

## **The complaint**

Mr W complains that Barclays Bank UK PLC (“Barclays”) won’t refund the money he lost when he was the victim of a scam.

## **What happened**

In December 2020, Mr W saw adverts on a social media platform about an opportunity to invest in a company (I will refer to as B) which leased cars. He was told his investment would be used to purchase a new vehicle which would then be leased out. The driver would make monthly lease payments, with part of these repayments being passed on to Mr W by B over the term of the investment. Mr W was told at the end of the investment term, the driver would return the vehicle and Mr W would receive his final exit payment from B which would consist of the remainder of capital and interest detailed in the agreement. Mr W was also told that the investment was secured against a vehicle.

Mr W transferred £14,000 on 16 December 2020 and says he received one monthly return totalling £267.36 in January 2021. Shortly after this B went into liquidation.

Mr W believed he’d been the victim of a scam and contacted Barclays to ask it to return his funds. Barclays declined to refund Mr W on the basis that it considered this was a failed investment, rather than a scam.

One of our investigators looked at the complaint. He said the evidence showed there was a clear discrepancy in alignment between the payment purposes Mr W and B had in mind, so this met the definition of a scam. He also said he was satisfied Mr W had no reason to suspect the investment wasn’t legitimate. So, he recommended Barclays refund Mr W’s losses in full. He recommended interest be added from 15 days after the date the directors of B were charged by the Serious Fraud Office (SFO) to the date of settlement.

Barclays disagreed with our investigator. It said based on available evidence; it doesn’t consider it amounts to a scam. It also said, the investigation into B is ongoing, and the current evidence available does not support the position that B set out to deceive/scam the complainant. It considers I should await the outcome of the court case and consider the Judgement of that case, before proceeding to determine Mr W’s complaint. Alternatively, it has requested I consider dismissing the case under our rules (specifically DISP 3.3.4A(5)) as it considers whilst an investigation is ongoing, would otherwise seriously impair the effective operation of the Financial Ombudsman Service.

As the complaint could not be resolved informally, it’s been passed to me for a 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.

When considering what is fair and reasonable, I'm 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.

It's important to highlight that with cases like this I can't know for certain what has happened. So, I need to weigh up the evidence available and make my decision on the balance of probabilities – in other words what I think is more likely than not to have happened in the circumstances.

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 victim 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.

*Can Barclays delay making a decision under the CRM Code?*

In its more recent submissions, Barclays has argued that the payments Mr W made are the subject of an ongoing complex investigation and it would be fair to wait for the outcome of this investigation before making a decision on whether to reimburse him. But I disagree.

The CRM Code says 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.

But this provision only applies *before* the firm has made its decision under the CRM Code. So, it can't seek to delay a decision it's already made. And Barclays only raised this point after the case was referred to our service. It had already reached a decision on Mr W's claim in its final response letter to him, when it said the complaint appeared to be the subject of a dispute between Mr W and the seller of the goods/services.

So I don't think Barclays can now rely on this provision.

And, in any event, the SFO had been carrying out an investigation into the car leasing company and several connected companies. But that investigation concluded on 19 January 2024 when the SFO published the outcome of the investigation, which included the charging of B's former company directors with fraud, on its website.

The Lending Standards Board has also said that the CRM Code does not require a criminal test to have been met 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 as the SFO has reached an outcome on its investigation, and I don't think it's fair or necessary to wait until the outcome of the related court case (which isn't scheduled for more than two years) I don't think it's fair for Barclays to delay making a decision on whether to reimburse Mr W any further.

For the same reasons I also don't feel it would be appropriate to dismiss this complaint. The SFO investigation is complete, and I don't think the outcome of the related court case would seriously impair the effective operation of this service in relation to this case. As I have said above, the CRM Code does not require a criminal test to be met before a reimbursement decision can be made.

*Has Mr W been the victim of a scam, as defined in the CRM code?*

The relevant definition of a scam from 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, in order to determine whether Mr W has been the victim of a scam as defined in the CRM Code I need to consider whether the purpose he intended for the payments was legitimate, whether the purposes he and the company he paid intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of the company.

From what I've seen and what Mr W has told us, I'm satisfied Mr W made the payment with the intention of investing with the car leasing company. He thought his funds would be used to purchase a vehicle which would then be leased out, and that he would receive returns on his investment. And I haven't seen anything to suggest that Mr W didn't think this was legitimate.

But I think the evidence I've seen suggests the car leasing company didn't intend to act in line with the purpose for the payments it had agreed with Mr W.

Mr W was told his capital would be used to fund a specific vehicle and the documentation listed one of the key benefits as 'UK asset-back Security'. But there's no evidence this was the case or that the consumer's funds were secured against a specific vehicle.

The FCA also checked a sample of the vehicles the companies held against the DVLA database and found a significantly larger proportion of these were second-hand than the companies' stated business model suggests or would support – as it relied on securing significant discounts on new vehicles, which wouldn't be available on second-hand vehicles.

It also found a number of leases started significantly before the vehicles were put on the road, and some vehicles were not found on the database at all. And the FCA said it considered the companies' valuation of the vehicles it held was unrealistic and that the group's liabilities significantly exceeded its assets.

A report by the administrators of one of the connected companies also said that the total number of loan agreements was 3,609, relating to 834 investors, but that the number of vehicles held by the group at the appointment of the administrators was 596 - or less than one car for every six loan agreements.

There's no record at Companies House of any charge in Mr W's favour over any vehicle with the company following his investment. And, as I think the evidence shows the company was largely not carrying out this key aspect of the investments, I think it's safe to conclude that this wasn't done in Mr W's case either.

So, I think the evidence shows the car leasing company wasn't acting in line with the business model and features of the investment it had led Mr W to believe he was making. And so the purpose the company intended for the payments Mr W made wasn't aligned with the purpose Mr W intended for the payments.

The SFO has also said that the former company directors are accused of providing those who invested with false information and encouraging people to pay in whilst knowing that investments were not in reality backed up by the cars they had been promised. So I think the discrepancy in the alignment of the payment purposes between Mr W and the company was the result of dishonest deception on the part of the company.

And so I think the circumstances here meet the definition of a scam as set out under the CRM Code.

*Is Mr W entitled to a refund under the CRM code?*

Under the CRM Code the starting principle is that a firm should reimburse a customer who is the victim of an APP scam, like Mr W. The circumstances where a firm may choose not to reimburse are limited and it is for the firm to establish those exceptions apply. R2(1) of the Code outlines those exceptions.

One such circumstance might be when a customer has ignored an effective warning. A second circumstance in which a bank might decline a refund is, if it can be demonstrated that the customer made the 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

There are further exceptions within the CRM Code, but they do not apply in this case.

Although Barclays has not established that any of those exceptions apply, for completeness I find that none apply in this case. I have explained why below:

The way Mr W was told the investment would work doesn't appear to be suspicious and the returns he was told he would receive don't appear to be too good to be true. And, in line with a genuine investment opportunity, the brochure stated that capital is at risk. The investment material and communications with B I've reviewed appears professional and there was nothing in the public domain at the time about B that Mr W could've reasonably inferred from that a scam was taking place. And it appears the company had been operating for several years. One of the connected companies was authorised and regulated by the FCA, and a number of previous investors had received the returns they were told they would. So I don't think there was anything about the investment that should have caused Mr W concern. And I find Barclays hasn't established that Mr W made the payment without a reasonable basis for belief that the investment was legitimate.

Barclays hasn't submitted it provided a warning at the time Mr W made the transaction – so I can't fairly say Mr W ignored an effective warning.

And so, I don't think Barclays has established that any of the exceptions to reimbursement under the CRM Code apply here, and so it should refund the money Mr W lost in full.

**Putting things right**

As Mr W received one monthly interest payment back from B, I think it would be fair for this payment to be deducted from the amount Barclays has to refund him.

I also don't think any action I would've expected Barclays to take would have prevented Mr W making these payments, as I don't think any of the information, I would've reasonably expected it to have uncovered at the time of the payments would've uncovered the scam or caused it significant concern. And I don't think it was unreasonable for Barclays to initially decline Mr W's claim under the CRM Code, as it wasn't clear from the evidence available at the time that this was a scam.

But the CRM code allows firms 15 days to make a decision after the outcome of an investigation is known. So I think Barclays should have responded to Mr W's claim and refunded his losses under the CRM Code within 15 days of the SFO publishing the outcome of its investigation. And so I think Barclays should now pay 8% interest on the refund, from 15 days after the SFO published its outcome on 19 January 2024, until the date of settlement.

As the car leasing company is now under the control of administrators, it's possible Mr W may recover some further funds in the future. So, if it wishes, I don't think it would be unreasonable for Barclays to request Mr W complete an indemnity confirming he'll return any funds recovered in future to Barclays. But this will be for Barclays to arrange separately from the settlement of this complaint.

So, in order to put things right for Mr W, Barclays Bank UK PLC should: refund Mr W the payments he made as a result of this scam, less the payment(s) he received back from the company. Pay Mr W 8% interest on that refund, from 15 days after 19 January 2024 until the date of settlement

If Barclays Bank UK PLC considers that it's required by HM Revenue & Customs to deduct income tax from the interest award, it should tell Mr W how much it's taken off. It should also provide a tax deduction certificate if Mr W asks for one, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

### **My final decision**

My final decision is that I uphold this complaint and I require Barclays Bank UK PLC to put things right for Mr W as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 12 September 2024.

Kathryn Milne  
**Ombudsman**