

The complaint

Miss B is unhappy that Barclays Bank UK PLC (“Barclays”) won’t refund all the money she lost to an investment scam.

What happened

Miss B says she saw an advert on a social media site about investing in an online retailer, so filled out a form. She received a call shortly afterwards from a company I will refer to as A. Between 13 April 2022 and 15 April 2022, Miss B made multiple payments from her Barclays account totalling £2,112.14 into the investment. Miss B says she had access to an online portal and was added to a social media messaging group with other investors. Miss B realised this was a scam when A stopped responding to her.

Date	Time	Amount	Payee (receiving bank)
13/04/2022		£36.00	New payee (W)
13/04/2022		£30.00	New payee (W)
14/04/2022		£44.28	New payee (W)
14/04/2022		£200.00	New payee (L)
14/04/2022		£164.00	New payee (N)
14/04/2022		£109.06	Existing payee (W)
15/04/2022	12:41	£551.20	New payee (R)
15/04/2022	13:55	£977.60	Existing payee (R)
15/04/2022	18:53	call first attempting to report scam	
16/04/2022	12:06	call notifying Barclays of scam	
16/04/2022	12:10-12:17	B notifies each receiving bank	

Barclays did intervene on the final payment of £977.60 but Miss B was coached into telling Barclays the transfer was for a holiday. Upon reviewing Miss B’s scam claim, Barclays decided to refund 50% of this payment.

Our investigator considered Miss B’s complaint under the Lending Standard Board’s Contingent Reimbursement Model (CRM) Code. However, he didn’t uphold the complaint as he didn’t think the payments were unusual enough and Miss B didn’t have a reasonable basis for believing this was a genuine investment opportunity.

However, the investigator did look further into the fact that - when Miss B first tried to report the scam to Barclays – it told her to come back in 24 hours. The investigator contacted various third-party banks to establish whether Barclays’ delay made a difference to the possibility of recovering Miss B’s funds from the people she sent it to. Our investigator also asked Miss B for copies of any of the messages she had with the scammer – but she is no longer able to retrieve these.

I issued my provisional decision on 21 March 2024 explaining why I was intending on reaching the same overall conclusion as the investigator, but for different reasons.

Miss B didn't agree. Barclays didn't provide any further comments.

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 have considered Miss B's response to my provisional decision.

Miss B has explained the scammer is still contacting her. She should report this to the relevant bodies including action fraud and the police. My remit is limited to deciding the case Miss B brings against her bank, Barclays. That means I must focus on whether I consider Barclays was at fault in any way - and if so, what difference I think that fault likely made.

I explained in my provisional decision that I agreed Barclays ought to have dealt with the matter 24 hours earlier. However, I also explained why Barclays reaching out 24 hours earlier would not have made a difference in this case. Miss B's payments did not go directly to the scammer but instead her payments went directly to third-party payees for the genuine purchase of cryptocurrency in the P2P (peer to peer) market – and that's what Miss B 'received' in return – albeit this cryptocurrency subsequently went onto the scammer.

Having reconsidering everything, in light of Miss B's response, I see no reason to depart from the conclusions set out in my provisional decision. I have concluded that the fair and reasonable outcome, in all the circumstances, would be to not uphold this complaint. For completeness, I have set this out below.

I'm sorry to hear Miss B was the victim of a scam and I can understand why she wants to do all she can to recover the money she has lost. She's lost a lot of money through no fault of his own. But that alone doesn't mean that Barclays must reimburse her. It's important to emphasise that I'm only considering whether Barclays, which had no involvement in the scam itself, should be held responsible for what happened.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Barclays is a signatory to the Lending Standard Board's Contingent Reimbursement Model (CRM) Code. But it doesn't apply in this case because it only applies to a transfer of funds executed across faster payments between GBP (British pound sterling) accounts in certain circumstances.

In this case, Miss B made faster payments to various individuals to buy cryptocurrency which was then transferred to the scammer. The sending of cryptocurrency isn't a faster payment between two GBP accounts as required by the CRM Code. In short, this type of payment isn't covered by the CRM Code.

It has also become apparent since the investigator issued his view and carried out further enquiries with the recipient banks (and I have followed up on this further) – that the payments appear to have been made direct to third-party payees for the purchase of cryptocurrency in the P2P (peer to peer) market – and that (cryptocurrency) is what Miss B 'received' in return. I appreciate Miss B says she didn't actually receive anything – but it seems likely these people were also tricked into sending on her purchased cryptocurrency to the scammer.

These transactions (purchasing cryptocurrency) of themselves are not a scam but rather genuine transactions for the genuine purchase of cryptocurrency. The scam happened after that; either by those traders directly moving cryptocurrency to the scammer on Miss B's behalf or via a cryptocurrency wallet in Miss B's own name that was set up for her (possibly unbeknown to her). Because Miss B hasn't been able to provide any evidence (such as messages or emails with the scammer) it is difficult for me to establish exactly what how the onward payments were made.

In broad terms, the starting position in law is that Barclays is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. It's not disputed that Miss B made and authorised these payments, although I accept that when she did so, she didn't think her funds were at risk.

However, even though the payments aren't covered by the (CRM) Code, Barclays has wider obligations outside of the that. There are circumstances where it might be appropriate for Barclays, to take additional steps or make additional checks before processing a payment to help protect its customers from the possibility of financial harm from fraud.

In this case, I need to decide whether Barclays acted fairly and reasonably in its dealings with Miss B when she authorised payments from her account or whether it could and should have done more before processing them.

Barclays has provided Miss B's bank statements. I've reviewed them carefully to consider whether the disputed transactions were in line with Miss B's normal account activity. Having done so, I'm satisfied that Barclays didn't need to do anything more.

The transfers were unremarkable (although I appreciate in total this is a lot of money to Miss B). Banks can't reasonably be involved in every transaction. There is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. So, although Miss B created some new payees, the payments weren't unusual compared to her usual account activity. I'm satisfied that the payments wouldn't have caused Barclays any particular concern.

That said, it does seem, by the time Miss B made the final transfer of £977.60, Barclays did have concerns and stopped the payment for further checks. But Miss B told Barclays it was to pay a friend for a holiday. I appreciate Miss B was coached to say this by the scammers – but this made it more difficult for Barclays to identify Miss B was at risk of financial harm. Whilst it could have probed further – I think its offer to refund 50% of this payment is fair and reasonable in the circumstances of this complaint.

If I were to uphold this final transaction – I would also be considering whether Miss B should share in the responsibility for her loss. And I feel it is appropriate here broadly for some of the reasons the investigator outlined. I think there were signs this wasn't a legitimate opportunity (I don't think a genuine investment company would encourage an investor to lie to their bank) and certainly the deal warranted further scrutiny given its advertisement on a social media site. I think checking things further would likely have revealed this was a scam. So it would be fair for Miss B to share in the responsibility for her loss.

Recovery of funds

Barclays did reach out to the beneficiary banks immediately after taking Miss B's call on 16 April 2022. However, the investigator considered it should have done so the previous day – on 15 April 2022 which was a few hours after the last payment was made. He felt that Barclays should have treated the call as Miss B reporting an APP (authorised push payment)

scam and started the process - part of which is an attempt to recover funds. Having listened to the call in question – I agree Barclays ought to have started the APP scam process on 15 April 2022.

In general, a business should attempt to recover lost funds once a scam has been reported. And where there is a delay, I would normally consider whether that delay has made a difference (i.e. I would consider whether funds remained in the beneficiary accounts at the earlier contact point which could reasonably have been recovered). However, in this case, it seems the transfers were made directly to third-party payees for the purchase of cryptocurrency in the P2P market – and that's what Miss B 'received' in return – albeit this cryptocurrency subsequently went onto the scammer.

I've seen no evidence to suggest the third parties were involved in the scam and because I have now established that Miss B was purchasing genuine cryptocurrency from genuine traders, I don't think Barclays is obliged to try and recover funds beyond this.

The final two transactions (one of which has already been refunded in part to Miss B) went to an international bank. I think it more likely than not this would also have been a genuine trader. However, even if these went directly to the scammer - international banks aren't bound by the same rules and regulations as banks within the UK. I can see from Barclays records it never received a response from the bank in question – so I don't think it would have been any different if Barclays had reached out a day earlier.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 25 April 2024.

Kathryn Milne
Ombudsman