

The complaint

Mr O complains that Barclays Bank UK PLC didn't do enough to protect him from the financial harm caused by an investment scam company, or to help him recover the money once he'd reported the scam to it.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In August 2020, Mr O's friend referred him to an investment company I'll refer to as "P". The friend told him P would help him to invest in cryptocurrency and showed him evidence of his investment, explaining he'd been investing for six months. He sent Mr O a referral link which he followed before opening a trading account with P, which required him to carry out ID verification checks and to create a username and password. He was then contacted by a broker claiming to work for P who instructed him to first purchase cryptocurrency through a cryptocurrency exchange company and then load the cryptocurrency onto an online wallet.

Mr O began by investing using his friend's wallet, followed by payments into his own cryptocurrency wallet once he was satisfied he could withdraw his funds. Between 3 November 2020 and 14 May 2020, he made 58 payments to a cryptocurrency exchange company I'll refer to as "C" and a payment platform I'll refer to as "L" totalling £73,382 via online transfer from his Barclays account.

On 18 January 2021, Mr O successfully made a withdrawal of £4,450, but in October 2021, he was denied access to his trading account and P's website was no longer accessible, at which point he realised he'd been scammed.

Mr O complained to Barclays stating it should refund the money he'd lost because it had only contacted him once during the scam period. Barclays said it had rewarded him £200 for the delays in resolving his complaint, but it refused to refund any of the money he'd lost. It said he had sent funds to his own cryptocurrency account, and from there, the money was sent to the scammer's wallet, so he would have to complain to the cryptocurrency merchant he paid. It also said the payments weren't covered by the Contingent Reimbursement Model ("CRM") code because they were sent to an account in Mr O's name.

It also said that between 22 September 2021 and 19 January 2022, Mr O had received payments from both C and L totalling £48,931.80. He continued to pay money to both companies after he reported the scam and he received withdrawals into his account as recently as 4 March 2022, so it didn't accept the investment was a scam.

Mr O complained to this service. He said he'd made 58 high value payments to a new payee linked to cryptocurrency, which was unusual activity, yet Barclays only contacted him once. During the call on 8 December 2020, it said it wanted to ensure the payment was genuine and warned him the investment might be a scam.

He said he received standard pop-up messages in respect of the other payments and if Barclays had contacted him and asked probing questions, it would have been obvious he was falling victim to a scam, and he wouldn't have gone ahead with the payments.

Mr O's representative argued that Barclays didn't do enough to establish Mr O was the victim of a scam and if it had asked more probing questions, he wouldn't have proceeded with the payments. They said that before the scam payment most payments on the account were under £1,000, so the sudden change to high value payments should have raised concerns.

Barclays reiterated that it didn't accept the investment was a scam because Mr O had received withdrawals from L and C totalling £48,931.80, which was an unusually large number of withdrawals to receive from a scam. And Mr O realised he'd been scammed in October 2021 but continued to make payments to both companies and he received withdrawals into his account as recently 4 March 2022.

Our investigator didn't think the complaint should be upheld. He noted there were occasions when Mr O had made multiple payments in one day, but he didn't think they would have seemed suspicious because he'd already paid the payee and the amounts weren't large enough to raise concerns, so he didn't think Barclays needed to intervene sooner than it did.

He explained there were three calls, one on 8 December 2020 and two on 17 January 2021. In each call, Mr O was asked why he was making the payments, why he was purchasing cryptocurrency and whether he'd been approached to make the transactions. He was also asked if he'd completed his own research and whether he'd checked the Financial Conduct Authority ("FCA") register. Across the three calls, Mr O said he was paying his own account, he wasn't being told to make the investments, he'd started investing on the advice of a close friend who he trusted, and he'd done his own independent research. He also said he'd been investing successfully for about four months.

Our investigator was satisfied that while the warning Mr O was given on 8 December 2020 could have been more specific, he was given an investment scam warning and asked to complete relevant research. He noted he was very confident the investment was genuine as it was recommended by a close friend and even though the scam was reported in November 2021, Mr O continued making payments beyond that date. So, he didn't think Barclays could have said anything to prevent the scam.

Our investigator was satisfied Barclays' decision to approve the payments was reasonable considering the answers Mr O gave and the fact he'd received several high value withdrawals. He also noted Mr O was warned about scams involving cryptocurrency, which he was satisfied was enough to put him on notice of the risk.

Mr O has asked for the complaint to be reviewed by an Ombudsman. His representative has said the intervention was basic and the scam warning wasn't sufficient to protect him. They have said Barclays should have asked probing questions and provided an effective and tailored scam warning and that the first intervention should have happened sooner. And while the payments were lower in value, he was making payments in quick succession, including several payments in one day, which should have raised concerns.

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 our investigator. And for largely the same reasons. I'm sorry to hear that Mr O has been the victim of a cruel scam. I know he feels strongly about this complaint, and this will come as a disappointment to him, so I'll explain why.

The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Mr O says he's fallen victim to, in all but a limited number of circumstances. Barclays had said the CRM code didn't apply in this case because the payments were to an account in Mr O's own name, and I'm satisfied that's fair.

I'm satisfied Mr O 'authorised' the payments for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although he didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of his bank account, he is presumed liable for the loss in the first instance.

Not every complaint referred to us and categorised as an investment scam is in fact a scam. Some cases simply involve high-risk unregulated investments that resulted in disappointing returns or losses. Some of these investments may have been promoted using sales methods that were arguably unethical and/or misleading. However, while customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

I've carefully considered the circumstances, and even though Mr O did receive significant withdrawals, there is a lot of information available online suggesting P was operating a scam. But, although he didn't intend his money to go to scammers, he did authorise the disputed payments. Barclays is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

Prevention

I've thought about whether Barclays could have done more to prevent the scam from occurring altogether. Buying cryptocurrency is a legitimate activity and from the evidence I've seen, the payments were made to a genuine cryptocurrency exchange company. However, Barclays had an obligation to be alert to fraud and scams and these payments were part of a wider scam, so I need to consider whether it ought to have intervened to warn Mr O when he tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect Barclays to intervene with a view to protecting Mr O from financial harm due to fraud.

I've considered the nature of the payments which pre-dated the intervention on 8 December 2020 in the context of whether they were unusual or uncharacteristic of how Mr O normally ran his account and I agree with our investigator that the two payments on 9 November 2021 were low value so there was no reason for Barclays to intervene. There were two further payments on 2 December 2020 but the cumulative total was only £2,520, so again, I don't think Barclays needed to intervene.

I've listened to the call that took place on 8 December 2020. During the call Mr O said he was buying cryptocurrency and had been investing for around four months. He was given a scam warning and he said he didn't need the payment to be processed because he'd made other arrangements. Barclays intervened again on 17 December 2020 and during the calls, Mr O was warned about scams involving the cryptocurrency exchange and advised to

research the company. He told the call handler the investment had been recommended by a close friend and that he'd researched P himself. The payment was then released.

I've thought about what took place during the calls and I'm satisfied Mr O was given a relevant scam warning and that he was told to research the investment. I think the call handlers on both occasions might reasonably have asked more questions, but I don't think it would have made any difference because Mr O was convinced the investment was genuine and that he'd done proper checks. The investment was recommended by a good friend who he believed had made good profits and he had himself received withdrawals totalling £48,931.80. He was also reassured by the fact P had required ID to open an account, he was able to raise queries via a live-chat and he was able to see his trades on his trading account.

I think Mr O would have been open in his responses to questions, but I don't think there were enough red flags for Barclays to have identified this as a scam and so I don't think there was anything it could have said in addition to what was said during the calls that took place when it did intervene that would have prevented him from going ahead with the payments. So, while I think Barclays should have intervened sooner and that it could have done more on the occasions it did intervene, I don't think this represented a missed opportunity to prevent Mr O's loss.

Recovery

I don't think there was a realistic prospect of a successful recovery because Mr O paid an account in his own name and moved the funds onwards from there.

Compensation

Mr O was awarded £200 compensation for delays investigating the complaint and I'm satisfied that's fair.

I'm sorry to hear Mr O has lost money and the effect this has had on him, but for the reasons I've explained, I don't think Barclays is to blame for this and so I can't fairly tell it to do anything further to resolve this complaint.

My final decision

For the reasons I've outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 11 December 2023.

Carolyn Bonnell
Ombudsman