

## **The complaint**

Mr B complains that Barclays Bank UK PLC (“Barclays”) have failed to refund over £39,000 that he says he lost to an investment scam.

The details of this complaint are well known to both parties, so I won’t repeat everything again here. Instead, I will focus on giving the reasons for my 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.

Having done so, I agree with the conclusions reached by the investigator for the following reasons:

- The relevant regulations and industry guidance makes it clear that banks have a duty to protect consumers from the risk of financial harm, including fraud and scams. But the obligation to warn customers of the risk of such financial harm will only reasonably have been engaged if there were sufficient grounds for suspecting the payee was a fraudster; meaning that Barclays could have delayed the payments while concerns about the payee were discussed with Mr B.
- So, I would need to be satisfied that Invest.com was operating a scam when the disputed payments were made between September 2016 and February 2017 in order to expect Barclays to have done anything further here. When determining this, I’ve borne in mind that certain high-risk investment traders (such as CFD merchants) may use sales methods, or communication styles that can be seen to be unfair. Especially, when considering the financial losses incurred because of a disappointing return on an investment that’s been promoted. Even so, not all complaints to us involving CFD merchants are in fact a scam. While the ways and means of these businesses can be viewed as unreasonable or even unethical – that doesn’t necessarily mean they amount to the high legal threshold or burden of proof for fraud.
- I’ve consulted the official organisations that publish warnings about merchants that operate in the UK and abroad, including the Investor Alerts Portal of the International Organization of Securities Commissions (“IOSCO”), as well as the FCA’s own warning list. These watchlists, along with other reputable sources, lead me to believe that there were no warnings about Invest.com at the time these payments were made. The broker was a trading name of Topic Markets Ltd, which was also regulated by the Cyprus Securities and Exchange Commission (CySEC) at the time and therefore authorised by the Financial Conduct Authority (FCA) under the Temporary Permission Regime.
- So, overall I’m not persuaded the investment firm can be said to have been fraudulent or operating a scam at the time in question. As a result, Barclays’ obligation to intervene wasn’t triggered. There was the inevitable risk of Mr B’s investments returning a loss based on market performance. But Barclays isn’t required to protect its consumers from the risk of financial loss due to investment advice or bad bargains. Therefore, I don’t

consider Barclays acted unfairly by failing to intervene in these payments.

- Even if I were to accept that the merchant was operating a scam at the time and that Barclays should have intervened to ask questions about the payments, there would have been very little to suggest that the investment firm was operating a scam, given it was regulated at the relevant time. Indeed, Mr B has said himself that he researched invest.com at the time and found no mention of it being a scam. So, any warning from Barclays to carry out further research on the investment firm's legitimacy would have been unlikely to yield any results that would have ultimately prevented the payments from being made.
- Given Mr B made the disputed payments via debit card, there is also the possibility that he could have sought to recover his funds via a chargeback claim. However, Mr B didn't dispute the transactions with Barclays within the relevant time period allowed (120 days) by the scheme provider, so I don't consider it acted unreasonably by failing to pursue a claim in these circumstances.

### **My final decision**

For the reasons given above, I do not 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 14 September 2023.

Jack Ferris  
**Ombudsman**