

The complaint

Mr K complains that Barclays Bank UK Plc won't refund the money he says he lost to an investment scam.

Mr K is represented by a third party, but for ease of reading I'll refer to all the submissions as having come from him alone.

What happened

From December 2017 to December 2019, Mr K invested over £100,000 with a company I'll refer to as 'O'. He made the payments from his Barclays current account and he received just under £11,000 back from them during the course of his investment. Towards the end of 2019, Mr K tried to withdraw his profits and was given excuses as to why he couldn't until ultimately he felt he'd been scammed.

In 2022, Mr K reported the alleged scam to Barclays. In November 2022, Barclays issued its final response explaining that it wouldn't be offering Mr K a refund on the grounds O was regulated during the period of his investment.

Unhappy with Barclays' response, Mr K referred the complaint to this service.

One of our Investigators reviewed the complaint and didn't think Barclays had acted unfairly. She found that at the time of Mr K's payments, O was regulated and even if Barclays had intervened, it wouldn't have made a difference.

Mr K asked for an Ombudsman to review the complaint. He said there was an international regulator warning published about O in 2013 and this should have prompted additional checks from Barclays.

The complaint has therefore been passed to me for determination.

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 don't uphold Mr K's complaint and I'll explain why.

Not every complaint referred to us and categorised as an investment trading scam is in fact a scam. Some cases simply involve high-risk investments that resulted in disappointing returns or losses.

Certain high-risk investment traders may have promoted these products using sales methods that were arguably unethical and/or misleading. However, whilst 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).

In simpler terms, some merchants may have used sales and promotional methods that could be seen to be unfair by consumers considering the losses they've incurred – but this does not always amount to *fraud*.

When considering this for Mr K's case, I've paid particular attention to the official organisations that publish warnings about merchants that operate in the UK and abroad. I've searched the Investor Alerts Portal of the International Organization of Securities Commissions ("IOSCO"), the international body that brings together the world's securities regulators. And the FCA (as the UK regulator) also has its own warning list, which is in place to share alerts and insight about merchants that have been identified as potentially being fraudulent or unauthorised.

Upon checking both of these, I've noted that there were warnings published about O in 2013. I've read those warnings and they advise that O was not registered in a particular country, they don't indicate that they were operating as a scam and these were published several years prior to Mr K's investment.

What I have noted about O was that at the time of Mr K's payments, they were regulated by the Cyprus Securities and Exchange Commission (CySEC) with passporting rights through the FCA - which meant they could offer services to UK customers. I don't think the warnings published several years prior to Mr K's investment outweighs O's regulation status at the time of Mr K's investment. It would be unusual for a scammer to comply with all the various requirements of becoming regulated.

I agree with Mr K and our investigator that some of the payments he made, particularly in 2018 were unusual when considering the normal operation of his account. But even if Barclays were to have intervened, I don't think it would have reasonably suspected a fraud or scam. Once it clarified who Mr K was investing with and that O was regulated with passporting rights to operate in the UK, I don't think Barclays would have had the need to probe any further. Barclays were under no obligation to provide Mr K with financial advice, nor was it under any obligation to prevent Mr K from investing in high risk products. So, I agree with our investigator that an intervention from Barclays would have likely made no difference here.

I've noted the FCA removed O's passporting rights on 1 June 2020 (after Mr K made all of his payments). And the FCA reported concerning conduct on the part of O. But I'm not persuaded Barclays could have reasonably foreseen the action the FCA would take prior to it publishing an advisory notice and press release about O.

As the payments were made via debit card, the only course of action available to Barclays to recover Mr K's payments would have been to process chargeback claims. But Visa has a maximum time limit of 540 days for dispute claims to be made. By the time Mr K contacted Barclays in 2022, he was outside of Visa's timescales. And therefore, I don't think Barclays could have done anything to recover Mr K's payments.

I appreciate that Mr K has lost a substantial sum of money. But I don't think Barclays can be held primarily responsible for these losses. Mr K may wish to explore any recourse he may have against O with CySEC, or the Cyprus Financial Ombudsman if he's not previously explored these options.

My final decision

My final decision is, despite my natural sympathies for Mr K's losses, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 15 September 2023.

Dolores Njemanze
Ombudsman