

The complaint

Mr K complains Barclays Bank UK PLC (Barclays) won't refund the money he lost to a scam.

What happened

In mid-2020, Mr K made a payment of £20,000 from his Barclays account to a recipient I'll refer to as "D". They were a jewellery company, and the payment was meant to be for an investment in gold. But D later went into liquidation. Mr K didn't receive any returns.

Mr K complained to Barclays that he had been scammed, so it should refund him for the payment under the terms of the Lending Standards Board's Contingent Reimbursement Model (CRM) code. This voluntary code generally requires firms who are signed up, including Barclays, to refund victims of Authorised Push Payment (APP) scams – unless certain exceptions apply.

Barclays said it wasn't liable for Mr K's loss as the matter was a civil dispute rather than an APP scam. Unhappy with Barclays' response, Mr K referred the matter to our service.

Our investigator ultimately concluded there wasn't enough to show an APP scam had occurred, so didn't recommend Barclays should refund Mr K. They said if further information came to light at a later date that substantiated D were operating a scam, he could go back to Barclays and ask it to reconsider his claim.

Mr K has appealed the investigator's outcome so the case has been passed to me. In summary he says others who invested with D have been reimbursed under the CRM code on the basis of less evidence. The perpetrator, who he thought owned D, has a court order against him prohibiting disposal of assets. And he says the police's investigating officer has no doubt he was scammed.

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 agree with the conclusions reached by the investigator. I'll explain why.

In line with the relevant regulations – the Payment Services Regulations 2017 – banks are expected to execute authorised payment instructions without undue delay. The starting position is that Mr K is liable for payments he authorises, even if he was tricked about the premise of the payment.

However, when a payment is made as the result of an APP scam, there are some circumstances under which the bank might be expected to hold liability for the fraudulent loss incurred. Such as when a payment meets the conditions of the CRM code and no exceptions apply which mean the bank wouldn't be expected to refund the consumer – which Mr K argues is the case here.

The CRM code defines what is an APP scam (as does the FCA, the UK's financial services regulator). It's a transfer of funds to another person where the consumer was either deceived into transferring the funds to someone other than who they intended to pay. Or a transfer of funds to another person for what the consumer believed were legitimate purposes, but which were in fact fraudulent.

It's the latter which Mr K seems to suggest applies; he knew he was paying D, but says he was paying them for what he believed to be a legitimate investment – which was actually a scam.

The CRM code sets out that it doesn't apply to private civil disputes. This is defined as where the consumer has paid a legitimate supplier but then has an issue with the goods or services etc. they were purchasing. The code doesn't offer further specifics on what is legitimate – or what constitutes fraudulent purposes. But the Fraud Act 2006 provides some relevant insight.

Briefly, the relevant section describes fraud by false representation as a deliberate dishonest intention to deceive, to make a gain or to cause loss to another. The representation must be untrue or misleading at the time it is made.

Considering the above, I think an APP scam requires that the consumer has been dishonestly deceived about the very purposes for which the payment was obtained. And the payment must have been criminally obtained. But fraud may occur that doesn't meet the definition of an APP scam – such as in circumstances where the fraud doesn't go to the purpose of the payment.

I've looked at how that applies here, to consider whether it was reasonable for Barclays to deny Mr K's claim under the CRM code due to deeming the issue a civil dispute rather than a scam. To conclude Barclays acted unreasonably, I'd expect to see compelling evidence of an APP scam.

Looking at the information that has been provided about Mr K's investment, there is certainly some circumstantial evidence to suggest D may have acted fraudulently. But at present, I don't have enough to confirm that, at the point Mr K made this payment, D were acting dishonestly and didn't intend to provide him with the investment.

I'm conscious D did have premises, and it appears they were operating as a genuine jewellery shop. The company was registered on Companies House, making the individuals involved publicly traceable. All of this makes it appear likely the company was providing legitimate services, at least at one point.

I understand there is a police investigation looking into individuals connected to D. But I haven't been presented with much information to confirm what, if any, action the police will be taking against the alleged perpetrators. It appears their investigation may be ongoing.

I'm also aware liquidators were appointed fairly recently. I haven't seen any suggestion they have raised or identified concerns of fraud.

Our service has also seen evidence of the receiving bank statements for D. The activity here appears to show the funds being spent as they were intended by both the recipients and its customers. That is significant bearing in mind the significance of the payment purpose in APP scams.

I know Mr K is aware of others who have been refunded for payments to D. But my role is to look at this complaint independently and impartially, based on all the information I have at this point in time, to determine what is fair and reasonable. I have also considered the information he has provided about what the police told him, and about restrictions placed on individuals linked to D. But weighed against the other evidence, I don't think that provides enough to show D criminally deceived him into making this payment at the time, with no intention of providing the investment.

I appreciate this will be disappointing for Mr K, who I accept hasn't received what he was expecting from the investment and has been left at a substantial loss. But considering all of the above, I don't have enough to show D had no intention of providing the investment at the point Mr K made the payment. I'm therefore not persuaded it would be fair to make Barclays refund him under the CRM code (or otherwise) – as I don't have compelling evidence of an APP scam.

There are indications that other organisations – such as the police and the liquidators – are looking into D further. As I've explained to Mr K, if evidence becomes available at a later date which shows this was an APP scam, he can go back to Barclays and ask it to reconsider his claim in light of this.

My final decision

For the reasons given above, my final decision is that I do not 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 May 2024.

Rachel Loughlin
Ombudsman