

The complaint

Mr and Mrs S complain that Barclays Bank UK PLC won't reimburse them after they lost money to an investment – that they now consider to have been a scam.

What happened

Mr and Mrs S have explained that they were introduced to an investment opportunity, provided by a firm that I'll refer to as T, by their son. Their son had already invested with the firm, and appeared to be making good profits from weekly statements he was receiving. Mr and Mrs S were aware that their son had also met with the director of T in person and asked questions about the investment, that the director lived locally and that others locally had also invested. This all reassured Mr and Mrs S that this was a legitimate investment opportunity. However Mr S has advised he also checked Companies House, where he found T was registered, and drove to the office address listed to ensure the premise existed.

Finding nothing untoward, Mr and Mrs S contacted T, expressing their interest in investing and, following a telephone call with the director, made two payments in December 2021 for £50,000 and £30,000 to an account in T's name. Mr and Mrs S also received a contract setting out the terms of the investment, which stated that the director personally guaranteed initial investments made. Other than this initial guarantee, they weren't given a specific rate of return to expect from their investment.

Mr and Mrs S explained that they received weekly reports confirming how their investment was performing, and it appeared to be receiving good returns. However, they were then contacted by another investor who stated they'd received contact from the Police regarding the investment. Mr and Mrs S tried at this time to make a withdrawal but never received any funds. Since this time, Mr and Mrs S have also received contact from the Police, advising T is under investigation.

Mr and Mrs S complained to Barclays, but Barclays didn't consider it was liable to reimburse them. It said that T was a genuine firm, that is no longer trading. Barclays therefore suggested Mr and Mrs S contact T's creditors to attempt to recoup their losses. Barclays also told our service that it considers T to be a Ponzi scheme and therefore considers losses are not eligible for reimbursement.

Barclays also said that when Mr and Mrs S made the payments to T, Barclays completed a Confirmation of Payee check, which confirmed that the account details they had provided matched the account in question. It states it also requested the purpose for payment, which Mr and Mrs S confirmed was for an 'investment or cryptocurrency' and as a result, it provided an online warning as follows:

'Could this be a scam?'

Fraudsters fake documents and websites to look like genuine organisations, and post adverts on social media and search engines.

Search the FCA ScamSmart tool and look out for any warnings. If the company is genuine, you'll also be able to find their registered contact details.

*If you're investing in cryptocurrency, be extremely cautious. Don't continue if someone has control of your wallet, or you can't access it.
Speak to a financial adviser first – if the offer sounds too good to be true, it probably is.
Stop. Challenge. Protect.'*

An investigator considered the complaint and upheld it. She said on balance this was a scam and covered by the Contingent Reimbursement Model (CRM) Code and that none of the exclusions Barclays had relied on applied – so Barclays should reimburse Mr and Mrs S in full.

In its response to our view, Barclays stated that there is an ongoing investigation by Police into T, where the current evidence available does not support the position that T set out to deceive complainants. It therefore considered our service should wait until the Police investigation had concluded. Barclays provided other examples of judgements it considered relevant to this complaint and also argued that this complaint should be dismissed under DISP 3.3.4A(5), as an investigation would 'otherwise seriously impair the effective operation' of our service.

As Barclays disagreed with the investigator's outcome, the complaint has been referred 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.

It's important to highlight that with cases like this, in deciding whether there was in fact a scam, I need to weigh up the available evidence and make my decision about what I think is likely to have happened on the balance of probabilities – in other words what I think is more likely than not to have happened in the circumstances.

When considering what is fair and reasonable, I'm also required to take into account: relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

In broad terms, the starting position in law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

Barclays is a signatory of the Lending Standards Board's Contingent Reimbursement Model (the CRM Code). This requires firms to reimburse customers who have been the victims of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the CRM Code where they have been the victim of an authorised push payment (APP) scam – as defined within the CRM Code. So if I am not persuaded that there was a scam then I will not have a basis to uphold the complaint.

Can Barclays delay making a decision under the CRM Code?

Barclays has suggested that our service should wait until Police investigations have concluded, before reaching an outcome on this case. There is an exception under the CRM Code (R3(1)(c)) that states that firms should make a decision as to whether or not to

reimburse a customer without undue delay but that, if a case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, it may wait for the outcome of the investigation before making a decision.

While this exception provides a reason why firms *may* delay providing a claim outcome under the CRM Code, it doesn't impact that customer's right to refer the complaint to our service – and similarly it doesn't impact our service's ability to provide a complaint outcome when we consider we have sufficient evidence to do so. Additionally, this exception needs to be raised by the firm, prior to it having reached an outcome on the claim under the CRM Code, which Barclays hasn't done in this case.

I've therefore gone on to consider below whether we do have enough evidence to proceed at this time on Mr and Mrs S's complaint.

Is it appropriate to determine Mr and Mrs S's complaint now?

I am aware there is an ongoing investigation, and there may be circumstances and cases where it is appropriate to wait for the outcome of external investigations. But that isn't necessarily so in every case, as it will often be possible to reach conclusions on the main issues on the basis of evidence already available. And I am conscious that any criminal proceedings that may ultimately take place have a higher standard of proof (beyond reasonable doubt) than I am required to apply (which – as explained above – is the balance of probabilities).

The Lending Standards Board has said that the CRM Code does not require proof beyond reasonable doubt that a scam has taken place before a reimbursement decision can be reached. Nor does it require a firm to prove the intent of the third party before a decision can be reached. So in order to determine Mr and Mrs S's complaint I have to ask myself whether I can be satisfied, on the balance of probabilities, that the available evidence indicates that it is more likely than not that Mr and Mrs S were the victim of a scam rather than a failed investment.

I've reminded myself that Parliament has given ombudsmen the job of determining complaints quickly and with minimum formality. In view of this, I think that it would not be appropriate to wait to decide Mr and Mrs S's complaint unless there is a reasonable basis to suggest that the outcome of any external investigation may have a material impact on my decision over and above the evidence that is already available.

Barclays has referred to another court case for consideration, although hasn't specified for what reason it considers this to be relevant. While I've reviewed the case referenced, as mentioned already, our service considers relevant law and regulations when considering all complaints. However, I don't consider the case referred to specifically impacts my decision on this case outside of the reasoning I've already set out.

Barclays has also stated the case should be considered for dismissal, as such a complaint would seriously impair the effective operation of our service. Again, Barclays hasn't stated its reasons for considering this – I assume this may be that it considers the case would be more suitably considered first in court. However, for the reasons I've set out above, I think there is enough evidence already available for our service to make a finding on this case and therefore don't consider it would be appropriate to dismiss it for this reason.

Have Mr and Mrs S been the victims of a scam, as defined in the CRM Code?

The relevant definition of a scam in accordance with the CRM Code is that the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

The CRM Code also says it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier.

So, it doesn't cover a genuine investment or a genuine business that subsequently failed.

So in order to determine whether Mr and Mrs S have been the victims of a scam as defined in the CRM Code I need to consider whether the purpose they intended for the payments was legitimate, whether the purposes they and T intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of T.

From what I've seen and what Mr and Mrs S have told us, I'm satisfied Mr and Mrs S made the payments with the intention of investing in forex trading. They thought their funds would be used by T to trade and that they would receive returns on their investment.

But I think the evidence I've seen suggests T didn't intend to act in line with the purpose for the payments it had agreed with Mr and Mrs S.

Mr and Mrs S made their payments to an account held in T's name. I've reviewed beneficiary statements for these accounts and while I can't share the details for data protection reasons, the statements do not suggest that legitimate investment activity was being carried out by T at the time Mr and Mrs S made the relevant transactions. Whilst there is evidence T initially did carry out trades, it doesn't necessarily follow that it was a legitimate enterprise. T and its linked companies were not authorised by the FCA to carry out trading, so its operations clearly lacked an important element of legitimacy; it was required to be authorised to do the activity it was carrying out and it wasn't.

Further concerns centre around the owner of T (who was bankrupt at the time). From the paperwork provided to consumers, he appears to have "personally guaranteed" the investments (despite forex being a high-risk investment and him never being in a financial position to do so). He also signed contracts on behalf of T despite not officially being listed as the director of the business. He appears to have acted as a 'shadow director', when he would've been disqualified as a director in his own right due to his bankruptcy. Furthermore, T was listed as an 'IT consultancy' business on Companies' House and not a financial services firm.

So based on the above, along with the weight of testimony we have seen from other consumers who invested in T, I am satisfied that it is more likely T was not acting legitimately, since its intentions did not align with Mr and Mrs S's intentions, and I am satisfied that T was dishonest in this regard. It follows that I'm satisfied Mr and Mrs S were the victims of a scam.

Are Mr and Mrs S entitled to a refund under the CRM code?

Barclays is a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this, in all but a limited number of circumstances and it is for Barclays to establish that a customer failed to meet one of the listed exceptions set out in the CRM Code.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that*:

- The customer ignored what the CRM Code refers to as an “Effective Warning” by failing to take appropriate action in response to such an effective warning
- The customer made payments without having a reasonable basis for believing that: the payee was the person the Customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate

**Further exceptions outlined in the CRM Code do not apply to this case.*

Did Barclays meet its obligations under the CRM Code and did Mr and Mrs S ignore an effective warning?

I've considered the warning referenced earlier in my decision, that Barclays has said it provided to Mr and Mrs S. However I don't consider it to be 'effective' under the CRM Code. For a warning to be considered effective, the Code requires it to be (among other things) impactful, clear and provide the customer with the potential consequences of proceeding. I don't think this warning met these criteria – it doesn't cover most of the key hallmarks we see in these scams to be impactful and clear, and there's no explanation of what may happen to Mr and Mrs S's funds, should this turn out to be a scam.

In any event, under the CRM Code, an effective warning is a minimum requirement where a scam risk is identified. In this case, the payments Mr and Mrs S made towards this scam were significantly higher than any they'd made in the past 12 months. I therefore think Barclays ought to have also contacted Mr and Mrs S, prior to processing the payment, to assure itself that they weren't at risk of financial harm from fraud.

Therefore I'm not satisfied that Barclays can rely on this exception of the Code as a reason to not reimburse Mr and Mrs S.

Did Mr and Mrs S have a reasonable basis for belief?

I've considered whether Mr and Mrs S acted reasonably when making these payments, or whether the warning signs ought to have reasonably made them aware that this wasn't a genuine investment. Having considered everything carefully, I don't think Mr and Mrs S did act unreasonably in the circumstances of this complaint. I've taken into account that their son had invested around six months before them and hadn't encountered any problems. In addition, their son had also met with the director of T to discuss the investment. I can understand why it would be assumed that if someone is identifiable and contactable, it would provide reassurance that this wasn't a scam – as there seems a clearer route for recompense should issues arrive.

Additionally, Mr S has explained he did make some checks before sending funds, such as checking Companies House, checking the office address provided and speaking to the firm's director by phone. I can understand why, in addition to others they know having already invested, these checks would have provided assurances that this was a genuine opportunity.

Lastly, I've thought about the returns being seen by investors and whether these were realistic. Mr and Mrs S would've no doubt been aware from their son's investment that profits being made were very high – arguably too good to be true. However, I've also factored in that Mr and Mrs S weren't given specific promises or rates of return to expect – only that their initial investment was guaranteed. So while profits made until that point seemed good, they were aware this wasn't promised and they may in fact make nothing. All things considered, I therefore don't think this offer was so lucrative that it made it implausible to believe.

Lastly, Barclays has itself suggested that this is a civil dispute between Mr and Mrs S, and T, rather than a scam. While I disagree on this point, as already explained, I think this evidences that it was not entirely clear whether this was in fact a scam or not, even with the benefit of hindsight and so it doesn't appear reasonable to suggest that Mr and Mrs S should have identified this, prior to many of these warning flags coming to light.

Overall, for the reasons I've explained above, I think it is fair for our service to consider Mr and Mrs S's complaint based on the evidence currently available and having done so, I think it is fair and reasonable for Barclays to fully reimburse them under the CRM Code.

My final decision

My final decision is that I uphold Mr and Mrs S's complaint against Barclays Bank UK PLC and I direct it to:

- Refund Mr and Mrs S in full the payments they made towards the scam (£80,000)
- Apply 8% simple interest, from the time it declined Mr and Mrs S's claim under the CRM Code until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 17 December 2024.

Kirsty Upton
Ombudsman