

The complaint

Mr D 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.

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.

Mr D wanted to book a holiday and found a hotel which was highly rated, well-reviewed, and recommended on major hotel websites. He decided to contact the hotel and completed a contact form using his email address. Unfortunately, his emails were intercepted by scammers who then had control of all communication between him and what he thought was the hotel. He decided to go ahead with the booking on 17 June 2022 and was misled into paying a total of £8,115.68 to the scammers from his Barclays account via an account he held with "W".

On 27 October 2022, Mr D contacted the hotel via live chat to ask for confirmation of the booking, but the hotel confirmed they had no record of the booking or the payment. And when he shared the emails, he learned they weren't with the hotel, and the bank details didn't match.

Mr D contacted Barclays with the assistance of a representative. He said it had failed in its duty to protect him from this scam as it failed to provide effective warnings which would have prevented his loss. And when it did intervene, it failed to ask probing questions which would have allowed it to understand the context of the payments. The representative said that had Barclays done more to protect Mr D, he wouldn't have proceeded with the payment. Barclays said W was a well-established payee, so the payment wasn't out of character. It accepted Mr D tried to raise a fraud claim, but even if he'd been successful, the claim would have been withdrawn on the basis that the onward payment to the hotel came from T, so he'd need to raise a claim with W.

Mr D complained to this service. He said he didn't know could intercept emails and that he'd sent £8,115.68 without any intervention from Barclays apart from a general pop-up asking if he was sure he wanted to make the payments.

He thought the booking was genuine because the correspondence was professional, and the email signatures looked legitimate. He was distressed when Barclays didn't log his complaint or provide education on how to avoid scams in future. He accepted W was an established payee but argued the high-value nature of the payment should have caused concerns and raised red flags. He said Barclays should have measures in place to detect a sudden increase in spending and recognise suspicious and high-value transactions. He said the highest transaction he'd made in the months prior to the scam was £2,500, so £8,115.68 was unusual. He argued that if Barclays had sent him a warning tailored to this particular type of scam, he would have been deterred from making the payment. But it failed to warn him, therefore it failed to protect him from the risk of fraud.

Finally, he stated the overarching provision of the Contingent Reimbursement Model ("CRM") code is for signatories to reduce the occurrence of APR scams and Barclays failed to adhere to this.

His representative said the payment represented a sudden increase in spending, it was a large and unusual amount and it matched known advanced fee/impersonation fraud. Further, he had received £8,115.68 into the account and transferred it to W the same day, which was another known indicator of fraud. They said that, as a signatory of the CRM, Barclays should have sent effective warning messages and that the one it did send was ineffective, bland and generic and didn't contain anything to catch his attention or alert him that the payment had the hallmarks of fraud. They said the warning should have been tailored to APP scam risk indicators, which would have indicated he was being scammed.

Representative also said Barclays didn't bother to contact Mr D to check it was him making the payment, even though he hadn't sent any high-value payments in the months prior. They argued it should have called to ask questions around why he was making the payment, how he found out about the company, whether he'd researched the company, where it was based and whether someone was pressuring him to make the payment. With this information, it should have realised he was likely falling victim to an elaborate scam and as he wasn't prompted to give false answers, it would have been clear the payment had the typical hallmarks of that particular scam type. It should then have provided an effective warning and Mr D would have decided against making the payment.

Barclays explained it didn't intervene because he'd made payments of similar value and the money was transferred to an account Mr D held with W, which was an existing payee that he'd paid many times, as well as after the scam. It also said it isn't liable for the payment under the CRM code as it doesn't apply to payments to an account in the same name, so Mr D would need to raise a complaint with W.

Our investigator didn't think the complaint should be upheld. She didn't think the payment was particularly unusual or suspicious when compared to the normal account activity, explaining he'd made a payment of £20,000 on 28 April 2022, another payment of £10,000 on 13 January 2022 and £10,150.39 on 22 March 2022. Further, W was a known payee to which Mr D made other high value payments including £2,408.02 on 28 February 2022. She explained that as Mr D didn't interact with Barclays when he made the payment it didn't miss an opportunity to identify it was being made in relation to a scam.

And she said there was no prospect of a successful chargeback claim as W had provided the service it was required to provide, and there would have been no prospect of a successful recovery as Mr D had moved the money from W to the scammers account.

Mr D has asked for his complaint to be reviewed by an Ombudsman arguing the large payment were transfers referred to by our investigator were between other accounts he held with Barclays, and all other payments were more than £5000 less than the disputed payment.

They maintain Barclays should have flagged the payment as unusual and asked questions around the purpose of the payment in response to which he would have been open about the reason for the payment. Barclays would then have given standard scam prevention advice like calling the beneficiary to verify the bank details, and the scam would have been stopped.

His representative maintains Barclays should've asked questions at the time of payment and had it asked basic questions and given the standard advice to verbally confirm the bank details with the beneficiary, the scam would have been prevented.

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 D 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 D says he's fallen victim to, in all but a limited number of circumstances. But the CRM code doesn't apply to this payment because it was to an account in Mr D's name.

I'm satisfied Mr D 'authorised' the payments for the purposes of the 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, Mr D 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 I am persuaded this was a scam. But, although Mr D didn't intend the 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 also thought about whether Barclays could have done more to prevent the scam from occurring altogether. Paying for holidays is a legitimate activity, 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 D when he tried to make the payment. If there are unusual or suspicious payments on an account, I'd expect Barclays to intervene with a view to protecting Mr D from financial harm.

The payment didn't flag as suspicious on Barclays's systems. I've considered the nature of the payment in the context of whether it was unusual or uncharacteristic of how Mr D normally ran his account and I don't think it was. The payment was to an account in Mr D's own name which he'd paid several times before. And while I accept £8,115.68 is a large amount of money, it's not unusual when compared with the spending on Mr D's account,

because there are other large payments in the six months leading up to the disputed payment.

I accept he also used the account for smaller day to day payments and Mr D has pointed out the larger payments are transfers between this account and other accounts he holds with Barclays. But the payment to W is also to an account in his own name, albeit with a different bank, so there isn't distinction enough between this and the other large payments to make the transfer to W suspicious. And there are other instances of him having transferred money out of the account shortly after receiving it. So, I don't think Barclays missed an opportunity to intervene.

Overall, I'm satisfied Barclays took the correct steps prior to the funds being released – as well as the steps they took after being notified of the potential fraud. I'm sorry to hear Mr D 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 D to accept or reject my decision before 12 October 2023.

Carolyn Bonnell
Ombudsman