

The complaint

Mrs A complains that Barclays Bank UK PLC won't refund her the money she lost after she fell victim to an Authorised Push Payment ("APP") scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat everything again here. But in summary, I understand it to be as follows.

Mrs A fell victim to a job-task scam after she was contacted by a recruiter ("the fraudster") offering a remote employment opportunity. Mrs A has said she'd previously been to a digital marketing workshop, where she was introduced to a marketing website, which appears to be a clone of a legitimate company.

Mrs A was told the job would entail completing tasks that simulated purchasing items to improve algorithms and for completing these tasks she would earn commission. But to receive the tasks Mrs A was required to make deposits, which she could do by sending cryptocurrency via crypto wallets that she held in her own name.

Mrs A was told that she would receive a 10-25% return on whatever she deposited. She was able to make a couple of withdrawals from her account, but every time she completed a set of tasks the next set became increasingly expensive.

Believing everything to be genuine, Mrs A made a number of payments as instructed. Details of the relevant transactions are listed below;

1	30 June 2022	Payment to Binance	£21
2	30 June 2022	Payment to Skrill	£21
3	1 July 2022	Payment to Skrill	£5
4	4 July 2022	Payment to Skrill	£35
5	5 July 2022	Payment to Skrill	£100
6	5 July 2022	Payment to Skrill	£200
7	5 July 2022	Credit from Skrill	£505
8	7 July 2022	Payment to Skrill	£25
9	7 July 2022	Payment to Skrill	£350
10	7 July 2022	Payment to Skrill	£350
11	7 July 2022	Credit from Skrill	£1,101
12	8 July 2022	Payment to Skrill	£700
13	8 July 2022	Payment to Skrill	£1,080
14	8 July 2022	Payment to Skrill	£2,190
15	8 July 2022	Payment to Skrill	£5,000
16	11 July 2022	Payment to Skrill	£3,750
17	11 July 2022	Credit from Skrill	£5,233.78

Mrs A has said she later realised she'd been scammed when she was asked to go to a Barclays branch after having a payment blocked. When visiting the branch, which according

to Mrs A's submission, was on 11 July 2022, she said she wasn't told anything about a scam and was allowed to make a payment (for £3,750). But after making this payment, she's said the bank told her that this wasn't FCA (Financial Conduct Authority) approved. She's said she hadn't known that, so on hearing this she withdrew the amount and put it back in her Barclays account.

Mrs A complained to Barclays about the money she'd lost. Barclays looked into her complaint, but didn't uphold it. In summary this was because it deemed the matter to be a civil dispute. It added that it had several strong scam conversations with Mrs A regarding the payments in question.

Unhappy with Barclays response, Mrs A brought her complaint to this service. One of our Investigator's looked into things and thought the complaint should be upheld in part. In summary, our Investigator thought, given Mrs A's previous account activity, that it was understandable why Barclays didn't flag payments until 8 July 2022. However, she thought the subsequent payments ought to have triggered further intervention and scrutiny. It was our Investigator's view that the intervention that did take place didn't delve deep enough into why Mrs A was sending the money and that it was unclear why she was referred to branch.

Overall, our Investigator thought that Barclays could have made a greater impact and had it of done, it could have established Mrs A was the victim of a scam. Our Investigator recommended that Barclays should refund Mrs A the final four payments she made (being transactions numbered 13-16 in the table above), less the final withdrawal she was able to make.

Mrs A didn't agree with our Investigator's view, she remained of the opinion that she was entitled to a full refund. Barclays also hasn't agreed with the view.

As agreement couldn't be reached, the complaint has been passed to me for 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.

Prior to reaching this decision I reached out to Barclays, through our Investigator, asking it to expand on the details of the branch interventions it referred to in its submissions, along with details of what was discussed between branch staff and its fraud team.

Our statutory rules provide – at DISP 3.5.8 to 3.5.15 of the Financial Conduct Authority Handbook – that we may give case-management directions and fix or extend deadlines and that we may:

...reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested;

And that:

If a respondent fails to comply with a time limit, the Ombudsman may: (1) proceed with consideration of the complaint; and (2) include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.

I've therefore concluded that, in the absence of a response from Barclays, it is fair and reasonable to proceed on the basis of the evidence we already have.

Firstly, I think the weight of evidence I've seen supports this being a scam, rather than a civil matter. What's happened in the circumstances of this case carries all of the hallmarks of a typical 'job' scam. Whereby victims are persuaded to make ever increasing deposits, through crypto wallets, in order to gain tasks, which generally involve leaving reviews for products/services. Victims are frequently able to make nominal withdrawals, to entice them to deposit more, only to then not be able to withdraw or gain access to their money.

But while I'm persuaded Mrs A was the victim of a scam, it doesn't automatically follow that Barclays is liable for refunding her loss. Barclays has a primary obligation to carry out the payment instructions its customers give it. So, as a starting point, a customer will therefore be assumed to be liable for payments they have instructed to be made. There is no dispute that Mrs A authorised these payments, albeit having been deceived into believing she was sending them for the purpose of a job opportunity. On the face of it, she is therefore liable for the resultant losses.

The Contingent Reimbursement Model (CRM code) can provide additional protection for the victims of APP scams such as this was. However, the transactions Mrs A made to fraudsters from a cryptocurrency wallet she held, aren't faster payments to another person between GBP accounts, which is a requirement of the code. So I cannot fairly apply the terms of the CRM code to any of the payments Mrs A has made.

However, 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 customers from the possibility of financial harm from fraud. I've therefore considered whether the instructions given by Mrs A were unusual enough to have expected additional checks to have been carried out before the payments were processed.

To decide this, I've reviewed the activity on Mrs A's account statements, from which the payments were made, for the months leading up to the scam. This is often a finely balanced matter, and Barclays has a difficult balance to strike in how it configures its systems to detect unusual activity or activity that might otherwise indicate a higher than usual risk of fraud.

Having considered the first ten payments of the scam (up to and including the payment Mrs A makes for £700 on 8 July 2022), on balance, I can't fairly say they were so unusual or suspicious in comparison to her usual activity, that they ought to have alerted Barclays that Mrs A may have been at risk of financial harm. The payments weren't dissimilar in value to other payments that Mrs A had made previously and she'd also made similar, or larger payments to cryptocurrency platforms in the months leading up to the scam, so I don't think they ought to have stood out, although I do think a pattern is starting to emerge.

However, when Mrs A goes on to make a further payment on 8 July 2022, for £1,080, I think Barclays ought to have had concerns and made some further enquiries. I say this because, by that point, it was the tenth payment within the space of just a few days, the majority of which were to a new payee, with the amounts steadily increasing in value. Barclays will be aware that multiple escalating payments being made in quick succession can often be indicative of financial harm.

It follows that I think Barclays should've spoken with Mrs A, about the payment for £1,080, before processing it. Barclays internal records show that after Mrs A had made a further payment for £2,190 it did start to have concerns, when Mrs A attempted to make a further payment for £3,900, which was blocked. For reasons explained, I think this intervention ought to have come sooner and led Barclays to making further enquiries about the payment. Had it have done so and questioned Mrs A proportionately and effectively, I've no reason to think Mrs A wouldn't have been candid about the detail behind the payments – that being for

a job involving completing tasks, in which she would get paid in crypto, and that she had to make payments to increase her wallet balance.

Given Barclays's familiarity of scams, including those involving completing tasks such as this, I think this would've been a red flag. And so, at this point, I think Barclays ought to have highlighted to Mrs A that there was a significant risk of it being a scam and encouraged her to not make any further payments. I've no reason to doubt that Mrs A would have acted on such advice.

I think this is supported by what subsequently happens. I've listened to a call Mrs A had with Barclays regarding the payment for £3,900 that was blocked. There is confusion around what Mrs A is investing in and so the Barclays agent refused to progress the payment and refers Mrs A to branch. Unfortunately, and as mentioned above, I haven't got any contemporaneous notes about what was discussed in branch. But a later internal call from Barclays indicates that its branch staff, at some point, hadn't followed the correct internal protocol, as the branch didn't contact its fraud team while the customer was present.

It is unclear what happened in branch and what visits Mrs A actually made to the branch. But this scam ultimately seems to have come to light following a conversation Mrs A *has had* with branch staff, where she told them she was investing in a job opportunity. Given this and, in the absence of any evidence to the contrary, I think it's a fair and reasonable conclusion to reach that had that interaction and conversation taken place sooner (as I think it ought to have done, at the point Mrs A was paying £1,080), the scam would more likely than not have been revealed sooner and Mrs A wouldn't have gone on to make that or the subsequent payments.

On realising this was a scam, Mrs A withdrew the money she had left in her wallet – so it's important to note that this final credit was not a commission return, rather it was funds that Mrs A had paid into her crypto wallet, but not yet sent to the fraudsters.

Overall, for reasons already explained, I'm persuaded there was enough going on earlier in the scam, for Barclay's intervention to fairly and reasonably have been sooner and gone further than it did. So I'm persuaded that it was, at least in part, responsible for some of Mrs A's loss.

I've also thought about whether Mrs A did enough to protect herself from the scam, and I don't think she did. While I do appreciate this was quite a sophisticated scam, especially considering Mrs A attended a workshop, I think it would've been reasonable for her to have had concerns about the legitimacy of the job offered. This is because I consider the concept of running tasks to drive ratings for products or services she hadn't used or purchased, being paid in crypto and having to deposit funds in order to acquire earnings doesn't seem genuine, and so should've prompted concerns. Mrs A also doesn't appear to have a contract of employment with the company she thought she was working for.

I've considered that Mrs A did receive some returns into her wallet. But I don't think a legitimate company would require somebody to make any upfront payments, but Mrs A has proceeded to pay money over anyway without completing sufficient independent checks, and I don't think that was reasonable. Alongside this, I think Mrs A ought reasonably to have had concerns about the strong additional income she was being offered to complete basic tasks. I think the level of income, seemed improbable to the point of being too good to be true.

I'm mindful that any of these individual factors in isolation may not have been enough to have prevented Mrs A from proceeding. But considering the specific circumstances of this case and the factors in the round, on balance, I think there was enough going on and

sufficient red flags that Mrs A ought reasonably to have taken further steps to protect herself. So, I think it would be fair and reasonable to make a 50% reduction in the award I'm making, based on contributory negligence in the circumstances of this complaint.

Finally, I've considered whether Barclays did all it could to try and recover the money Mrs A lost, once she had reported the scam to it. But I don't think there was anything more Barclays could've done. There would've been no prospect of recovering the funds from the receiving accounts, given we know these accounts were controlled by Mrs A who, with the exception of the final withdrawal she was able to make, had already transferred the cryptocurrency on to the scammer by the time the fraud had been reported.

Putting things right

For the reasons I've explained, Barclays Bank UK PLC, should now;

- Refund Mrs A £3,393.11. That being, 50% of the money she lost from the point she made the payment for £1,080 on 8 July 2022, less the money she was able to recover from her cryptocurrency wallet, after her final payment (£12,020.00 less £5,233.78).
- Pay 8% simple interest per year on this amount from the date of loss until the date of settlement.

My final decision

My final decision is that I uphold this complaint in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 12 March 2024.

Stephen Wise
Ombudsman