

The complaint

Mr L is unhappy that Barclays Bank UK PLC has refused to refund the money he says he lost to a scam.

What happened

The circumstances that led to this complaint are well known to both parties, so I won't repeat them in detail here. But, in summary:

- Mr L says he fell victim to an investment scam that occurred between January and August 2021. He made various payments and transfers over this period including eight bank transfers, totalling £140,000, which are the subject of this complaint.
- Barclays refunded 50% (almost £12,000) of some debit card payments that Mr L said were made as part of the same scam – the bank concluded that both it and Mr L were at fault relating to those payments. But Barclays subsequently refused to refund any of the bank transfers, saying Mr L's claim wasn't covered by the provisions of the Contingent Reimbursement Model Code (the CRM Code). But it paid £150 compensation into his account by way of an apology for the length of time it had taken to give Mr L an answer to his complaint. It also contacted the banks that received Mr L's payments to see if anything could be recovered, but no funds remained. Mr L remained unhappy and asked us to consider his complaint.
- Our investigator didn't think that Barclays ought to have reimbursed Mr L. But Mr L disagreed, so the complaint has come to me.

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've reached the same conclusion as the investigator, for much the same reasons. In all the circumstances, I don't think it's fair or reasonable to instruct Barclays to refund any of the disputed payments – under the provisions of the CRM Code or otherwise – and I've reached this conclusion having taken the following into account.

There's no dispute that Mr L authorised all of the disputed payments. So, under the Payment Services Regulations 2017, and the terms and conditions of his account, Mr L is presumed liable for the losses in the first instance. But the matter doesn't end there if a scam has taken place.

As Mr L has pointed out, Barclays should be on the lookout for, and help to prevent, payments that could involve fraud or be the result of a scam. But a balance must be struck between identifying payments that may indicate a customer is potentially at risk of financial harm – and then responding appropriately to any concerns – and ensuring minimal disruption to legitimate payments. With this in mind, given the historic activity on the numerous account Mr L held with Barclays, which included some relatively large payments

and references to investments, I'm not persuaded the bank ought to have intervened particularly with respect to the earlier payments.

But, even if I thought the bank ought to have provided in-person intervention at some point, I'm not persuaded that this would have prevented the losses Mr L has claimed. I think, by the time he made these payments, he'd already built up a great deal of trust and belief in what the scammer was telling him. And, I think it's more likely than not the scammer could have persuaded him to continue investing despite any warnings the bank might have given. I say this, not least, given the following:

- The day before the first transfer was made, Mr L asked the scammer to recommend a business account that he could open because his personal account had been stopped a few times and he didn't want this to keep happening. So, it doesn't seem that the blocks Barclays, or other banks, had instigated had much (if any) effect on Mr L's decision-making. He had been sending money to genuine cryptocurrency exchanges up to that point and then passing the cryptocurrency on to the scammer. It's not clear to me, despite asking, why Mr L was subsequently persuaded to send money by bank transfer.
- Barclays' records suggest that when Mr L set up the first new payee in order to make the first transfer, he received an on-screen warning which encouraged him to check the FCA's register and warning list to confirm the investment company was certified and regulated before proceeding. Mr L says he didn't undertake any checks at that point. He appears to have thought the money he was sending was passing through a genuine FCA-regulated bank and this gave him some reassurance.
- By the time Mr L made the first transfer, he'd already been communicating and transacting with the scammer for at least a couple of months. He'd been given access to, what he felt was, a professional looking online trading platform which showed him how his investment was performing. He'd been given an insurance policy which he believed guaranteed 100% of his investment. He'd previously sent cryptocurrency to the scammer and been able to withdraw a small amount. Mr L has also shared some messages he exchanged with the scammer, but I can't see all the detail and it's clear that a great many phone calls also took place. At one point Mr L asked for a call because he wanted to discuss an "idea" he'd had and didn't want this to be recorded on the chat facility.
- Despite what Mr L says, I think the evidence suggest he and his friends (who I will talk about more below) had some investment experience prior to becoming involved in this alleged scam. They were all interested in making money quickly using the stockmarket, forex, cryptocurrency etc and were exploring these options directly as well as through intermediaries like this scammer.

Barclays has shown that £125,000 was received into Mr L's accounts from various sources while this alleged scam was taking place. Despite what Mr L has said and provided, I'm not persuaded all of money he paid away was his own. He says at least three different friends loaned money to him. But I think it's more likely than not that he was 'investing' this money on their (and perhaps other's) behalf. I say this, not least given that:

- Before and around the time this investment started, Mr L set up various limited companies which had direct and indirect links to two of his friends. The limited companies were all set up with intended business activities linked to investing and/or financial services. Mr L suggests these companies were never really active, but he seems to have received payments into his accounts relating to at least one of them. And, at some point, Mr L set up a separate account with the scammer in the name of one of the limited companies.

- The messages Mr L exchanged with the scammer include a reference to one of the individuals being his business partner. It's clear the scammer was also corresponding with this friend directly and, at one point, Mr L asked if that individual could send money direct rather than through him. Mr L asks for a third person to be added to their chat group. And Mr L refers more than once to the group's plans for the future and that they have a lot more investors lined up.
- Many of the payment descriptions that the individuals used when sending Mr L money suggested they were investing, not lending.
- Despite what Mr L says, I think the historic account activity suggests that Mr L entered investment arrangements with at least one of the individuals (and other, third parties) previously.
- Mr L has provided a personal loan agreement he says he entered into with one of the individuals. But that same individual sent him money before the date that document was signed.

With the above in mind, I can't fairly hold Barclays liable for financial losses which weren't Mr L's own.

I'm also satisfied that the bank's award of compensation was fair and reasonable in all the circumstances of this complaint – this was a, somewhat, complex situation which has taken some unravelling.

While looking into Mr L's complaint, Barclays decided to amalgamate all his accounts into one and close the others. It has also, seemingly, defaulted the remaining account because the amalgamation resulted in a debit balance which Mr L had not repaid. Mr L tells us he's unhappy with the bank's decision in this respect but, as the investigator has already explained, he needs to pursue a complaint with the bank about those matters before we can consider them.

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 L to accept or reject my decision before 31 August 2023.

Ruth Hersey
Ombudsman