

## The complaint

Mr A complains that Barclays Bank UK PLC trading as Barclaycard (Barclaycard) won't refund all the money he lost in an investment scam.

## What happened

Mr A is represented by a third-party firm of solicitors and I refer to Mr A as the complaint here.

In October 2020, Mr A saw some advertisements online for a crypto currency trading company – which I will call 'company A'. He says he carried out some research and it appeared to be legitimate.

He began to make some investments, at the beginning starting with modest sums of money but then introducing larger amounts – as company A's website showed he was apparently making good returns. He came to trust company A. He relied heavily on the advice of company A's advisers who gave him instructions on every trade and held his hand at each stage. He thought he was investing in gold and crypto currency.

After a while, his trading account went negative and company A said he had to introduce further funds to put it right. This happened three times and each time he put in more money, but each time his investment value turned negative. Overall, Mr A says he 'invested' USD72,000 – and company A's investment site proved to be a fake.

Mr A made payments to a crypto wallet in his name with various third-party exchanges, and from there sent the money to company A. Payments were made from both his Barclays current account (which is the subject of another complaint brought to this service) and from his Barclaycard account (this complaint). **(continued)**

### *Payments from Barclaycard account:*

Date	No.	Payment	Amount (£)
30 December 2020	1	<i>Credit card – to crypto wallet (4) in Mr A's name</i>	76.35*

12 February 2021	2	<i>Credit card – to crypto wallet (5) in Mr A's name</i>	1,087.60*
30 April 2021	3	Credit card – to crypto wallet (1) in Mr A's name	1,278.99
31 May 2021	4	Credit card – to crypto wallet (2) in Mr A's name	2,363.88
31 May 2021	5	Credit card – to crypto wallet (2) in Mr A's name	945.66
30 June 2021	6	<i>Credit card – to crypto wallet (2) in Mr A's name</i>	2,229.76*
30 June 2021	7	<i>Credit card – to crypto wallet (2) in Mr A's name</i>	891.99*
<b>Total paid from credit card account</b>			<b>£7,710</b>

*\*not refunded by Barclaycard*

As a result of his losses, Mr A says he's lost most of his savings and this has had a devastating effect on him and his family.

Mr A says Barclaycard allowed the payments to go through without any intervention or warnings. He says these were unusual transactions for him and Barclaycard should've intervened and ask him questions about what he was doing. If the bank had, it's likely the payments would've been stopped and Mr A wouldn't have lost his money. He says the payments were covered under the Contingent Reimbursement Model Code (CRM Code).

Mr A says Barclaycard should refund the money plus interest at 8% per annum.

*What Barclaycard said:*

Barclaycard accepted they should've intervened and asked questions of Mr A. The payments were out of character. But they also said that Mr A hadn't carried out sufficient research – there wasn't any evidence that the investment platform (company A) was genuine. The bank therefore said Mr A should bear 50% of his losses. Barclays refunded £20,765.50 (being 50% of Mr A's total payments from his current account and credit card), plus interest at 8% per annum simple (£2,596.16).

*Our investigation so far:*

Mr A didn't agree and brought his complaint to us. He said Barclaycard should refund 100% of his losses. He also said there were further payments which Barclaycard hadn't refunded and he believed that bank should do so. These were the payments 1, 2, 6 and 7 in the schedule above.

Our investigator put this to Barclaycard and they declined to make the further refunds. The bank said they weren't convinced they were part of the same scam. Our investigator reviewed the evidence provided by Mr A and said she was persuaded they were part of the scam. But she went on to say that payments 1 and 2 were too low in value to have expected Barclaycard to have intervened and so those should not be refunded.

But she said that payments 6 and 7 should be refunded – given that they took place after a pattern of payments was established and they were of a higher value. So she said Barclaycard should refund £3,121.75 plus interest at 8% per annum.

She considered the deduction of 50% was reasonable. She couldn't see that Mr A carried out sufficient research into company A. There was little on company A online at the time, other than a few online reviews - and the balance of those were negative, and said it was a scam. She said it was a reasonable expectation that Mr A did more research, especially when putting in larger amounts of money from April 2021 onwards.

She also noted that Mr A had provided little evidence of communications with the scammers – for example, it wasn't clear why he paid various firms – and that should've been a red flag in itself – it didn't make sense for reputable investment firm to use a number of exchanges.

Barclaycard agreed with this, but Mr A didn't. He said he should get a 100% refund of all of the credit card payments – an extra £4,285.70, to include payments one and two. He said he was careful to invest small amounts at first, and was able to withdraw some money at first – so he was taken in and came to trust company A. If Barclaycard had intervened, the bank could've suggested ways to carry out more research into company A. Mr A further said Barclaycard could've seen the payments were to suspicious payees – given the bank's experience in scams.

He said Barclays/ Barclaycard declined his complaint originally and it was only now, with the support of a claims firm, that the refunds had been agreed. Because of this, he had to employ the third party which would cost him 30% of the money refunded – so this should also be taken into account.

Mr A's complaint has come to me to consider and 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.

*Barclaycard have already refunded 50% of the payments made by Mr A. So - this decision considers two things:*

- *Whether Barclaycard should refund the further payments of £4,285.70 (payments one, two, six and seven).*
- *Whether a deduction of 50% for contributory negligence is reasonable.*

I'm sorry to hear that Mr A has lost money in a cruel scam. It's not in question that he authorised and consented to the payments in this case. So although Mr A didn't intend for the money to go to a scammer, he 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 Barclaycard 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 Barclaycard acted fairly and reasonably in its dealings with Mr A when he 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) provides for refunds in certain circumstances when a scam takes place.

But – it 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 Mr A's own account with company A: i.e. his crypto wallet; and by credit card.

If the payments were of a sufficient size and were out of character with how Mr A normally used his account – then we would expect Barclaycard to have intervened and spoken to him about them.

I can see that Mr A's credit card account had only very few transactions, and of a low value – much lower than the larger payments made. And here, Barclaycard have accepted they should've intervened, but didn't – and have refunded 50% of some of the payments made (payments three, four and five) but not payments 1,2, 6 and 7 (those totalling £4,285.70).

So, I need to consider whether Barclaycard should refund £4,285.70. Looking at payments one and two – these were the first payments made from the credit card as part of the scam. And they are for fairly low amounts.

And: there's a balance to be made: Barclaycard 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 Barclaycard acted reasonably in processing the first two payments. And so, I don't hold Barclaycard liable to refund those.

But looking at payments six and seven – these were for much higher amounts and by then, a pattern of paying the scammers had been established. And Barclaycard should've seen that and intervened but didn't.

So, in the first instance, I consider Barclaycard should refund those two payments - £3,121.75.

#### *Contributory Negligence:*

But that's not the end of the story here. I also considered whether Mr A could've done more to protect himself and whether he should therefore reasonably share some of his losses – bearing in mind that Barclaycard have already refunded 50%. And I think he should. I say that as:

- Mr A has said he did sufficient research, but I've not seen any evidence of what that included.

- I looked at some online reviews of company A and there are some negative ones dating back to 2020. I think it's reasonable that Mr A should've seen those.
- Company A wasn't registered with the Financial Conduct Authority – so it doesn't look as though Mr A looked at the FCA's website. This would've been a reasonable thing to do.
- The payments from the credit card were to four different payees in different countries. I think it's reasonable to have expected Mr A to question why that was so – and whether a genuine and credible investment business would do that.
- Mr A didn't take any advice for a trusted friend or adviser in making the payments – think would have been a reasonable thing to do.
- I'm also mindful that we've seen little evidence of any contracts, or written communications between Mr A and company A – so it's not clear what, (if anything) was confirmed or proposed in writing. Mr A says he did most of the transactions following telephone conversations – but I don't think that was a reasonable thing to do, given the sums of money involved.

Therefore, I agree that Mr A should share 50% of his losses with Barclaycard.

Mr A has also argued that Barclays/ Barclaycard declined his original complaint and he therefore has had to pay a third-party firm to argue his case for him. He says this should be taken into account.

I haven't seen evidence of his first complaint to Barclays/ Barclaycard. But if the bank sent him final response to a complaint – this would've given him referral rights to our service; which he could then have taken advantage of. But there's no record of such a complaint coming to us before this one. It was Mr A's decision to pay a third-party claims firm – whereas he could've brought his complaint us and had the benefit of our free service. So here, I don't agree that his argument leads me to say Mr A should get a higher refund that he's already had.

### *Recovery*

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether Barclays/ Barclaycard took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost money. I couldn't see that they'd contacted the provider of Mr A's crypto wallet – but I'm persuaded that had they done so, no funds would've remained – as he'd moved them into the trading platform.

I'm sorry Mr A has had to contact us in these circumstances. I accept he's been the victim of a cruel scam, but I can't reasonably hold Barclaycard responsible for all of his losses. Barclaycard have already refunded 50% of payments three, four and five, but should now refund the further amount of £3,121.75 (payments six and seven), plus interest at 8% per annum simple.

### **Putting things right**

Barclaycard should refund £3,121.75 plus interest at 8% per annum simple.

### **My final decision**

I uphold this complaint. Barclays Bank UK PLC trading as Barclaycard must:

- Refund £3,121.75 plus interest at 8% per annum simple from the date the payments were made to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 24 October 2024.

Martin Lord  
**Ombudsman**