

## **The complaint**

Ms S complains that Barclays Bank UK PLC (“Barclays”) won’t refund money she lost when she fell victim to an investment scam in 2017. Some of the payments were funded through a loan that was taken out as part of the scam. Ms S says Barclays lent to her irresponsibly as it was unaffordable.

Ms S is being represented by a claims management company in this complaint.

## **What happened**

The full details of this complaint are well known to both parties and have also been previously set out by the investigator. So, I’ll focus on giving my reasons for my decision.

The complaint concerns ten payments totalling £76,250 which were made using Ms S’s Barclays debit card between February and March 2017 in connection to an investment opportunity with a firm “H”. A loan for £35,000 was taken out on 15 March 2017 and was used to fund some of the payments.

Ms S says H turned out to be a scam and according to her representative’s submissions the matter was reported to Barclays in late 2022. Ms S’s bank statements show that in December 2018, she received a credit for £22,776 from H. This amount was then used to settle the Barclays loan that was taken out in 2017.

## **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.

Given my research into H, I think Ms S was likely scammed. In 2020, the FCA removed H’s passporting rights to operate in the UK. Reference was made to H enticing consumers into scams involving Contracts for Difference (a high-risk investment area). But this warning wasn’t published until 1 June 2020, which is more than three years after Ms S made her payments.

Under regulations and in accordance with general banking terms and conditions, banks should execute an authorised payment instruction without undue delay. The starting position is that liability for an authorised payment rests with the payer, even where they are duped into making that payment. There’s no dispute that Ms S made the payments using her security credentials, and so they are authorised.

But in accordance with the law, regulations and good industry practice, a bank should be on the look-out for and protect its customers against the risk of fraud and scams so far as is reasonably possible. If it fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime, it might be liable for losses incurred by its customer as a result.

I've looked at the operation of Ms S's account. I don't consider the first disputed transaction (£250) was particularly unusual or suspicious such that I think Barclays ought to have intervened. But two weeks later, when Ms S authorised the next transaction (£10,000), I consider the payment was out of character for her usual account activity such that I think Barclays ought to have made further enquiries.

But that isn't the end of the matter. Causation is a critical determinative factor in every scam case. It isn't enough that a payment service provider like Barclays failed to act fairly or reasonably; its acts or omissions must be the immediate and effective cause of losses that were reasonably foreseeable at the time of the breach.

We would expect banks to educate a customer on the steps they can take – research, etc. – to ensure they are dealing with a legitimate trader and provide a scam warning if necessary. As the investigator explained – and I agree – had Barclays intervened here and told Ms S about the research she could carry out, she simply would have discovered that H was regulated in another country and had passporting rights to offer financial services to UK customers. I'm not persuaded anything about that would indicate to either the bank or Ms S that she was ultimately investing into a scam. As I've mentioned, the warning wasn't published until three years later. So, I'm not persuaded that an intervention by Barclays would have resulted in Ms S not going ahead with that payment – or the subsequent payments which wouldn't appear unusual due to the earlier payments forming part of the account spending pattern.

In relation to the £35,000 loan which Ms S says the scammer encouraged her to take out, her representative submits that the loan wasn't affordable as the repayments were just over half of Ms S's monthly income.

Given how long ago the loan was taken out, there isn't a lot of information available from the time of the application. I don't think that's unreasonable. The crux of Ms S's representative's argument is that the repayments weren't sustainable given her income at the time. There's no suggestion that there were other factors, such as adverse credit history, which meant Barclays lent to her irresponsibly.

As the investigator has highlighted, Ms S's bank statements show she received regular credits into her account each month in addition to her salaried income. These additional credits increased her average disposable income by over a £1,000. Reviewing the incomings and outgoings, I find that the monthly loan repayments were affordable.

Ms S says the credits – which appear to be cash and cheque remittances – were made by a relative. Her representative says these shouldn't be considered as a source of income. While I understand the point Ms S's representative is trying to make here, given the frequency and the regular nature of these credits, I don't agree that the bank wasn't entitled to take them into account when assessing affordability. Had these been irregular or ad-hoc credits, then I might have thought differently. Overall, based on what I've seen, I haven't seen sufficient evidence to conclude that Barclays's decision to lend to Ms S was irresponsible.

I've also thought about the recovery of funds once Barclays became aware of the situation. As these were card payments, the only recourse would have been a chargeback. Given the length of time that had passed between when the payments were made and when Barclays was notified, it would have been too late for a chargeback to be attempted given timescales apply to when the card scheme would consider it valid.

In summary, despite my natural sympathy for the situation in which Ms S finds herself, I don't find that Barclays has acted unfairly or unreasonably. So, I won't be making an award against it.

**My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 5 February 2024.

Gagandeep Singh  
**Ombudsman**