

The complaint

Mrs D complains that Barclays Bank UK PLC refuses to refund the money she lost to multiple investment scams.

What happened

The background to this complaint is well known to both parties, so I'll only summarise key events.

Mrs D saw a social media post from a friend stating they'd invested with a trading platform I'll call 'C' and had made good returns. Mrs D invested approximately £26,000 with C (via two different banking providers) but C's trading platform subsequently disappeared. Mrs D joined a social media group and people within that group recommended a company I'll call 'M'. Mrs D understood that M would help recoup the losses from her C investment. Mrs D invested £10,000 with M who subsequently disappeared. Mrs D later discovered that scammers had infiltrated that social media group.

Mrs D joined a social media group for people who'd lost out to M. She invested with companies I'll call 'A' and 'E'. Mrs D was able to successfully withdraw more than she invested with 'E' and she was able to make smaller withdrawals from 'A' but then she was unable to withdraw any funds. Someone from the social media group reached out to Mrs D and recommended another company called 'F'. At this point Mrs D was desperate to recover her losses and an account manager for F was able to answer a lot of Mrs D's questions and reassure her they would be able to help.

Mrs D was offered access to a private investigator called 'Chris' who claimed to be an expert in recovering losses. He explained that Mrs D would first need to open a 'numbered account' which came with a fee. Mrs D agreed and then made numerous payments to Chris until she was persuaded this was also a scam.

A company I'll call G reached out to Mrs D showing her a screenshot of her money from F. They said they could get it back if she paid them. Mrs D agreed but G disappeared. Barclays intervened towards the end of the scam.

Mrs D referred her complaint about Barclays to this service and claims it didn't do enough to protect her from financial harm.

Whilst Mrs D was scammed by various companies, she paid these companies in crypto. And in order to facilitate the payments, she was guided to open a crypto exchange account in her name with a company I'll call S. Mrs D therefore disputes a total of 28 payments she made from her Barclays account to S to fund the various scams from April 2022 to October 2022. The disputed payments total £185,236.71 (I've deducted the amounts Mrs D was able to withdraw).

Barclays declined to refund Mrs D. It said she did not do enough due diligence when making the transfers and did not check whether the investment returns were viable. Barclays

advised Mrs D on 2 September 2022 that it believed she was being scammed and referred her to a branch but she didn't heed the warning from its staff members.

One of our investigators looked into things. He felt Barclays should have intervened sooner than it did. But he didn't think a warning would have likely made a difference. He noted that Mrs D also made payments to the same scam via another third-party bank account. He noted that bank warned Mrs D in April 2022 but Mrs D was comfortable with her decision to proceed with the payment.

In July 2022, Mrs D contacted the third-party bank to let it know she believed she was the victim of a scam. The third-party bank advised she was liable for the loss. And our Investigator felt at this point, she ought to have reasonably been aware of this type of fraud and should have recognised red flags when she was contacted in the same manner again. Our investigator further noted that when Mrs D visited a Barclays branch in September 2022, the branch advised this was a scam and called the police to attend – who also advised Mrs D she was being scammed. But Mrs D continued to make further payments to the scammer. Our investigator highlighted that after Mrs D reported the scam to her third-party banking provider in October 2022, she decided to make a further payment to the scam three months later.

Overall, our investigator didn't think that Barclays could have prevented Mrs D's loss and she would have likely continued to pay the scammer, even if Barclays had intervened sooner.

Mrs D didn't agree and asked for an Ombudsman to consider the complaint. She said in summary:

- She only wanted transactions up to 1 September 2022 to be reviewed, not after, which she accepts were her responsibility.
- Had Barclays blocked earlier transactions, she was abroad and wouldn't have been able to unfreeze her account. Towards the end of the scam, she'd paid the scammers so much, she was convinced she had to continue.
- She doesn't agree she could have found that Chris was a fraudster as there was no adverse information about him.
- Paying £5,000 to open a numbered account seemed reasonable and she checked the bank was reputable.
- At the point she paid £42,000 tax to access a £70,000 investment, she was shown she had access to an account (which she didn't know was fraudulent) which contained €718,500 – so the payment she made sounded reasonable.
- Had she been in the UK when the scam with Chris was occurring, she would have been in a better position to do a lot more investigating but couldn't as access to her internet abroad was limited.
- She doesn't think Barclays should refund all the money but she wants to know why it blocked the 20th payment when there were payments of much larger amounts earlier.
- When she was scammed by F, she was going to pay another £16,000 into the account but she spoke to someone in the UK who had a look into the company and told her not too. Had she been able to contact that person again (if she were in the UK at the time) things would have been different. If Barclays blocked payments and she had to wait until she was back in the UK, things would have been very different.

On 28 November 2023, I issued a provisional decision not upholding Mrs D's complaint. For completeness, I repeat my provisional findings below:

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 don't uphold this complaint but before I explain why, I want to make it clear that I believe Mrs D is the victim in what I consider to be cruel multi-layered scams. But being the victim of a scam, doesn't automatically entitle Mrs D to a refund.

Banks and other Payment Services Providers ("PSPs") have duties to protect customers against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering (see below). But when simply executing authorised payments, they do not have to protect customers against the risk of bad bargains or give investment advice — and the FCA has confirmed that a fraud warning would not constitute unauthorised investment advice.

There's no dispute from either party that Mrs D was the victim of multiple scams. Having concluded that these were scams rather than just 'bad bargains' I must now go on to consider three more issues in order to determine the outcome of the complaint:

- 1. Were any of the payments Mrs D made out of character and unusual and should Barclays have intervened before processing them?*
- 2. If so, would Barclays intervention have made a difference and prevented or reduced the loss?*
- 3. And if so, should Mrs D bear some responsibility for the loss such that it would be fair and reasonable to reduce compensation proportionately.*

Were any of the payments out of character and unusual and should Barclays have intervened before processing them?

It is common ground that the disputed payments were 'authorised' by Mrs D for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. This is because they were made by Mrs D using the legitimate security credentials provided to her by Barclays. These must be regarded as 'authorised payments' even though Mrs D was the victim of a scam. So, although she did not intend the money to go to scammers, under the Regulations, and under the terms and conditions of her account, Mrs D is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Barclays should fairly and reasonably:

- Have been monitoring accounts—and any payments made or received—to counter various risks, including anti-money-laundering, countering the financing of terrorism, and preventing fraud and scams;*
- Have had systems in place to look out for unusual transactions or other signs that might indicate its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer; and*
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.*

I've noted there were interventions early on by Barclays and Mrs D's third-party bank. I've seen notes that Mrs D attempted to make a payment of £301 to S on 9 April 2022 (early on into the scam). Barclays say it had a telephone conversation with Mrs D on 11 April 2022

and she confirmed the transaction was genuine. The notes say Mrs D cancelled the payment (presumably as she'd already sent this money via her third-party bank) but she said it was safe to be released. The notes also say that Barclays had a scam conversation with Mrs D. But Barclays hasn't provided a copy of this call, so I cannot say with any certainty how meaningful the scam warning was. But I have noted the third-party bank also intervened when Mrs D tried to send a payment of £301 to S and she was given a written warning. However, I don't think this warning was relevant to the scam Mrs D found herself the victim of, so I don't think it was all that meaningful.

I also think there were other points that Barclays could have intervened based on the size and frequency of the payments to S and I'll list these points below:

- 21 April 2022 – payment of £10,000
- 22 August 2022 – three payments totalling £45,000 were sent on to S

Whilst there were other payments to S in between the above dates, they didn't exceed £10,000 and they were to the same payee and were in keeping with Mrs D's pattern of spend. So, I don't think any payments between 21 April 2022 and 22 August 2022 were unusual or uncharacteristic enough for Barclays to have intervened.

Barclays also intervened on 2 September 2022 when Mrs D was sending a payment to S. It felt she was being scammed, so it invited her to visit a branch where the police were called. I appreciate Mrs D would like an explanation as to why Barclays didn't intervene sooner. I've seen that it did (albeit I don't have detail around what was exactly discussed). But I also agree with Mrs D that Barclays could have done more at different stages. It's not for me to explain why Barclays' systems didn't detect some of her payments as unusual because I consider the payments I've highlighted were unusual for Mrs D. I am satisfied Barclays ought fairly and reasonably to have intervened by calling Mrs D to ask some questions about the nature and purpose of the payments before agreeing to process them.

Although Barclays intervened at a later stage, I think there were some missed opportunities for Barclays to have intervened earlier on.

Would Barclays' intervention have made a difference and prevented Mrs D's loss?

If Barclays had fulfilled its duties by asking suitably probing questions, there is no reason to doubt that Mrs D would have explained what she was doing and that the purpose of the payments were to invest. I've seen that in conversations with Barclays and with her third-party bank, she explained that she was investing these funds.

In such circumstances, whilst Barclays had no duty to protect her from a bad bargain or give investment advice, it should have reasonably asked Mrs D some further questions to ascertain whether she was likely to be at risk of financial harm from fraud. I've thought carefully about the sorts of questions Barclays should've asked, bearing in mind the features of investment scams at that time – particularly crypto scams.

At the time Mrs D fell victim to the scam, investment scams carried common features. For example, these included rates of return which were too good to be true, receiving the opportunity to invest via an unsolicited offer or cold call (this could be contact via social media); with fraudsters often applying pressure to their victims to invest quickly.

Against this backdrop I'd have expected Barclays to ask Mrs D some questions to see if there were any signs that this was an investment scam (as described above).

At the point of the initial intervention Barclays say it made on 11 April 2022, I think Mrs D would have explained that one of her friend's suggested via social media that C was a good investment opportunity and they'd earned profits. I don't think Barclays would have necessarily been concerned that Mrs D was falling victim to a scam. She'd received the opportunity from someone she considered to be a friend who had earned profits. She also hadn't yet experienced any issues with being unable to withdraw any profits. However, given the risks associated with crypto scams, I think Barclays ought to have explained the various risks of crypto trading and that C could have difficulties withdrawing her profits and may lose them entirely.

Barclays notes suggest that a verbal scam warning was given prior to Mrs D making any substantial large payments and Mrs D proceeded with making more substantial payments despite these warnings. I'm also mindful that there were no credible warnings about C at the point Barclays say it intervened, so based on the evidence that Mrs D didn't heed a warning when she hadn't paid substantial funds to C, I think she would have proceeded with the payment even if Barclays had provided a meaningful warning.

At the point of Mrs D's payment of £10,000 to S on 21 April 2022, I think Barclays ought to have reasonably expressed similar concerns to Mrs D about common investment scams involving crypto. But I also don't think any meaningful warning would have dissuaded Mrs D from investing with C. At this point, she had no concerns that C was a scam company, she trusted the advice she was receiving by individuals she believed to be friends and she believed what she was investing in was real. As I explained above, there was no credible adverse information published about C, so I don't think Mrs D could have been persuaded not to invest with them, even with a meaningful warning from Barclays.

Had Barclays intervened on 22 August 2022, when Mrs D made payments of £45,000 in one day. I think Mrs D would have been honest about what she was doing – she would have explained she'd been the victim of a scam and was paying money to a private investigator who was helping her to recover her payments. With this information, I think Barclays would have likely concluded - as it did in September 2022 - that Mrs D was almost certainly the victim of a scam and would likely have invited her to come into branch so that it could discuss the payments face to face. I think after this conversation, Barclays would have likely called the police (as it did in September), who I think would have explained that Mrs D was the victim of a scam. I've taken account of the fact that Mrs D says she was abroad at the time and would have had time to reflect whilst her account was frozen until she returned. But I agree with our investigator that I don't think this would have deterred Mrs D from investing. I think Mrs D was so bought into this multi-layered scam and had already lost substantial sums of money that she was willing to believe that someone could help her.

I say this because after Mrs D lost approximately £10,201 (from her Barclays account) to the scam involving C, she started investing with M in order to recoup her losses. She was introduced to M in the same manner that she was introduced to C but this didn't deter her from investing. And when she lost money with M in the same way, she decided to invest with A and E. Whilst she says she was successfully able to withdraw with E, she made smaller withdrawals with A until the same pattern repeated itself. The same thing repeated when Mrs D was introduced to F – at which point she realised she'd been scammed and tried to contact her third-party bank for help with recovering her payments. She was then subsequently introduced to Chris. I think by the point Mrs D met Chris, she'd already lost substantial sums to scams and in her words, was desperate to recover her payments. I don't think the difference of a week would have made a difference because despite Barclays and the police advising Mrs D that she was the victim of a scam, she continued to make further payments to Chris one month after these warnings.

I think Barclays did all it could have reasonably done in September 2022 to warn Mrs D and I acknowledge she doesn't expect payments after this warning to be returned to her. But I still have to consider that Barclays did provide meaningful warnings in September 2022 but I've seen these warnings and the addition of police involvement didn't stop Mrs D from sending further payments to Chris.

In other words, I am satisfied those earlier warnings from Barclays probably would have made no difference to Mrs D. Any failings by Barclays were not the dominant, effective cause of her losses; they were just part of the background history or occasion that led up to them.

In light of my conclusions above on whether a warning would have made a difference, it is unnecessary for me to go on to consider whether Mrs D herself was partly to blame for what happened (contributory negligence). Indeed, I have already concluded that she was responsible for her own investment decisions, and that such choices were the proximate cause of her losses.

But I want to be clear that I understand Mrs D fell victim to a very sophisticated scam. She is not to blame for this; the cruel scammers are to blame.

Recovery

I've thought about whether Barclays did what it ought to have done to recover Mrs D's payments.

Mrs D transferred funds to an account in her name and control with S. From there, she purchased crypto and moved it onto a wallet address of her choosing (albeit upon the scammers instructions). So I can't say that Barclays could have likely recovered her losses. Barclays' only option to recover Mrs D's payments would have been to recover them from S but by the time she reported the scam, she'd already moved her money from S to the scammers. And even if she hadn't, she'd have had access to the funds in her S account as they were in her control. So, I don't think there was any reasonable prospect of success had Barclays tried to recover Mrs D's losses.

Responses to my provisional decision

Barclays nor Mrs D responded to my provisional decision.

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.

As neither party had anything further to add, I see no reason to depart from my provisional decision (which forms part of this final decision).

My final decision

My final decision is, despite my natural sympathies for Mrs D's loss, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 12 January 2024.

Dolores Njemanze

Ombudsman