

The complaint

Mrs H and Mrs M complain about Barclays Bank UK PLC.

They say that Barclays should refund them for a scam Mrs H fell victim to. Although the account the payments were made from is in joint names, I will refer to Mrs H throughout the decision as it was Mrs H that made the payments.

What happened

Mrs H was introduced to an investment by an individual who was a consultant at P.

She was encouraged to invest in a company – ‘B’ – which offered bonds to investors, with the funds being used to place bets on sporting events in the UK. B claimed to have developed an AI algorithm which could accurately predict the outcome of such events.

Between May 2018 and February 2021, Mrs H made payments to B totalling £115,000, and received some returns.

However, later, Mrs H said that she had been the victim of a scam, and complained to Barclays, asking it to refund the money she had to refund her the money she had lost as a result.

Barclays declined to do so – it said that B was a genuine business that had suffered from financial difficulty.

Mrs H then brought her complaint to our Service. Our Investigator looked into things and concluded that B was not a legitimate business. They explained that the evidence showed that the funds weren’t used for their intended purpose and were obtained by dishonest deception, so part of their claim was covered by the Contingent Reimbursement Model Code (‘CRM Code’). And, under the CRM Code, Mrs H was entitled a full refund for payments made after the CRM code came into effect as Mrs H had a reasonable basis for believing the investment was legitimate when the payments were made.

Barclays didn’t agree, so the complaint has been passed 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.

Having done so, I have decided to uphold this complaint in part, for broadly the same reasons as our Investigator.

As Mrs H and Mrs M have already accepted our Investigators opinion that only some of the payments made are covered by the CRM code, I will only be considering these payments as part of my decision. I have set these out below.

- 21/02/2020 - £20,000 – Debit
- 28/02/2020- £666.67 – Credit
- 04/08/2020 - £5,000 – Debit
- 06/08/2020 - £15,000 – Debit
- 21/08/2020 - £5,000 – Debit
- 19/02/2021 - £5,000 – Debit
- 22/02/2021 - £15,000 – Debit

The last two payments made were made to a different business – 'I' – which Barclays says is a genuine business, and not linked to B – so we have made some enquiries to determine what these payments are.

'I' was B's accountant – and it has provided information to this Service which shows that B instructed Mrs H to make payments directly to I's client account, which was then moved on under the instruction of B. So, I am satisfied that the payments do form part of the same scam and should be taken into account as part of this complaint.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

The starting point for my considerations is that, under the Payment Services Regulations 2017 and the terms of their account, Mrs H is liable for transactions she carried out.

But Barclays is a signatory to the Lending Standards Board Contingent Reimbursement Model CRM Code (CRM Code), which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

The CRM Code defines what is considered an APP scam as, "where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent".

In order to decide whether the circumstances under which Mrs H made her payments, meets the definition of an APP scam, I need to consider:

- The purpose of the payments and whether Mrs H thought this purpose was legitimate.
- The purpose the recipient (B) had in mind at the time of the payments and whether this was broadly in line with what Mrs H understood the purpose to be.
- And, if I decide there was a significant difference in these purposes, whether I'm satisfied that was as a result of dishonest deception.

Mrs H was making the payments to B as part of an investment. Based on the evidence that Mrs H had available at the time, there isn't anything to suggest she didn't think this was a legitimate purpose.

However, having looked at the evidence provided to me, I am satisfied that B was not a legitimate business – and I am satisfied that Mrs H was the victim of a scam, and did not lose her money in a high-risk investment or bad bargain. I'll explain why.

In its promotional literature, B sets out the details of its 'trading algorithm', which used artificial intelligence (AI) – 'which constantly refines and innovates the underlying assumptions and strategy'.

But the administrators have not been able to identify or locate such an operating system, and instead confirmed in its report dated 16 December 2022 that rather than a piece of software capable of what B had promised its investors, was actually a very short written set of trading rules. It also stated that it had seen no evidence that the algorithm performed as described to the investors.

Further to this, the administrators report relating to B's use of funds showed some concerning information. In this report, they found that 'the total amount paid to introducers by August 2019 was £3,540,991, which would equate to 41% of that invested by bond holders at that date'. Payments of this volume to introducers are more typical of a Ponzi scheme than a genuine investment – and it doesn't appear clear from the literature presented to investors that this would have been the case.

I accept that B made some payments to gambling companies – but I don't think that this is enough to show that B was operating as a legitimate business. And in addition, the liquidators report says that 'there were considerable losses of bond holder capital whilst B was purportedly placing bets using its algorithm. Again, this shows that B was not acting in line with what had been set out to its investors.

To date, nothing that has been received by this Service, or reviewed by me has shown that B was operating as it had suggested to and agreed with its investors prior to them making their investments.

I understand that Barclays has some concerns about the outcome of this complaint – including that the algorithm is owned by a different entity than B (albeit one that is linked to B). But the administrators have explained that the algorithm presented to it did not function as described – regardless of who actually owned it.

Also, being registered on Companies House does not necessarily mean that a business is legitimate on its own – and while B may have been seen to be 'successfully' trading, as I have explained above, the funds investors have paid to B do not appear to have been used in line with what the investors were told. And while I understand that Mrs H initially received returns on her investment, this can be a common tactic to keep people investing, or an indication of a Ponzi scheme.

I know that the COVID-19 pandemic effectively shut down B, as it couldn't continue due to the lack of sporting events taking place, but as I have explained, it doesn't appear that the funds B was given were being used in the way that was described to its investors.

I also don't think that the amount of money being paid to introducers suggests that this was an unregulated investment gone wrong, given what is also known about the way B was operating. And I have explained, it doesn't appear that the funds given to B were used to place bets as suggested in the literature provided to investors, which I think shows that from the outset, investors were deceived.

And finally, 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 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 Mrs H'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 Mrs H was 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 Mrs H'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 – and given what I have explained above, I am not persuaded that it would.

Putting things right

Barclays Bank UK PLC should refund Mrs H and Mrs M the payments as set out above – less the one return received. On top of this, it should also pay 8% simple interest from the date it originally declined the claim until date of settlement – less any lawfully deductible tax.

My final decision

I uphold this complaint in part. Barclays Bank UK PLC should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mrs M to accept or reject my decision before 28 March 2025.

Claire Pugh
Ombudsman