

The relevant payments are:

Date	Type	Amount
28 April 2022	Debit card transaction	£80.88
29 April 2022	Debit card transaction	£81.40
29 April 2022	Debit card transaction	£162.85
9 May 2022	Debit card transaction	£482.47
9 May 2022	Debit card transaction	£907.87
12 May 2022	Debit card transaction	£829.02
16 May 2022	Debit card transaction	£1,699.45
17 May 2022	Debit card transaction	£1,669.71
26 May 2022	Debit card transaction	£890.54
6 June 2022	Debit card transaction	£48.45
6 June 2022	Debit card transaction	£2,937.76
6 June 2022	Debit card transaction	£3,150.59
Total:		£12,940.99

Mr W reported the scam to Barclays in early July 2022. Barclays wrote to Mr W requesting further information, to allow them to start the chargeback process, but didn't receive a response. Mr W says he didn't receive this letter.

In November 2022, with the assistance of a third-party firm, Mr W complained to Barclays about the above payments he made as part of a crypto scam. He said Barclays failed in their duty of care to protect him from it by not identifying the above payments as unusual and suspicious, thereby warranting further investigation and enquiries. And had such enquiries been made, Barclays would've become aware he was likely falling victim to a scam. At which point, upon being appropriately warned of the risks involved, he wouldn't have proceeded with making the payments. Because of this, Mr W wanted Barclays to reimburse him the loss he suffered from the scam.

Barclays upheld the complaint in part. They said they couldn't provide a full refund as the payments weren't out of character for Mr W's account up until the fifth payment, and he didn't carry out any checks about the person he was in contact with. They did however agree to refund half of the payments made from the fifth one onwards – and they credited £6,046.27 to Mr W's account.

The complaint was referred to the Financial Ombudsman but our Investigator didn't think Barclays had to do anything more. In short, she said:

- She didn't think Barclays was responsible for Mr W's loss as they couldn't reasonably have prevented the scam payments being made. This was because she didn't think the payments were particularly unusual or suspicious to Barclays, thereby requiring them to intervene before processing them. This was because Mr W had made payments of a similar amount previously and, by the point of the larger payments, they were being sent to an established payee. Further, there weren't any warnings regarding the crypto exchange (merchant) for the payments to have flagged with Barclays.
- As Mr W didn't speak with Barclays at the time of the payments, she couldn't say they missed an opportunity to identify them being made in relation to a scam.
- The chargeback process wasn't started as Barclays didn't receive the additional information from Mr W. That said, even if Mr W provided the information and a chargeback was processed, she didn't think there was any reasonable prospect of success as Mr W received the service from the crypto exchange.
- Barclays refunded £6,046.27 to Mr W. But 50% of the payments from the fifth one onwards is £6,066.69. Having queried this difference with Barclays, they'd offered to pay the additional £20.42 to Mr W.

Mr W disagreed and so the matter has been passed to me to decide. In short, he added:

- He explained how the scam happened and that the government are now highlighting the prevalence of them – including how there isn't any organisation, body, or way of checking the authenticity of such people and firms. The government also announced, in 2022, a new crackdown on fraud and money laundering to protect the UK economy. And so, given there are identity checks to open accounts, the money from the scam payments should be traceable and retrievable.
- He's disappointed there isn't a proper tracing system to freeze the accounts used by scammers.
- He has screenshots of his entire interaction with the scammer.
- The payments were unusual for his account, as it was being sent to the same payee and increasing in value. Therefore, they should've been flagged by Barclays as potentially being due to a scam, with appropriate warnings given to him. He received no alerts or contact from Barclays in this regard.
- He wasn't in a good place at the time of the scam as, in the year prior, he'd lost both his mother and father as well as his mother-in-law. And it saddens him that the money he lost to the scam came from his mother's estate.
- He didn't receive the letter from Barclays requesting additional information. He moved property but has a postal redirection in place. Given the letter wasn't sent by recorded delivery, Barclays can't assume it was received and they made no further attempts to contact him about it.
- He thinks Barclays should refund him the full amount paid to the scammer.

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 Mr W has been the victim of a scam and I don't underestimate the impact this has had on him - particularly as the funds he lost sadly came from his mother's estate. But while I'm sympathetic to Mr W's situation, I must consider whether Barclays is responsible for the loss he suffered. And while I know this won't be the outcome Mr W is hoping for, I don't think they are. It follows that I don't think Barclays has to do anything more. I'll explain why.

I'd like to firstly acknowledge the level of detail Mr W has gone to in explaining how he was scammed. This has been extremely useful in understanding what happened. But while Mr W has offered to provide further evidence of his interactions with the scammer, I don't feel this is necessary as I fully accept he was scammed and I'm satisfied I've got enough information to decide his complaint. At which point, I'd like to assure Mr W that I've very carefully considered all the evidence he has provided. And so, if I don't mention a particular point it's not because I haven't considered it, but I've focussed instead on what I believe to be important to the outcome of this complaint.

In broad terms, the starting position in law is that a bank is expected to process payments that their customer authorises them to make. It isn't disputed that Mr W knowingly made the payments from his Barclays account and so, I'm satisfied he authorised them. Therefore, under the Payment Services Regulations 2017 and the terms of his account, Barclays are expected to process the payments and Mr W is presumed liable for the loss in the first instance.

However, taking into account regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for Barclays to take additional steps or make additional checks before processing a payment to help protect customers from the possibility of financial harm from fraud.

So, the starting point here is whether the instructions given by Mr W to Barclays (either individually or collectively) were unusual enough to have expected additional checks being carried out before the payments were processed.

Having reviewed Mr W's account statements for the twelve months prior to the scam, I can see that it was typically used for relatively low value day to day spending. There were however, at times, transactions that Mr W made of a higher value – ranging from about £500 up to £3,000. And so, given the highest value payment to the crypto exchange was only just over £3,000, I don't think the payments were out of character for Mr W's account based on their value.

I've also considered the frequency of the payments – as multiple payments made within a short period of time can be a feature of crypto scams. Here however, I don't think the payments were made within a sufficiently short enough amount of time – and of a high enough value - for them to have been seen as suspicious. And by the point of the higher value payments, with over £6,000 sent across three payments on 6 June 2022, Mr W had already made several prior payments to the crypto exchange and so it would've been seen as an established merchant. Because of this, I'm not persuaded that the payments Mr W made to the crypto exchange would've been sufficiently unusual to have indicated a heightened risk of financial harm from fraud.

Barclays, having considered the complaint, offered to consider the fifth payment as unusual but I don't think they needed to. I therefore wouldn't have expected Barclays to have taken additional steps or carry out additional checks before processing the payments. It follows

that I think Barclays has acted more than fairly by refunding 50% from this payment onwards (including the additional £20.42 they've since offered to pay).

I've considered whether, on being alerted to the scam, Barclays could reasonably have done anything to recover Mr W's losses, but I don't think they could. The only possible option for recovery here, given the payments were made by debit card, would have been via chargeback claims. Barclays have shown they wrote to Mr W requesting additional information so that a chargeback(s) could be processed but they didn't receive a response. Mr W says he didn't receive this letter but, even if it wasn't received, I don't think I can hold Barclays responsible if there was a mailing error (as this wasn't within their control). And I wouldn't expect Barclays to have sent the correspondence by recorded delivery.

Nevertheless, even if Mr W had received the letter and provided Barclays the additional information for a chargeback to be processed, I don't think this would've led to a refund. This is because, as our Investigator explained, these payments were sent to the crypto exchange for the use of purchasing crypto. Because of this, I don't think chargeback claims would have been successful as Mr W received the service he paid for. As such, I don't think Barclays is responsible for the loss Mr W suffered due to not processing chargeback claims on the payments.

I understand Mr W has explained he wasn't in a good place at the time of scam due to several close family bereavements. While I'm very sorry for Mr W's loss and the affect this had on him, I've not seen anything to show Barclays were aware of this at the time. And so, although I appreciate Mr W may have been more vulnerable to the scam at this difficult period, I don't think I can fairly apply further responsibility to Barclays because of this.

On a final note, I'm aware Mr W has questioned why the payments cannot be traced and recovered given the identify check requirements to open a bank account. While I've noted Mr W's concerns in this respect, I think it would be helpful for me to explain that the payments in question went to a legitimate crypto exchange. Because of this, any responsibility for Barclays to recover the funds he lost is limited to contacting the crypto exchange. Barclays wouldn't be expected to seek recovery of the funds beyond this. But even if they did, given the methods used by scammers to ensure anonymity with these types of crypto scams it would be highly unlikely that any further attempts to recover the funds would be successful.

I have a great deal of sympathy for Mr W and the loss he's suffered. But it would only be fair for me to direct Barclays to refund more than they already have if I thought they was responsible – and I'm not persuaded that this was the case. For the above reasons, I think Barclays has refunded more than I would've directed and so, I'm not going to tell them to do anything further.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 31 August 2023.

Daniel O'Dell
Ombudsman