

The complaint

Mr P complains that Barclays Bank UK PLC won't reimburse him the money he lost when he sent funds to an investment that he now believes to be a scam.

Mr P is professionally represented in bringing his complaint to our service, but for ease of reference I'll refer to all submissions as being made by Mr P directly.

What happened

Mr P has explained that in around 2018, he and his late wife were approached by a firm offering to assist in writing their wills. This firm then went on to introduce a further advisor, who presented Mr and Mrs P with an investment opportunity, with a firm I'll refer to as 'H'.

Mr P has explained they were told this was a property/real estate investment, whereby they would be guaranteed to receive annual returns equivalent to between 8% and 15% of their capital contribution, per annum.

Mr P has explained he was inexperienced in investments and agreed to the investment based on what he was told. Mr and Mrs P signed a deed agreeing to become a party to the Security Trust Deed as a Loan Note Holder. They made two payments towards the investment in February 2018 – one for £25,000 and another the following day for £20,000.

Mr P received returns of £2,250 every six months for the first 18 months. In around 2021, Mr P contacted H, requesting to terminate his investment. He says that each time he did so, he was assured this would happen, and his money would be returned in full, but this never happened. At this point, Mr P began to question the legitimacy of the investment. H later went into administration and to date, Mr P has received nothing further back from H.

In 2023, Mr P made a complaint to Barclays. He complained that, prior to processing these payments, Barclays ought to have questioned him on them and had it done so, it would have identified that he was making payments to a high-risk, unregulated investment. He also said Barclays ought to have highlighted concerns regarding the significantly high level of returns being marketed as guaranteed and had it done so, Mr P wouldn't have proceeded with the investment.

Barclays considered Mr P's complaint but didn't uphold it. In its final response letter it said that it had been unable to verify Mr P's complaint as being from him, and had been unable to contact him, so wasn't able to consider the complaint. Mr P remained unhappy and referred his complaint to our service. In its file to our service, Barclays explained it considers this matter a civil dispute, H having been incorporated in 2011 and going into liquidation ten years later, having been impacted by the pandemic. It suggested Mr P raises a claim with the Administrators, if he has not already done so.

The complaint was looked at by an Investigator who didn't uphold it. She agreed that Barclays ought to have been concerned about the high value payments Mr and Mrs P were making and that it ought to have contacted them, prior to processing the payments, to ensure Mr and Mrs P weren't at risk of financial harm from fraud. However, she didn't think

that Barclays would've identified, from the available information at the time, that the payments were potentially fraudulent.

Mr P didn't agree with the investigators view. To summarise some of the key concerns raised, Mr P said:

- He didn't consider the investigator had adequately considered the concerns that Barclays would have been alerted to, had it contacted Mr and Mrs P in line with relevant regulatory guidance. These include promoting an opportunity to invest in a property development bond, which was not regulated, and what he considers to be an unregulated collective investment scheme (UCIS), that Mr and Mrs P were not high net worth individuals and therefore were inappropriate investors, that Mr P was in his 70s and more vulnerable to financial harm from fraud and that promised returns were a fraud hallmark.
- Mr P considers that had Barclays contacted him and shared concerns about these payments, he would have taken heed of these warnings and not proceeded.
- Some investors were dubious about H's investment opportunity, and Barclays should therefore also have been dubious when questioning its customers.

As Mr P disagreed with the investigator's view, 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.

Mr P has made extensive submissions in support of this complaint. I'm very aware that I've summarised this complaint and the relevant submissions briefly, in much less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focused on what I think is the heart of this complaint. If there's something I've not mentioned, it isn't because I've ignored it – I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I consider is the right outcome. Our rules allow me to do this, reflecting the informal nature of our service as a free alternative to the courts.

In broad terms, the starting position at law is that a bank such as Barclays is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

And, as the Supreme Court has recently reiterated in *Philipp v Barclays Bank UK PLC*, subject to some limited exceptions banks have a contractual duty to make payments in compliance with the customer's instructions.

However, taking into account what I consider to have been good industry practice at the time, I consider that Barclays ought fairly and reasonably have taken steps to intervene (in proportion with the risk identified), prior to processing a payment, where it had concerns that a customer may be at risk of financial harm from fraud.

Having considered Mr P's statements and his typical spending, prior to these disputed payments, I agree with Mr P that the payments he made were out of character and that Barclays therefore ought to have made enquiries prior to processing the first payment, to satisfy itself that Mr P wasn't at risk of financial harm from fraud. Unfortunately, due to the

length of time that's passed since these payments were made, Barclays isn't able to provide much information on how the payments took place, and whether Mr P was questioned on them. However, even if Barclays didn't intervene on these payments (which I can't be sure of as a starting point), I still need to consider whether this missed intervention opportunity caused Mr P's losses.

Had Barclays contacted Mr P when he made these payments, I've thought about what it might reasonably have asked him, and what answers Mr P would've provided to determine if it ought to have reason to conclude Mr P was falling victim to a scam. Mr P has stated that this was a Ponzi scheme and a UCIS. From the documentation Mr P has provided, I don't think it's clear whether this was in fact a UCIS – Mr and Mrs P are referred to as 'Loan Note Holders', which would suggest this agreement had a different set up to a pooled investment, as would be seen in the case of a UCIS. In any event, I've thought about what I would reasonably expect an advisor to have identified from a call with Mr P.

Even with the benefit of hindsight it's not entirely clear what the basis of this loan note was, so I don't think it's reasonable to determine that the advisor would've identified in a telephone call that this may be a UCIS or not - and what levels of regulation may or may not be necessary.

Similarly, with Ponzi schemes, even if it is the case here that this was a Ponzi scheme, the nature of such a scheme makes it so that they are unfortunately difficult to detect until their collapse.

I would expect an advisor to ask more general questions, such as who Mr and Mrs P were making a payment to, where they had found out about the investment and whether they'd done any research on the investment, whether paperwork had been provided and potentially touching upon what returns have been advised.

As the payment was being made to a firm that had been incorporated for some time and had been initially recommended by a will writing service advisor, I don't think this would have caused concern to a fraud advisor. I agree that the rate of return Mr P has quoted was high. However, I've taken into account that returns on a loan will vary depending on the perceived risk, and I don't think that the rate quoted was so high, that it could be considered too good to be true, rather than potentially a riskier level of investment. As a fraud advisor would be on the lookout for signs of a scam, I don't think this would've been cause for concern that Mr and Mrs P were at risk of a scam, rather than a potentially risky investment (which wouldn't be something I would expect to be advised on in a call of this nature).

Overall I can't conclude that had Barclays called Mr and Mrs P to question these payments, they would've been able to uncover anything that would raise sufficient concerns to conclude that Mr and Mrs P were falling victim to a scam. While there may have been some dubious investors at the time, there were also investors receiving agreed returns – and I can't fairly conclude that any available information gave a clear indication on whether or not this was a scam.

Mr P has requested Barclays' reasons for closing the account it held open with H. However, Mr P made these disputed payments in February 2018, and it appears H's account was still open in at least August 2019, as Mr P appears to still be receiving his interest payments from this same account. I don't think the reasoning for closing the account past this point would therefore have any bearing on the outcome of Mr P's complaint specifically to question Barclays on this point.

Therefore, while I'm sorry to disappoint Mr P, I don't find that Barclays could have reasonably prevented the losses Mr P incurred here. In saying this, I don't underestimate the impact that losing such a sum of money will have had on Mr P. However, I don't consider I can fairly and reasonably hold Barclays liable for that loss.

My final decision

My final decision is that I don't uphold Mr P's complaint against Barclays Bank UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 11 November 2024.

Kirsty Upton
Ombudsman