

The complaint

Miss F complains that Barclays Bank UK PLC (Barclays) won't refund all of the money she lost in an investment scam.

What happened

Miss F is represented by a third party claims firm, but I refer to her as the complaint here.

What Miss F says:

Miss F became interested in investing in bitcoin and saw a company advertising on social media. It was fronted by a well-known finance personality, so she thought it was genuine. The 'account manager' called her back immediately and she was encouraged to invest. He gave her a link to the firm's website which showed the profits that were being made. It looked genuine, but it turned out to be a fake. He asked her to open an account in her name with another bank (I will call this bank 'A').

Miss F gave him control over her mobile phone and desktop computer, and her Barclays account. The scammer told Miss F that if she was asked anything by the bank, she should lie and say the payments were for a holiday. Payments were then made from her Barclays account to her account with bank A, and then onto the bitcoin company.

Payments were made as shown:

Date	Payment	Amount
3 February 2023	Faster payment to bank A	£1,500
3 February 2023	Faster payment to bank A	£3,500
9 February 2023 (14.06)	Faster payment to bank A	£5,000
9 February 2023 (14.17)	Faster payment to bank A	£6,327
9 February 2023 (14.20)	Faster payment to bank A	£6,000
9 February 2023	Received from bank A	(£199.91)
Total loss		£22,127.09

The scam was uncovered when Miss F tried to withdraw money and she was asked to send more funds. She then realised something wasn't right and that she'd been scammed. She contacted Barclays on 9 February 2023.

Miss F says Barclays should've done more to protect her. The payments were out of

character and should've been stopped. She hadn't made any large payments in the past. She was coached by the account manager as to what to do and she was taken in by what he said - she came to trust him. She 'googled' the bitcoin firm and found the reviews were positive. She didn't check the FCA's website – she didn't think that she needed to as she was an inexperienced investor and wouldn't have thought to do so given the opportunity came from social media.

Miss F says Barclays should refund the money she lost.

What Barclays said:

Barclays said:

- They didn't consider they were liable as the payments were made to an account in Miss F's name and under her control, at bank A.
- But they accepted they should've intervened in the payments as they were out of character. They didn't speak to Miss F when she made the payments; but sent an online warning for the last payment of £6,000.
- Barclays refunded 50% of Miss F's losses – as they considered she should've confirmed the authenticity of the beneficiary and done more research.
- So – Barclays refunded £11,163.50 plus interest at 8% per annum simple. And paid compensation of £100 – because it had taken a long time (four months) to resolve her case.

Our investigation so far:

Miss F brought her complaint to us. Our investigator said Barclays didn't need to do anymore. He said:

- Barclays should've intervened as the payments were unusual.
- But Miss F didn't do enough research prior to sending the money. The firm she was investing in wasn't registered with the FCA (Financial Conduct Authority); and there was no contract given to Miss F.
- To send money to someone she met over social media, and to a new account she was told to open should've been a 'red flag' to Miss F.
- So, what Barclays paid (50%) was fair and reasonable in the circumstances.

Miss F 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 Miss F has lost money in a cruel scam. It's not in question that she authorised and consented to the payments in this case. So although Miss F 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.

I need to decide whether Barclays acted fairly and reasonably in its dealings with Miss F when she made the payments, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) doesn't apply in this case. That is because it applies to faster payments made to another UK beneficiary– and in this case, the payments were made to Miss F's own account with A.

If the payments were of a sufficient size and were out of character with how Miss F normally used her account – then we would expect Barclays to have intervened and spoken to Miss F about them. I looked at Miss F's account, and it's fair to say that the later, larger payments were unusual compared to the way in which she used her account – which was to receive her salary and make day to day expenditure of low value.

But, looking at the first two payments for £1,500 and £3,500, it's reasonable to say these weren't very unusual for Miss F - she made regular payments of up to about £2,000.

And here, there's also a balance to be made: Barclays has certain duties 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, I think Barclays acted reasonably in processing the first two payments.

But after that, I think the payments were of a sufficient size and character to have expected Barclays to intervene and ask questions of Miss F, with effect from the third payment for £5,000. And – there were three payments of more than £5,000 made on the same day, and within minutes of each other.

Barclays did send an online warning to her for the last payment for £6,000 – but this related to a 'safe account' scam, and therefore wasn't relevant.

So, I consider that Barclays should be liable for £17,127.09 (the total of the last three payments, less the refund of £199.91).

Contributory Negligence:

But that's not the end of the story here. I also considered whether Miss F could've done more to protect herself and whether she should therefore reasonably share some of her losses. And I think she should. I say that as:

- Miss F was an inexperienced investor, and she was making a large investment into bitcoin, and for the first time. In those circumstances it's reasonable that she should've taken advice from a financial advisor, or even trusted friends - but she didn't.
- I can see that at the time, the online reviews for the bitcoin firm were generally positive, but equally, the FCA published a warning about the firm on 2 February 2023.
- And the FCA website shows the firm wasn't registered at the time.
- Miss F gave control of her mobile phone and computer to the scammer – which she'd only met very recently via social media. This wasn't a wise thing to do in any circumstance and enabled the scammer to transfer funds from her Barclays account and from bank A to the bitcoin firm.

Therefore I think it's reasonable to ask Miss F to share 50% of her losses with Barclays – which means Barclays are liable for £8,563.55.

Barclays have already refunded £11,163.50 – which is more than our service would normally determine in the circumstances of this case. Therefore, there is nothing more for Barclays to do.

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 money. Barclays told us they contacted the recipient bank immediately, and no funds remained to be repaid. But - I can see there was a refund from bank A for £199.91, which I've included in Miss F's losses calculation.

I'm sorry Miss F has had to contact us in these circumstances. I accept she's been the victim of a cruel scam, but I can't reasonably ask Barclays to do any more here than they've already done.

(continued)

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 12 February 2024.

Martin Lord

Ombudsman