

The complaint

Mrs T complains that Barclays Bank UK PLC (Barclays) wouldn't refund money she lost in an investment scam.

What happened

Mrs T sadly passed away after putting her complaint to Barclays via a third-party claims firm. After that, Mrs T is represented by her daughter, but I will refer to the late Mrs T as the complainant.

What Mrs T says:

Mrs T was cold called in 2018 by someone purporting to be an investment advisor. She was encouraged to invest in bonds with a firm (which I will call A). A was said to be investing in property and was said to be generating cash 'immediately'. Mrs T agreed to invest and made two payments totalling £25,000 as follows:

Date	Payment type/Beneficiary	Amount
2 November 2018	Online banking/ payment service provider	£10,000
3 November 2018	Online banking/ payment service provider	£15,000

Mrs T received a bond certificate for £25,000 dated 5 November 2018.

Mrs T argues that she was vulnerable when the payment was made - she was then aged 89. She said that A was a scam operation and had raised funds from investors, but they weren't used for the purposes they promised. A therefore defrauded hundreds of people.

She said Barclays should've stopped the payments and ask questions. If they had, the payments would likely have not been made and her losses avoided. Mrs T complained to Barclays early in 2023. She said Barclays should refund the money, plus 8% per annum interest.

What Barclays said:

Barclays said the payments were made for a bad investment and not a scam. Mrs T had been introduced to A by an intermediary and was advised by email to 'take time to understand the investment opportunity in its entirety'. The payments were made to a payment service provider and not to A directly, but Mrs T went ahead. The transactions were not out of character with the way in which Mrs T used her account, and so Barclays couldn't be expected to have stopped the payments. Barclays didn't refund any money.

Our investigation so far:

Mrs T brought her complaint to us. Our investigator didn't uphold it. He said it was likely the

funds were sent onto A by the payment service provider. He couldn't be certain whether A was a scam or a genuine investment company. But in either case, he could see that the payments weren't out of line with Mrs T's normal use of her account – so he could see why Barclays didn't stop them. Even if they had, he could see that A seemed (at that time) to be a credible, trading investment company, and therefore it was likely that Mrs T would've gone ahead anyway.

He couldn't see that Barclays tried to recover the money – given the passage of time this was reasonable.

Mrs T didn't agree and asked that an ombudsman look at her complaint – and so it has come to me to make a final 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.

I'm sorry to hear that Mrs T has lost money. It's not in question that she authorised and consented to the payments in this case. So although Mrs T didn't intend for the money to go to a scammer, she is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case. But that is not the end of the story. Taking into account the law, regulators 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 that its customers were at risk of fraud (among 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.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make 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.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) doesn't apply in this case. That is because it came into effect in May 2019 – after the payments in question.

I looked at what happened to A. It was a trading company when Mrs T made the payment in November 2018 – as A lodged a 'confirmation statement' at Companies House in August 2017. And filed its annual accounts for the year ended 28 February 2018. It was only later when A went into difficulty – as it went into administration in May 2020.

But - this decision does not hinge on the status of A at the time i.e. whether it was a scam operation, or a viable investment. I need to decide whether Barclays acted fairly and

reasonably in its dealings with Mrs T when she made the payments, or whether it should have done more than it did. I have considered the position carefully.

In their submissions to us, Barclays advised that the two payments in question were made by Mrs T's daughter under her Power of Attorney (POA), but that doesn't affect this decision.

The important matter here is whether these were payments that Barclays might reasonably have considered unusual, and therefore whether they should've held or stopped the payments and contacted Mrs T (or her daughter) about them.

I looked at Mrs T's account history with Barclays. And I don't think the payments were unusual for her. There were fairly frequent, large online payments. For example I can see:

£4,273.50 to £4,347.50 – regular monthly payments each month up to June 2018.

June 2018 - £13,092, £3,155, £3,000.

July 2018 - £11,815.

August 2018 - £385,039, £11,250.

September 2018 - £10,000, £10,000.

October 2018 - £2,370, £2,400, £1,570, £2,400, £3,000.

There's a balance to be struck: Barclays has obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. In this case, the disputed payments were not out of line with how Mrs T normally used her account. Therefore, I think Barclays acted reasonably in processing the payments, and not contacting Mrs T (or her daughter) about them.

Therefore, I don't think Barclays can be held to be reasonably liable for the payments made.

Recovery:

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether Barclays took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost funds. And here, because they weren't advised about the disputed payments until early in 2023, sufficient time had passed to suggest there was little point in trying to recover payments that were made in November 2018 – and so Barclays took no action. Under the circumstances I think that was a reasonable thing to do.

Mrs T lost a lot of money - and when she was vulnerable. But having looked at the circumstances of this complaint, I'm not going to ask Barclays to do anything here.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 22 October 2023.

Martin Lord
Ombudsman