

The complaint

Mr K is unhappy that Barclays decided not to refund him after he was the victim of an Authorised Push Payment (APP) scam.

What happened

Mr K says he received a cold call from a company I'll refer to as P, followed by a letter, offering assistance in recovering funds that he'd lost in an investment some years earlier. But this turned out to be a scam.

He was told his initial investment of £25,000 was not lost, as he'd previously thought, and was now worth approximately £90,000. The scammers explained his money was being held in escrow and P could help to recover and return this to Mr K.

Mr K made payments from other accounts and using other sources of funds. This complaint relates to his losses from his Barclays account.

Mr K made a total of five payments across the course of a week to three new payees. His losses from his Barclays account totalled £13,280.56. Barclays was able to recover £1,861.86 which has been returned to Mr K. The payments related to various fees and commissions that the scammers said were needed to release his investment funds.

Mr K said he researched P and found them on Companies House. He said P didn't have a website but there were no other red flags when looking online. He went on to receive various documents from P for the payments, some of which he was told would be refundable when his investment profits were released.

Mr K said, when trying to contact P, after he was told his money would be released to him, he couldn't reach them and so he thought it could be a scam. He says it was at this point he checked the address on the letters and invoices he'd received and realised the address was for a different registered company.

Barclays looked into Mr K's scam claim. Barclays' evidence shows that when selecting the payment purpose Mr K said these payments were to "friends and family" and the payees were all individual's names which came back with a correct name match when checked. Barclays notes show that it intervened with a further payment that Mr K attempted but was blocked by the banks fraud detection systems. When questioned Mr K said the payment was for building work and was genuine. The agent that spoke to Mr K decided to place a block on the account and asked Mr K to attend the branch which Mr K was not happy to do. Mr K then transferred his funds to an account he held at a different bank. And shortly after he reported the scam to both Barclays and his other banks.

When asked why he chose the payment reason he said it was because if he selected "investment" it was more likely to get flagged. He said he didn't want the payment to be stopped. He said he did not check the FCA website as he knew the company wasn't regulated. And he didn't question why he was paying individuals rather than the company account he thought he was dealing with.

Barclays looked into matters. It said it had considered Mr K's losses in light of the CRM code. It said it wouldn't be reimbursing Mr K as he was given sufficient warnings through his mobile banking app, prior to him making the payments. Barclays went on to say Mr K did not perform the required level of due diligence, before authorising the payments. It also said the payments weren't unusual or out of character compared to Mr K's usual account activity. It also decided to close Mr K's account and gave him 60 days' notice. On review of this decision Barclays decided it wouldn't be re-opening Mr K's account.

Barclays explained Mr K has made four scam claims since January 2020, relating to similar and, in some instances, the exact same scam. Barclays says it has paid £102,626 to Mr K as result of these scams. When refunding Mr K on one of those occasions it provided scam education, saying it would not pay out on future claims should he invest without due diligence. Mr K gave assurances he wouldn't pay individuals again. And in one instance Barclays notes show the Police spoke to Mr K when the banking protocol was invoked. One of our investigators looked into things. She felt Mr K's losses weren't covered by the Contingent Reimbursement Model (CRM) code as Mr K had already received full reimbursement for his losses relating to the original investment. So, he couldn't have thought there was a genuine claim for the money that P was claiming to return to him.

She also said that even if the bank had intervened, she didn't think it would have made a difference. Having listened to calls between Mr K and a different bank, during which he admitted to being the victim of a scam and said he wouldn't go on to make any further payments, but then did.

She also considered that Mr K was advised the previous year about recovery scams, and he said he would change his telephone number and not continue to make payments. She went on to say Mr K didn't select the correct payment reason when carrying out these transactions and he said he would make the payments from a different bank if they were blocked. Barclays blocked Mr K's account and asked him to visit the branch, but he continued to make payments from a different account.

Mr K was unhappy with this outcome and asked for an ombudsman to review the matter. He said Barclays had refunded him on one occasion but, never gave him a satisfactory explanation as to why they thought he was the victim of a scam for a second time. He also said the money Barclays refunded was well below the sum of money he had expected. And the payments were verified by Barclays Bank. He went on to say Barclays never told him why the payment was blocked (on 11 May 2022) and that's why he chose the different payment reason.

Mr K's representatives added that they thought Mr K's losses were covered by the CRM code. Mr K thought his initial investment could still be recovered so his dealings with the scammers still appeared genuine.

Additional background information

In 2018 and 2019 Mr K was dealing with liquidators for the initial investment he made. During this time there are several emails where Mr K is warned in general about companies claiming to recover lost investment funds on his behalf. One email said *"I would advise extreme caution in your dealings with them and do not pay any fees to a company on the promise of being able to recover funds for you. There are a lot of companies like this that take advantage of investors who have lost funds."* And he was advised to take independent financial advice.

Mr K also contacted the FCA in October 2019 as he had concerns about a different company he was dealing with. The FCA's response included information about the company not being FCA regulated but that it wasn't clear if FCA regulation was required. And that it wasn't unusual for scammers to contact consumers to say money could be recovered, and they had concerns, based on what Mr K had explained, these events held some characteristics of a scam.

In January 2020 Mr K had discussions with the Police and confirmed he wouldn't be making any more payments unless he was 100% sure who he was dealing with. And he was advised not to pay anyone an upfront fee to anyone offering a service, particularly in recovery of funds. Mr K even said he suspected the payments he was making were part of a scam, at points, but did not want to face the reality of that.

Mr K also contacted the insolvency service in April 2022 about P (that he went on to pay as part of this scam). He explained he had not parted with any money as he couldn't trust them. But shortly after this email exchange he made payments of over £58,000 to P across his Barclays and two other bank accounts.

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 come to the same overall conclusion that Barclays does not need to refund Mr K for his losses.

I'll start by saying how sorry I am that Mr K has clearly been targeted by scammers on a number of occasions, with the promise of recovering money he invested in 2018. Each time this has turned out to be a scam. And I appreciate this will have had and will continue to have an impact on Mr K and his financial position. But in this instance, I'm not recommending that he receive a refund for his losses from Barclays. I'll go on to explain why Barclays doesn't need to refund Mr K in this instance.

I disagree with the investigators' initial finding that Mr K's payments are not covered by the CRM code as I believe they are. I think even if Mr K had been refunded his losses from the initial investment from his bank, it's possible he could still seek to recover his initial funds and any returns made on those funds. And there is no evidence of those initial investment funds being refunded by Barclays, only the subsequent "recovery fund scams" that he fell victim to. So, I don't think there is an issue with Mr K believing the payments were for a legitimate purpose but were in fact fraudulent. And the payments are covered by the CRM code.

But I do agree with the investigators' finding that Barclays isn't liable to refund Mr K under the CRM code. She said, and I agree, that better intervention by Barclays wouldn't have made a difference. I'll explain why in more detail.

Did Mr K have a reasonable basis of belief when making these payments?

I've started by considering whether Mr K had a reasonable basis of belief when deciding to make these payments.

Having considered Mr K's actions at the time he made these payments, his previous scam claims, all the correspondence he's provided and the bank's notes, I'm satisfied that Mr K was or ought reasonably to have known he wasn't going to recover the funds he originally invested. Each time he appears to have been scammed, he's told his initial investment is a different amount (far larger than his initial investment) and given a range of different reasons

why he needed to pay varying amounts, in order to access his funds. And he had been told and seems aware that all the previous “recovery attempts” were in fact scams.

Mr K says he lost an initial £25,000 to an investment in 2018. But Mr K also spent around £106,000 in 2019 and 2020 falling for recovery scams, most of which his banks have refunded. And in this particular scam, Mr K spent approximately a further £58,000 across April and May 2022. Overall I haven’t seen any real difference in the scams that Mr K fell victim to previously and this one where he was contacted by P. Mr K hasn’t said or shown any convincing evidence to support why P was genuine given the plethora of warnings and advice he’d been given about proceeding with caution with any company claiming to recovery his lost investment funds.

It appears that Mr K fell victim to the exact same scam twice before, with payments from his Barclays account, in the two years prior to this one. Mr K received partial and, in some instances, full refunds for the payments he made. Mr K also seems to have been aware that he was scammed on those occasions. And was given at least some advice to be on the look out for these types of scams in the future. But when P contacted him, I can’t see that he did anything more than check Companies House to see if it was a registered business. And when he received the paperwork from P, he doesn’t appear to have noticed the address is different to that on Companies House, something that he did realise after he thought he’d been scammed.

Given that Mr K had been scammed at least twice before, it would be reasonable for him to have made further checks and enquiries before deciding to part with such large sums of money, based on a cold call and a few invoices. In light of this, I’m not persuaded Mr K had a reasonable basis of belief, that he was dealing with a genuine company, attempting to recover his investment funds.

Did Barclays meet its standards under the CRM code?

Mr K has fallen victim to several recovery fund scams across a number of years. At each juncture, he was given warnings about scammers targeting him, with promises of recovery. From the correspondence Mr K has provided, I can see he was advised that companies asking for money upfront in this way, were very likely to be a scam. That he should proceed with extreme caution and that he was likely to be targeted by scammers because of the initial investment money he lost. Mr K doesn’t appear to have heeded those warnings from, the Police, FCA, Insolvency service, liquidators or indeed from Barclays and his other bank account providers.

Barclays has provided a comprehensive history of the activity on the account and its interactions with Mr K. Mr K had a call with Barclays at the time it refunded his losses from a previous scam in 2020. During that call Mr K acknowledges the scam was sophisticated and that he would proceed with caution going forward. The Barclays agent says if ever he’s unsure he can go online and check the FCA website and he can always call the bank (Barclays) and they can go through it with him. Mr K goes on to say “*If I’m going to make any sort of payment I’ll check with you*”. The Barclays agent also explains that if this sort of scam happens again Barclays might not be in a position to refund him, but he should never think twice about calling the bank if he needs help.

I have also listened to the calls where Mr K is attempting a further payment as part of this scam (on the 11th May 2022), which is ultimately blocked by Barclays. I can hear Mr K is frustrated that his payment has been blocked and he tells the Barclays agent that they should be working in his interests and allow him to make the payment. The Barclays agent is very thorough, asking a series of questions to help ascertain what the payment is for and who the payee is. As the agent wasn’t satisfied with Mr K’s responses, she explained that he

would need to go to a branch to complete some further checks. Mr K was unhappy with this response and said he'd transfer the money to his account held at a different bank. Barclays has said it provided Mr K with warnings each time he set up a new payee and this was based on the payment reason he selected as "friends and family". Mr K has been honest about his reasons for doing so and made this choice in an attempt to avoid the payments being blocked. And of course when it did intervene with a payment, beyond its online warnings, Mr K had a cover story about the payments and did not appear deterred by the questioning in attempts to protect him from risks of scams and/or financial harm.

With all of this in mind I've thought about whether Barclays met its standards under the CRM code. Barclays' online warnings were prompted by the information that Mr K provided at the time of making the payments. However the payment purpose isn't something that stands in isolation and that's why when Mr K attempted a sixth payment on 11 May 2022 it intervened and discussed the payment with Mr K.

When it did intervene the Barclays agent was thorough and, in my opinion, proceeded proportionately with the answers Mr K provided. Mr K was advised to attend the branch presumably for branch staff and the fraud team to get a better understanding of the payments he was making.

It's not clear why the payment was blocked and Barclays didn't tell Mr K the specific reason that it was a suspicious payment - which is one of Mr K's complaint points. But Barclays did make it clear they thought it was suspicious and that's why they didn't allow him to proceed with the payment. And as Mr K wasn't forthcoming with the real reasons for the payment the Barclays agent was limited in her ability to appropriately warn Mr K.

But I am satisfied from both Mr K's explanation of the events, both in handling his complaints and when he reported the scam – that he would have and did proceed with the payments regardless of the actions of Barclays (and his other banks). I think Barclays' intervention here was proportionate and I don't think better or different intervention would have made a difference. Mr K was determined to make the payments, he acknowledged there was at least some risk in that decision and decided to go ahead regardless. Because of that I can't say that Barclays needs to refund Mr K.

In his calls with both Barclays and his other banks, when reporting and discussing the scam, Mr K admits it was like "taking a gamble". He said he made some of the payments because P had promised they were refundable, although he had no way of confirming this. And he said he always had the nagging doubt in the back of his mind, but he was looking at the bigger picture and what he was going to gain (the returns he was promised). I have also seen that Mr K reported some payments to P as a scam (to a different bank account provider) and then continued to make payments to P. So, I'd go so far as to say Mr K understood the scam risk and would have (and did) go ahead regardless of what Barclays (and his other banks) did or said.

I've also thought about Mr K's personal circumstances. In conversations with Barclays and his other bank account providers that this has been questioned and carefully considered. And having done so I can't see any other reason why Mr K should receive a refund under the CRM Code.

Recovery of funds

I can see that Barclays did make attempts to recover Mr K's funds after he reported the scam. Some of those funds were recovered and this have been returned to Mr K. Once it was made aware of the scam, I'm satisfied that Barclays did what it could to recover Mr K's money. So it wasn't responsible for Mr K's losses at this point.

My final decision

I don't uphold this complaint. For the above reasons, despite the CRM Code applying to these transactions, I'm satisfied Barclays was entitled to choose not to reimburse Mr K's losses. Again, that doesn't take away from the fact that Mr K was the victim of a scam. But rather, I don't think Barclays was at fault here, or that it has applied the CRM Code incorrectly.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 18 December 2023.

Sophia Smith
Ombudsman