

The complaint

Mr S complains that Barclays Bank UK Plc won't reimburse him with the money he lost to a 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.

In 2021 Mr S says he was looking to invest in cryptocurrency and found a firm online that I'll refer to as N. Between August and November 2021 Mr S sent payments from his account with another bank 'S' to an exchange I'll refer to as 'C'. Cryptocurrency was purchased which Mr S believed was then used to fund his investment with N. Mr S says that he had an account manager from N and access to a platform where he could see his account value rising.

In late October 2021 Mr S' account manager told him there was a problem and that his account was frozen. He was required to pay a further amount of around £26,000 to release his funds. Around this time Mr S was also referred to a Mr B who he was told also had significant funds frozen with N and who would assist him to recover the same.

At Mr B's direction Mr S started to use a different cryptocurrency exchange 'K' and he also opened an account with Barclays. This was because Mr B told him that Barclays were more co-operative with payments being made to cryptocurrency.

Mr S made payments from his account with S to C of around £165,000. There was also one payment from that account on 23 November 2021 for £100 which went to K. Mr S also received credits back into his account with S from C of around £37,000. Mr S then went on to send significant funds of over £630,000 from his account with Barclays towards the scam (to both C and K). This included the proceeds of Mr S selling his home. The details of these transactions are listed below:

Date	Amount	Beneficiary	Notes
31 December 2021	£100	K	Online Banking
12 January 2022	£410,506 Credit	N/A	Credit from Equity Release
13 January 2022	£50,000	K	Online Banking
13 January 2022	£83,000	C	In Branch
13 January 2022	£67,000	K	In Branch
14 January 2022	£189,000	K	In Branch (Posts to statement on 17 January)
18 January 2022	£15,000	K	Online Banking
26 January 2022	£4,000	K	Online Banking
1 Feb 2022	£155,966.17 Credit	N/A	Proceeds of House Sale

1 February 2022	£155,500	K	In Branch
3 February 2022	£21,000	K	Online Banking
3 February 2022	£24,000	K	Online Banking
4 February 2022	£5,800	K	Online Banking
7 February 2022	£19,250	K	Online Banking

In February 2022 Mr S realised he'd been the victim of a scam and reported this to Barclays and S. This realisation came when he was due to receive over £1,000,000 from Mr B (who was also going to buy back his home for him and provide him with two new cars) but was then informed that he'd been in an accident. Barclays had intervened numerous times in the series of payments Mr S had made. And overall they felt they'd done enough to warn him of the risks involved and declined to offer a refund.

One of our Investigators didn't recommend that the complaint should be upheld. In summary she didn't think that any reasonable level of questioning by Barclays would have resulted in Mr S not continuing to make payments towards the scam. So, she didn't recommend that they needed to do more.

Mr S disagreed and asked for an Ombudsman to review his complaint. In August 2023 I issued a provisional decision in which I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm aware of Mr S' linked complaints which arise from the same overall scam. But this decision is limited to whether Barclays have acted fairly and reasonably in all the circumstances.

Overall, I'm intending to reach the same outcome as our Investigator. But as I'm providing a greater level of detail, I wanted to issue this provisional decision to give both sides a further opportunity to comment before finalising my decision.

Firstly, I'm very sorry to hear that Mr S has lost such a life changing amount to cruel and callous scammers. I have no doubt as to the significant impact this must have had (and continues to have) on him. My role here however is to act impartially to reach a fair and reasonable outcome. So, despite my natural sympathy for Mr S' situation, it would only be fair for me to direct Barclays to do more if they are responsible for failings which either caused the loss or hindered its recovery.

Does the Contingent Reimbursement Model Code (the CRM Code) apply to this complaint?

In May 2019 the Lending Standards Board introduced the CRM Code. This is a voluntary code through which victims of Authorised Push Payment (APP) scams can sometimes receive reimbursement from the banks involved.

Mr S believes the payments he made from his Barclays account fall within the scope of the CRM Code. He has pointed out the way in which APP scam is defined in a recent consultation by the Payment Systems Regulator. Specifically, that it involves a transfer to an account 'controlled by the fraudster'. He believes this supports the CRM Code being applicable here. I've considered this, but I think the definition within the CRM Code itself should be used. And this means, for the CRM Code to apply, it requires that the payments were made to 'another person'.

Mr S' testimony around this issue hasn't been consistent. When Barclays (and S) intervened

in the payments he was making, he told them that he'd opened the accounts with C and K himself and that he had sole access to them. When Mr S reported the scam to S, he was asked whether he opened the accounts himself or if they were opened for him and he said: "I was assisted in the opening of the account..." The following exchange also took place:

S: "What happens is we've obviously got your money to start with, so then, you move your money from us to [C] and that money is then on that app. Did you move it from that app yourself or did they have control of that?"

Mr S: "Well, I was being told to move it, so I was acting under instructions."

S: "But they didn't have access to do that then?"

Mr S: "No."

S: "So you moved it all to the trading account or the investment?"

Mr S: "Yes"

This indicates that Mr S had both access to and control of the account. Further to this, when reporting the scam to Barclays, Mr S confirmed that he was guided by the scammers when opening the cryptocurrency accounts, which suggests he did this himself. He was also asked if the fraudster showed him how to convert the funds into cryptocurrency and send them on, to which he replied "yes". This again suggests that Mr S had access to and control of the account. However, later in the same call, Mr S says that the account had two-factor authentication (2FA) and that this was always provided by the scammer, who provided the codes.

In his more recent submissions to our service, Mr S has said the accounts with C and K were opened and controlled by the scammer. He points out that Mr B was able to apply for a loan in his name with another business. Mr S has also shared what he says was part of his communication with Mr B from February 2022 which shows that Mr B had opened a new account in his name (although with whom isn't mentioned, and this was a few days before the scam was discovered). Mr S also said: "(Mr B) had access and equal control of the account. He opened accounts in my name, had the security details and passwords. He frequently used TeamViewer to take over control of my iPad." Mr S also shared evidence of what he says are emails sent, from his account, by the scammer and not him.

The net result of all of this is that I can't rely on Mr S' testimony particularly in relation to whether he opened and operated the accounts with C and K himself, as his testimony has changed over time. In cases like this where evidence is contradictory or incomplete, I have to make a judgement on the balance of probabilities. That being what I believe is most likely to have happened, taking into account all the available evidence.

I asked Mr S to provide all the evidence he had of the communication between him and the scammers. And having reviewed this I find the messages between him and the scammer to be persuasive evidence and I've placed more weight on it accordingly. It is, in effect, a contemporaneous record of what was said.

The message evidence is clear that Mr S was talked through the process of opening the account with C. It is equally clear that Mr S also had control of that account as there is a conversation about Mr S' decision to withdraw £25,000 from the account with C back to his bank account in September 2021 – something the scammer criticised him for doing. This withdrawal is also supported by evidence from Mr S' account statements (with S) – along with various other withdrawals for lesser amounts made around the same time.

Similarly, the message evidence shows that Mr S shared with the scammer a 'Know your Customer' (KYC) email which he'd received from K. This asked him to provide a photo of himself, presumably as part of their account opening process. The messages that followed involve the scammer assisting Mr S with submitting a photo and advising him of what to say

to K. Mr S also later shared confirmation with the scammer that his account with K was open and had received a credit. This doesn't support that Mr S was unable to access that account.

Taking all the evidence into consideration, I think it's most likely that Mr S opened the accounts with C and K himself, albeit under the guidance of the scammers. Mr S has also maintained this in all but his most recent submissions in response to our Investigator's view. I also think it's most likely that Mr S shared access to his accounts with C and K with the scammers. But I've not seen anything that persuades me (including the issue around 2FA) that the scammers had sole or exclusive access to either account. Mr S' submissions also include that he'd reported the scam to K who had blocked his account, something they would be unlikely to do, were it not his account.

And in these circumstances, I can't fairly say that the payments made from Barclays to the accounts in Mr S' name with either C or K, and to which Mr S had (or always could have had) access, were transfers to 'another person'.

Barclays are a signatory to the CRM Code – but the CRM Code is quite explicit that it doesn't apply to all push payments. As I've mentioned above, it only covers scam payments when the funds are being transferred to another person. In this case, on balance, I think Mr S sent the money to his own accounts held with cryptocurrency exchanges before it was then passed on to scammers. This means I don't think Barclays have acted unfairly or unreasonably by not providing a refund under the CRM Code. If Mr S has further evidence that the accounts he funded with either C or K weren't his, he should supply this in response to my provisional decision and I'll take it into consideration.

But just because the CRM Code doesn't apply to the payments relevant to this complaint, this doesn't mean Barclays weren't obliged to try to protect Mr S from financial harm due to fraud or scams. So, I'll go on to consider whether they've acted appropriately in the circumstances.

Did Barclays do enough to try to protect Mr S from losing money to the scam?

Both parties agree that the majority of the payments Mr S made towards the scam were potentially indicative of fraud, particularly given this was a newly opened account without a history of previous activity. So, I won't discuss that in further detail.

Barclays's first obligation is to follow the instructions that Mr S provides. But if those instructions are sufficiently uncharacteristic or suspicious (as they are here), I'd expect Barclays to intervene and to ask their customer more about the intended transactions before processing them. I'd also expect Barclays to provide suitable warnings about common scams to help their customers make an informed decision as to whether to continue with the payments. There might also be cases where it's appropriate for Barclays to refuse to follow the instruction if there are good grounds to believe it is being made as a result of a fraud or scam.

In this case there were numerous instances of intervention from Barclays with several conversations between them and Mr S. Throughout these interactions Mr S' answers to the questions from Barclays included that:

- He was investing in Bitcoin and was aware of the risks in doing so.
- He had opened his Crypto wallet accounts himself and hadn't shared access or details of these with anyone else.
- He had previously withdrawn funds without issue.
- He was doing all this based on his own research and wasn't being instructed or

assisted by anyone else.

Further to this there were occasions when Barclays asked questions which closely matched the circumstances of the scam Mr S was a victim of. On 18 January 2022 Barclays asked whether Mr S had shared access to his cryptocurrency accounts, had the involvement of any third party or was making the payment on a promise to recover an old investment? Mr S said no to all of these.

Again on another call on 26 January 2022, Barclays confirmed with Mr S that he hadn't downloaded any software that allows shared access to his devices and that he wasn't making the payment to recover an old investment. And there was also another call, earlier in January 2022 in which the following exchange took place:

Barclays: *"Once the payment has gone through, if it does turn out to be a scam, there is no guarantee we'll be able to recover the money for you. So, can I just confirm you do understand that?"*

Mr S: *"I take responsibility for that, yes."*

Much of what Mr S said at the time differed to what he said when reporting the scam. Specifically that there was a third party involved, that he had downloaded software to enable sharing of his device and that he was making payments in an attempt to try to recover his initial investment with N.

Banks like Barclays should be alert to victims of scams who might be being coached. Which is why it's important that any questions asked are probing in nature and designed to try to unearth a potential scam. And that the answers received aren't automatically taken at face value. But, by answering in the way he did, I think Mr S seriously impaired Barclays' ability to try to protect him.

Mr S had also complained to S because they kept stopping his payments to C and were asking him lots of questions. He says he was paid £50 compensation and was assured that the situation would improve. I understand that he expressed further frustration when S continued to ask him about payments going to C. Mr S likewise voiced his concerns to Barclays about what he believes was excessive intervention in how he spent his money.

Some of the payments Mr S made were instructed in branch. The Banking Protocol is a joint initiative between financial institutions and the Police. It centres around trying to protect customers from losing money to fraud, particularly in relation to in-branch withdrawals or transfers. The Banking Protocol is a relevant consideration here.

The Banking Protocol says that:

"If a customer is identified as making an unusual or out of character cash withdrawal or fund transfer request...

- 1. The colleague will discreetly question the customer about their withdrawal and the reason for making it.*
- 2. If the colleague is concerned that the customer may be a victim of fraud, they will notify a senior member of staff and, where possible, take the customer to a quiet area or private room to ask further questions.*
- 3. If the colleague believes the customer is the victim of fraud then they should call the police immediately on 999 quoting 'Banking Protocol'..."*

The first in branch payments were made on 13 January 2022, Mr S' account had been credited with over £400,000 the previous day. And Barclays easily would have been able to ascertain that this had come from either a re-mortgage or equity release. They then had

Mr S, a gentleman in his 70's in branch, requesting to send significant amounts to a cryptocurrency exchange. Barclays also would have known that older people are disproportionately targeted by scammers and that the purchase of cryptocurrency can be a common factor in scams due to its untraceable nature. Based on this, I think Barclays ought to have invoked the Banking Protocol. And there is evidence to suggest that they did.

The message history shows that Mr S was communicating with Mr B whilst in branch on the morning of 13 January 2022. At one point Mr S tells Mr B that he is about to see the bank manager. So, I think Barclays did invoke the banking protocol and take it to stage two (as quoted above). I think it's most likely that the manager spoke to Mr S, asked him about the payments and likely gave warnings of the risk of a fraud or scam. The notes recorded on the day on Barclays' systems say "Scam check passed, buying cryptocurrency."

The Banking Protocol requires that the 'senior member of staff' should call the Police if they still have concerns that the customer is the victim of fraud. So, part of my consideration needs to be whether the manager was right to not go to the next stage of calling the Police. I think the manager's decision was reasonable in the circumstances. Whilst cryptocurrency can be a common feature of scams, it is also an increasingly popular investment choice.

Payments to cryptocurrency aren't automatically fraudulent or the result of a scam. And I've no doubt that Mr S would have come across to the manager in the same way he did during the numerous calls that I've listened to. That being a confident and assured individual looking to make personal investment decisions. And even if I'm wrong about the manager's decision, and the Police ought to have been called, I'm not persuaded this would have made a difference overall for the reasons I'll come to.

This wasn't a case of an HMRC scam or that Mr S believed he was making payments to help a law enforcement investigation where Police involvement would easily have uncovered the scam. He believed he was making payments to recover a lost investment and had been briefed and coached by the scammer to present himself as an individual making his own investment decisions, something the evidence overwhelmingly supports he was prepared to do.

As a part of the wider circumstances here Mr S had arranged to release equity from his home. In doing so, he had presented Mr B as his nephew and allowed him to represent him with the equity release company. Mr S also sourced a detailed quote for a home renovation costing around £166,000 (which he never intended to follow through with) as part of the process for the equity release. He also went to great lengths when liaising with Land Registry to arrange for another party to be removed from their records as having an interest in the property to allow the equity release to take place. Mr S told the equity release firm that he wished to gift the money to his son for the purchase of a house. He said he had an investment due to mature for a significant sum, but that he didn't want to wait for that due to his assessment of the property market at the time.

And whilst Mr S has said this isn't part of his complaint about Barclays, in January 2022 Mr S also made a payment of around £1,800 to an account in Russia. The evidence from Barclays shows that Mr S was again questioned in branch by a manager. But when Mr S reassured the manager that this was for a genuine purchase of goods, the payment was released.

However, the messages between Mr S and Mr B show that this was in fact a payment to a person Mr S had met online and who he'd been communicating with for a number of weeks. And that she was due to come and stay with him for a month. This has the hallmarks of a romance scam, but again Mr S wasn't truthful as to the reasons for his payment. I'm more persuaded by the message history than by what Mr S told the manager at the time.

All of this evidences that Mr S was prepared to go to significant lengths to present himself in such a way that he would achieve the ends he was seeking. Whether this was securing lending as an equity release, or persuading a bank to release a payment he wished to make.

I appreciate a uniformed Police officer asking questions or providing a warning can be more impactful than bank staff. But ultimately, I don't think in these specific circumstances Police involvement would have caused Mr S to have done anything differently. The level of concern about his payments expressed by both S and Barclays was already very strong. Further evidence of the messages between him and the scammer support that he was "given the third degree about the dangers of scams". So I don't think Mr S was in any doubt as to the concerns about the actions he was undertaking. Yet, he still decided to continue to instruct the payments. And as I've mentioned above, Mr S was asked many questions which closely matched what was happening between him and Mr B, but this wasn't enough for him to realise that he was being scammed.

As well as asking questions, I think it's important that banks provide context to those questions and highlight how common scams work. A consumer may not understand the importance of the questions being asked without this. In the circumstances here Barclays did a good job of asking a lot of questions. But during the calls I've listened to, on occasions, they could have provided more context to those questions. It may be that such context was provided during branch interactions that I have no detailed record of. But either way I'm not persuaded this would have made a difference to what Mr S would have done, particularly as context was given during some of the interactions with S.

Everything Mr S said (and likely would have said to the Police) was plausible. I'm well aware that investing the proceeds of an equity release and property sale into cryptocurrency certainly sounds like an incredibly risky thing to do. But it 'can' be a legitimate investment and Mr S very much presented it in that way, without contradicting himself or saying anything that would indicate he was being scammed. Barclays were under no obligation to provide investment advice or to prevent Mr S making potentially unwise decisions. They were obliged to try to prevent fraud, scams and the misappropriation of funds. And in the circumstances of this complaint, I don't think anything that Barclays (or the Police) reasonably could have said to Mr S would have resulted in him not sending the payments he did.

I've considered whether there was enough here for Barclays to have refused Mr S' instructions altogether. This is a significant step for any bank to take given their regulatory obligations as a payment services provider. To be clear, I do not expect a bank to refuse a payment request lightly or without reasonable grounds for suspecting fraud. And, based on all Mr S had told Barclays, I don't think they would have had grounds to suspect fraud such that refusing his instructions would have been a reasonable expectation.

I don't think there was anything conclusively indicative of fraud in the activity on Mr S' account. And as I've mentioned above, Mr S presented himself to Barclays as an individual wishing to invest in cryptocurrency without there being other indicators of a potential scam. During one of the calls with S he said: "If you don't know anything about Cryptocurrency it's a growing market. I have lots of investments. I invest in gold and stocks and shares and all sorts of other things and I've decided to invest in cryptocurrencies."

I'm also satisfied that, upon receipt of notification of fraud, there wasn't anything Barclays could've done that would've resulted in the recovery of more of Mr S' funds.

Mr S says that at the time of the scam he was vulnerable due to his age, health and being a widower. However, in a call with Barclays (following the scam), Mr S was asked if he needed additional support. And he responded that other than the stress caused by the scam he was

in good health and didn't need support. I wouldn't consider Mr S to be vulnerable based solely on his age (which is in his 70's). And I'm not persuaded that Barclays treated Mr S unfairly here. Mr S came across as a confident and articulate customer. And even if he was vulnerable, I'm not persuaded this is something Barclays reasonably could have known or ought to have ascertained at the time.

As I said at the start of my decision, I'm genuinely sorry to hear of the terrible crime committed by the scammers and I hope the authorities are successful in prosecuting those responsible and that this results in redress for Mr S. But as I don't think Barclays are responsible for any errors that caused or contributed to the loss, hindered its recovery, or are obliged to provide a refund under the CRM code, I'm not intending to tell them to do anything further to resolve this complaint."

Barclays didn't respond to my provisional decision. Mr S responded with some comments which I'll address below.

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.

Mr S says he believes Barclays have failed with regard to their Anti Money Laundering (AML) obligations. He points out that his recently opened account had very significant sums paid into it which were then paid away. He thinks Barclays should have frozen his account and established the source of funds. Mr S believes Barclays also should have checked the reasons for the equity release and that this wasn't done under duress.

Even if I were to find that Barclays should have questioned Mr S about the source of the funds paid into his account, I don't think this makes a difference to the outcome of the complaint. The incoming money came from an equity release, something Mr S would have easily been able to evidence. And if he'd been questioned about the reasons for this, I think it's most likely he wouldn't have shared the true purpose. I say this because he told the equity release company a different story as I've referenced above. And he also didn't share the full details of what was happening during the numerous interventions by both Barclays and S. Much of my reasoning around this point is set out above in my provisional decision.

Mr S says that he didn't have complete control of his account and that there were numerous times that the scammer took control via software and authorised transactions himself or manipulated Mr S to do so. He also says that the scammer created wallets on the crypto platforms and had the credentials to these. Firstly, I don't think I can fairly conclude that any of the payments from Mr S' Barclays' account were 'unauthorised'. Even if some were physically keyed from his account by the scammer as is alleged, I think it's most likely Mr S had knowledge of them at the time such that they were authorised payments. The evidence surrounding the challenges of these payments by Barclays (with ample opportunity for Mr S to report any unauthorised payments at the time) is compelling. And whilst I appreciate and accept that Mr S was socially engineered and cruelly manipulated / tricked by the scammer, this doesn't mean he didn't authorise the payments in question.

I've also considered what Mr S has said about the messages between him and the scammer as well as where he has highlighted some of the messages in which the scammer indicates he had opened a new account in his name. I acknowledged that exchange (from February 2022) in my provisional decision. But for the reasons I've explained above, I still think it's most likely Mr S opened the accounts with C and K himself, albeit following instructions from the scammer.

Mr S has also sought to clarify some details around the home equity release. He says this was all the scammers idea and it was the scammer who sourced the home renovations quote to support the equity release application. He says he was again socially engineered to go along with this. I'm prepared to accept what Mr S has said in this regard. I agree Mr S was influenced by cruel scammers. But whether Mr S initiated or was tricked into taking the actions he did, and whoever sourced the quote and started the equity release process, this doesn't change my mind as to the outcome of the complaint.

Again, I'm sorry Mr S has suffered such a loss to a despicable scam. But as I don't think this is something Barclays are responsible for, there isn't a reasonable basis upon which I can require them to do more to resolve this complaint.

My final decision

For the reasons 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 S to accept or reject my decision before 27 November 2023.

Richard Annandale
Ombudsman