

## **The complaint**

Mrs and Mr F complain that Barclays Bank UK PLC hasn't refunded them after they reported falling victim to a scam.

## **What happened**

In January 2020 Mrs and Mr F invested £40,000 with an unregulated company which I'll refer to as J. A friend of theirs had already been investing for two years and was receiving returns, so they thought it a wise investment.

But contact with J began to dwindle. And then Mrs and Mr F were notified that J was going into liquidation. They were contacted by J's solicitor's during this time.

Mrs and Mr F were pushing for a return of their funds, but J repaid nothing. The insolvency process was completed, and no money was returned to Mrs and Mr F, even after a civil case progressed through the courts.

It's now Mrs and Mr F's view that they were scammed by J. They reported as much to Barclays who then considered whether it ought to reimburse their loss. But it considered the matter to be a civil dispute between Mrs and Mr F and J, rather than agreeing a scam had taken place. It said J had appeared to be a legitimate company that had gone into liquidation, failing to deliver the services promised to Mrs and Mr F.

Mrs and Mr F weren't happy with Barclays' response and so brought the complaint to our service. One of our investigators considered the complaint and didn't uphold it. He found there was little evidence of a scam having taken place and so couldn't recommend a refund.

The case has been passed to me for review as Mrs and Mr F remained dissatisfied.

## **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 disappoint Mrs and Mr F further but I'm not upholding their complaint, and for broadly the same reasons as our investigator. I have no doubt they have lost significantly here. And it might well be that J has not acted fairly. Certainly, it hasn't delivered on what was promised. But there isn't sufficient evidence for me to say the reason behind that failure was an intent to defraud Mrs and Mr F from the very beginning, rather than the company failing for any number of other reasons.

The starting point at law is that Mrs and Mr F are responsible for any payments made from their account that are properly authorised. The relevant regulations here are the Payment Service Regulations (2017).

There is established industry guidance and best-practice in place to see customers protected from scams. And Barclays is a signatory to the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. But these protections don't apply to all

payments made by a customer.

The Code sets out that it does not apply to:

*private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier;*

The effect of this exclusion broadly applies to the other forms of scam protection that sit outside of the Code too.

Having considered the facts of the case, and all information and evidence available, I find that Barclays has acted fairly and reasonably in declining to reimburse Mrs and Mr F on the basis that they have a civil dispute with J. My key reasons are as follows:

- J was a well-established company by the time Mrs and Mr F engaged with it, having been incorporated in May 2017, nearly three years before they invested;
- It filed accounts each year, including after Mrs and Mr F had invested;
- J had been recommended by a friend who had been invested for two years and was receiving returns, showing J was delivering on its promises;
- J had formal legal representation. These representatives contacted Mrs and Mr F and other investors about ongoing issues with J. I wouldn't expect a scam company to engage with such representation. I consider it more likely than not all contact would simply be cut off if a fraudulent scheme were uncovered;
- The accounts of J, held at a different bank, reveal no concerning detail about J's activity;
- That same bank only received one other scam claim, in October 2023. Had J been engaged in scamming lots of people I'd expect to see that reflected in claims being raised with its account provider.

Mrs and Mr F have pointed to the debts left behind by J at the point of liquidation as evidence of a scam taking place. Indeed, it seems J had creditors to the tune of £4million when it was dissolved. That is of course an incredible sum of money. But I'm not able to say how that debt was created. I've seen no evidence it was the result of activity – fraudulent or otherwise – on J's part that suggest a scam has taken place. This service isn't in a position to forensically analyse all of J's accounts; we must consider the evidence that is before us. And, in doing so, I've not seen persuasive evidence that J set out to scam Mrs and Mr F from the outset.

### **My final decision**

I don't uphold this complaint against Barclays Bank UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mr F to accept or reject my decision before 1 August 2024.

Ben Murray  
**Ombudsman**