

## The complaint

Mrs I complains that Barclays Bank UK PLC (Barclays) wouldn't refund money she lost in a scam.

## What happened

### *What Mrs I says:*

Mrs I is represented by a third-party firm of solicitors, but I will refer to Mrs I as the complainant.

In February 2018, Mrs I's husband ('Mr I') spoke to a friend who recommended investing with a company (which I will call 'A'). Mr I's friend had invested in A and so Mr I contacted A, and he visited their office in London. It seemed genuine and professional – the staff appeared professional and knowledgeable. A's staff explained what their business was – investing in data and reselling it. Mr I felt he would be able to profit by investing in A's shares and reselling them at a profit.

Mr I didn't do any further research into A – as his friend recommended the investment. Mr I then made a payment of £50,000 to A on 26 February 2018. The funds were paid from Mrs I's account and with her consent:

Date	Type of payment / beneficiary	Amount
26 February 2018	Online payment/company A	£50,000

Mr I didn't get any returns from A, and when he tried to contact A, he couldn't get through to anyone. His friend then told him he had the same experience and had lost all his money. Mr I then realised that he had been the victim of a scam.

The loss to Mr I and Mrs I had a serious impact on them – as they separated as a result; and Mr I's children haven't spoken to him since.

Mrs I doesn't dispute that she agreed that the funds could be paid from her account (even though the investment was being made by Mr I). She said Barclays didn't intervene in the payment and should have done so – the amount was unusual compared to the normal use of her account. If they had intervened, it was likely the scam would've been revealed, or at least Mr I would've done more research into A - and the payment wouldn't have been made. She said Barclays should refund the amount of the payment - £50,000.

Mrs I's representatives complained to Barclays in January 2023.

### *What Barclays said:*

Barclays said that this was a civil dispute and not a scam. A appeared to have been a trading company until it ceased trading and entered voluntary liquidation. Mr I was therefore

an unsecured creditor and should get in touch with the liquidator to try to get some of his money back. Barclays noted that Mr I did very limited research into A, nor did he seek independent advice, especially given the amount of the payment involved. Barclays therefore declined to refund any money. Barclays said the Contingent Reimbursement Model Code (CRM Code) didn't apply – as it only came into existence in May 2019.

### *Our investigation so far:*

Mrs I brought her complaint to us. Our investigator said the payment to A was likely a scam – because there weren't any investment brochures or a contract. She said Barclays should've intervened and questioned the payment. If they'd done so, they would've found out that Mr I had no experience of investing; and they would also have questioned the wisdom of investing such a large amount of money on the basis of limited research. She said Barclays were liable for the payment - £50,000.

But – she also said that because Mr I did little research into A, Mrs I should bear some responsibility for what happened, and so Barclays should refund 50% of the payment, plus interest at 8% per annum simple.

Barclays accepted this, but Mrs I didn't. She asked that an ombudsman look at her complaint. And so it has come to me to 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.

I'm sorry to hear that Mrs I has lost a lot of money. Mrs I doesn't dispute that she gave permission for her husband, Mr I, to make the payment from her account. So - it's not in question that she authorised and consented to the payments in this case.

As a first step, I need to decide whether this was a scam (where a scammer takes money from a customer with no intention of providing any services or returning the money to them) or a civil dispute (where a payment is made to a legitimate trading company or business, but the promised services or products don't materialise, or are sub-standard).

Barclays said the investment was a civil dispute – as A was an incorporated trading company, registered at Companies House. If I agreed with that, it's less likely that I would decide that Barclays should refund any of the money.

While I can see why Barclays said this was a civil dispute, I'm persuaded that on balance, this was likely a scam. I say that because:

- Companies House shows that A was incorporated in November 2017 and filed to be struck off in August 2018 – only nine months later. Its four officers resigned in July 2018.
- It was dissolved in November 2018.
- A didn't file any trading accounts in that time. So - there isn't any record of it trading or having any income or investments. Even though the nature of its business is stated as 'financial intermediation'.
- I couldn't find any other information out about A – for example, reviews of its business by clients, or its services or investment performance.
- On balance, I'm persuaded that A seems to have been set up as a scam operation – maybe with the intention of taking in money and closing the business down quickly.

So – I have looked at this complaint as a scam, and applied scam principles to it – in terms of how we would expect a firm to deal with the payment.

So having decided that: although Mrs I didn't intend for the money to go to a scammer, she 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 Barclays 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.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) doesn't apply in this case. That is because it came into operation in May 2019 – after the payment in question.

I need to decide whether Barclays acted fairly and reasonably in its dealings with Mrs I when she made the payment, or whether it should have done more than it did. I have considered the position carefully.

The first consideration here is: If the payment was of a sufficient size and was out of character with how Mrs I normally used her account – then we would expect Barclays to have intervened and spoken to Mrs I about it. I looked at Mrs I's account, and it's fair to say that the payment was unusual compared to the way in which she used her account – which was to make day to day expenditures of low value. There was one large payment of £73,700 in January 2018 – but other than that, there weren't any other large payments of any significant value (i.e. over £1,000).

So – the payment of £50,000 was sufficiently unusual to expect Barclays to have stepped in and asked questions about it – but they didn't.

I think it's reasonable to say that had they done so – they would've asked Mrs I what the payment was for; what research into A Mr I had done; what he had found out; what were the expected returns, and over what period; what was the history of the company; and had he taken any investment advice from an independent, third party. Given that it was unlikely that any of these questions would have received credible answers, I'm persuaded that it's likely that the payment wouldn't have gone ahead. I note however - that Barclays' role here wasn't to give investment advice about A, as that wasn't their role.

Therefore, in the first instance, I think Barclays should be liable for the payment of £50,000.

*Contributory Negligence:*

But that's not the end of the story. I need to consider whether Mr I should've done more to protect himself, and I consider he should have:

- He did very limited research into A, and relied on the word of a friend who was said to have invested in A.
- He took no independent third-party investment advice – it would've been reasonable he did so, especially given the amount of the payment.
- We asked to see any correspondence, investment prospectuses, contracts, share certificates – and there weren't any.
- The nature of A's business wasn't clear, nor how any profits or returns would be made.
- It wasn't clear what Mr I was investing in, or what his possible returns would be.

For all these reasons, I think it's reasonable that Mrs I should share responsibility for 50% of her losses here.

**Putting things right**

Barclays should refund £25,000 to Mrs I, plus interest at the statutory rate of 8% per annum simple from the date of payment to date of settlement.

**My final decision**

I uphold this complaint. Barclays Bank UK PLC must:

- refund £25,000 to Mrs I, plus interest at 8% per annum simple from the date of payment to date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs I to accept or reject my decision before 20 October 2023.

Martin Lord  
**Ombudsman**