

Complaint

Mr B is unhappy that Barclays Bank UK PLC didn't reimburse him after he fell victim to a scam.

Background

In June 2020, Mr B saw an advert on a social media platform advertising an investment opportunity. He was interested and so filled out a form to contact the company that had placed the advertisement. He was contacted by someone who claimed to be a lawyer working for a firm in the United States. Unfortunately, the opportunity that had attracted Mr B's attention wasn't legitimate but was a scam.

He claimed that a client had inherited a store of gold bullion that had been held in a vault in Europe for many years. He claimed that he and his team were working to secure the release of the gold so that it could be sold, and its value released.

In December 2020, the scammer told Mr B that he needed to travel to the site of the gold as part of the process of securing its release, but he needed Mr B's assistance with covering his travel costs. He told them these would be reimbursed once the gold was sold. Mr B agreed to transfer £2,600. There had been regular contact between Mr B and the scammer for around six months until Mr B was asked to transfer funds.

In January 2021, the scammer told Mr B that they could proceed with their plans but that there were significant costs involved. Mr B agreed to partially underwrite those costs on the assumption that he would receive a pay-out once the gold had been sold. He was told that the gold weight 127g and, on the basis, he anticipated a generous return. At the scammer's request, he transferred £37,000.

When the scammer tried to persuade him to transfer more money, Mr B suspected he had fallen victim to a scam. He notified Barclays promptly. It considered his complaint under the terms of the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. Under the terms of that code, it agreed to refund 50% of the money Mr B lost to the scam. However, it didn't agree to refund him in full. It thought Mr B should've taken greater steps to ensure that the opportunity was a legitimate one before transferring his money.

Mr B was unhappy with the response he received from Barclays and so he referred his complaint to this service. It was looked at by an Investigator who considered that Barclays' offer was fair in the circumstances. She didn't think Mr B had a reasonable basis for believing that the investment was a legitimate one. She also wasn't persuaded Mr B was 'vulnerable' as defined in the CRM Code which might have led to him receiving a full refund.

Mr B disagreed with the Investigator's opinion and so 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.

The starting point in law is that Mr B is responsible for transactions he's carried out himself. But, as already set out, Barclays is a signatory to the provisions of the CRM Code. So, I've considered whether he should be reimbursed in full under its provisions. The CRM Code allows Barclays to decline reimbursement in full if it can demonstrate that one of the exceptions under the code applies. In this instance, it seeks to rely on the exception that applies where a customer made payment *"without a reasonable basis for believing that ... the person or business with whom they transacted was legitimate."* In other words, it argues that Mr B's belief that this was a genuine investment opportunity was not a reasonable one.

I've considered the available evidence carefully and I agree with that conclusion. Unfortunately, Mr B no longer has any of the documentation that was provided to him as part of the scam so I can't know if it was objectively credible or not. But I think there were several factors here that ought to have caused him concern. The justification given for the initial transfer was that Mr B needed to cover the cost of the lawyer's flights to the city where the gold was stored. There was no plausible explanation given as to why this flight was necessary, but in any case, I don't find it credible that an individual involved in managing the private affairs of wealthy individuals would need to take a short-term loan from Mr B.

From everything I've seen, Mr B wasn't given a credible explanation of the obstacles preventing the gold being sold and its value realised. He appears to have simply taken the scammer at his word. Mr B told us that the gold that was to be sold weighed 127 grams and so he expected a generous. But all the data I've found suggests this would make it worth no more than £5,000.

I think there were certainly enough indicators here that things might not be legitimate. Mr B should've acted with greater caution and carried out further checks before proceeding. Overall, I'm persuaded that he made these payments without a reasonable basis of belief and as a result, it's fair and reasonable for Barclays to rely on the relevant exception in the code. It has already refunded 50% of the money Mr B lost to the scam and so it doesn't need to do anything further here.

I've also considered the arguments made by Mr B's representatives that he should be considered vulnerable. Mr B was around 80 years old at the time of the scam. It cited an industry code of practice and guidance published by the Financial Conduct Authority saying that customers over the age of 65 are *"potentially vulnerable."*

I agree that, by virtue of his age, Mr B was more likely to be targeted by a scam of this kind. However, the CRM Code treats vulnerability in a slightly different way to the guidance his representatives have cited. It says *"A Customer is vulnerable to APP scams if it would not be reasonable to expect that Customer to have protected themselves, at the time of becoming victim of an APP scam, against that particular APP scam, to the extent of the impact they suffered. This should be assessed on a case-by-case basis."*

I've not seen anything to suggest that were any factors specific to Mr B that could've hindered him in protecting himself from a scam of this type and no arguments have been made to that effect. As a result, I'm not persuaded that the CRM Code's definition of vulnerability applies here or that it's not fair and reasonable for Mr B to be considered responsible for 50% of the funds he lost to the scam.

For completeness, I've also looked at whether Barclays did everything it should've done after Mr B notified it he'd fallen victim to a scam. I can see that he informed Barclays on 14 January 2021 and that it made immediate contact with the receiving bank – i.e. the bank

that operates the account the controlled by the fraudster. Unfortunately, Mr B's funds were moved out of that account promptly and so there were no funds remaining to be recovered.

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 Mr B to accept or reject my decision before 7 November 2023.

James Kimmitt
Ombudsman