

The complaint

Mr C is unhappy that Barclays Bank UK PLC won't refund the money he lost as part of an APP scam.

What happened

On 12 July 2022, following advice from an independent financial adviser (IFA), Mr C decided to invest some funds into a six-month fixed rate bond. The IFA was known to Mr C both personally and professionally for a number of years.

Mr C made two payments of £750,000 from his Barclays' bank account to an account in the IFAs name. Mr C received investment documents and bond certificates. The bonds were due to mature in January 2023.

When the bonds were due to mature, the IFA gave Mr C excuses as to why he hadn't received his funds. Mr C contacted the genuine product provider of the bonds, who confirmed that the documentation he received was fraudulent and that the bonds didn't exist.

Mr C was only able to recover £350,000 directly from the IFA by asking her in email communications to return his money. The IFA claimed she had reinvested the rest of Mr C's funds by accident.

Mr C contacted Barclays in February 2023 to raise the issue. Barclays investigated the matter but deemed this to be a civil matter between Mr C and the IFA. Mr C raised the matter again with Barclays and in May 2023 Barclays advised that it wasn't in a position to offer a reimbursement. It said the legal and civil proceedings would need to be concluded before it would be appropriate for it to offer any reimbursement.

Unhappy with this response, Mr C referred his complaint to our service.

Our investigator upheld the complaint. He considered this was a scam rather than a civil dispute. He said that the purpose the IFA used the funds for was not in line with what Mr C believed they were being used for and that this was a result of dishonest deception.

Barclays didn't agree it said it invites the ombudsman to:

- Await the outcome of any investigation and conclusion of the active court proceedings before determining this complaint.
- Dismiss the complaint under DISP 3.3.4A (4) and/or 5. A first supervisory notice from the regulator relates to the subject matter of the complaint and is also the subject of current and active court proceedings. A fact pattern will be established as part of those proceedings. Any inconsistent finding between various settings is undesirable and would otherwise seriously impair the effective operation of the financial ombudsman service.

I issued my provisional decision on 19 February 2025 explaining why I was reaching the same decision as the investigator for broadly the same reasons. Mr C accepted my decision.

Barclays said whilst it remained of the view that the determination should await relevant parallel legal proceedings, it was prepared to accept a modified version of the provisional decision as follows:

- Pay Mr C £415,000
- Pay compensatory interest at 8% simple per year from the date it rejected Mr C's claim (16 March 2023) to the date it processes the settlement. It said my proposal to pay from the date of the transaction is at odds with the established approach taken in other CRM decisions.
- Mr C agrees if he recovers an amount greater than his losses, he will repay any additional amounts to Barclays (up to the total compensation amount paid, including interest).

Barclays has also confirmed that it is only willing to pay up to the award limit so will not be paying anything further.

The consumer also asked for a short delay to allow for the court hearing to take place in May.

Subsequently, the parties wanted time to agree any assignment of rights wording which this service can't get involved in.

More recently the consumer solicitors have asked for clarity regarding interest on the award.

I wrote to both parties on 18 June 2025 to bring the 'putting things right' section up to date.

As the matter has not been resolved following my provisional decision and letter of 18 June 2025, I am now issuing my 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 have considered Barclays' point about when the interest on the award ought to be payable from. Whilst I don't agree every case covered the CRM Code would automatically revert to the date of the declined claim, in this case I agree. I say this because at the point Mr C made the transaction if it had intervened it wouldn't have been apparent to Barclays that Mr C was a falling victim to a scam and the payment would have appeared genuine.

Mr C has subsequently accepted that position.

I see no reason to depart from the conclusions set out in my provisional decision. I have concluded that the fair and reasonable outcome, in all the circumstances, would be to uphold this complaint.

For completeness, I have set this out below with an amendment to the 'putting things right sections' as confirmed in my letter of 18 June 2025.

Should I dismiss the complaint under DISP 3.3.4A (4) and/or(5)?

I am satisfied Mr C's complaint is one we can and should consider. We've a statutory duty to resolve complaints referred to us which are within our jurisdiction, subject to certain discretions which are set out in our rules.

Regarding Barclays' more recent submission about dismissing the complaint because it is subject to current court proceedings. Specifically, DISP 3.3.4A where:

(4) the subject matter of the *complaint* is the subject of current court proceedings, unless proceedings are stayed or sisted (by agreement of all parties, or order of the court) so that the matter may be considered by the *Financial Ombudsman Service*; or

(5) dealing with such a type of *complaint* would otherwise seriously impair the effective operation of the *Financial Ombudsman Service*.

But Mr C's complaint against Barclays is not the subject matter of current court proceedings. I appreciate there are other related matters that are; and I will come on to these.

This complaint requires consideration to be given to the rules and principles set down by the FCA. In my view, these are matters which the Financial Ombudsman is particularly well placed to deal with. I'm also satisfied we possess the necessary knowledge and expertise to fairly determine the complaint. Our investigation is also well advanced.

For similar reasons, I'm satisfied that I don't need to exercise my discretion to dismiss the complaint under DISP 3.3.4 AR on the basis it would significantly impair our effective operation. As I've explained, I'm satisfied the complaint is well suited to the work of our Service. We have significant experience of dealing with complaints of this type and are well-placed to consider them.

I appreciate Barclays is concerned that a fact pattern will be established as part of formal proceedings. But the key facts have been established here and I can't see any obvious reason why the facts that have arisen during our investigation would be inconsistent with facts established during legal proceedings.

Ultimately, I've discretion to decide what I'll do in the circumstances. And, for the reasons I've given above, I've decided to exercise my discretion not to dismiss Mr C's complaint at this very late stage in the proceedings.

Given my determination in respect of Barclays' dismissal points, I'll now go on to consider the merits of this complaint below.

Basis of my consideration of the 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.

Of particular relevance to the question of what is fair and reasonable in this case is the Lending Standards Board's (LSB) Contingent Reimbursement Model (CRM Code) for authorised push payment scams. The CRM Code was a voluntary code for reimbursement of authorised push payment scams which required firms to reimburse customers who have been the victims of APP scams - in all but a limited number of circumstances. Barclays was a signatory to the CRM Code at the time the payments in question in this case were made.

Where a firm is a voluntary signatory of the LSB's CRM Code, I need to see whether it is a relevant consideration for my decision. And, where it is a relevant consideration, I must carefully consider the provisions of the LSB's code itself that the firm has agreed to and any guidance the LSB has provided on its application.

In order for me to conclude whether the CRM Code applies in this case, I must first consider whether the payment(s) in question, on the balance of probabilities, meet the CRM Code's definition of a scam.

An "APP scam" is defined in the Definitions and Scope section of the CRM Code:

"Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, where:

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent."*

If I, fairly and reasonably, make a balance of probabilities conclusion that it does, then the provisions of the CRM Code apply. In that event, unless Barclays is able to show that the consumer is not entitled to reimbursement due to any the CRM's Code exceptions at R2(1) and the vulnerability considerations are not relevant, then the consumer is likely to be entitled to reimbursement.

Can Barclays delay making a decision under the CRM Code?

In its recent submissions, Barclays explained it wasn't in a position to provide answer. It said there was an ongoing investigation and wants me to wait for the court proceedings to be finalised.

The CRM Code says firms should make a decision as to whether or not to reimburse a customer without undue delay. There are however some circumstances where I need to consider whether a reimbursement decision under the provisions of the CRM Code can be stayed. If the case is subject to investigation by other statutory bodies and the outcome might reasonably inform the firm's decision, the CRM Code allows a firm, at R3(1)(c), to wait for the outcome of that investigation before making a reimbursement decision. By asking for me to wait for the outcome of any legal and civil proceedings, I take that Barclays considers that R3(1)(c) applies in this case.

In deciding whether R3(1)(c) is applicable in this case, there are a number of key factors I need to carefully consider:

- Where a firm already issued a reimbursement decision - for example by telling the consumer they will not be reimbursed because they are not the victim of an APP scam – then R3(1)(c) has no further application. The LSB confirmed in its DCO letter 71 to firms dated 6 November 2024 that *“a firm should not seek to apply this provision where it believes that the case is a civil dispute and therefore outside of the scope of the CRM Code”*.
- The Financial Ombudsman Service does not have the power to restart R3(1)(c) – so where a firm has made a reimbursement decision a consumer is entitled, under the DISP Rule, for our service to decide the merits of the complaint about the payment(s) they made fairly and reasonably on the balance of probabilities.

So, this provision only applies *before* the firm has made its decision under the CRM Code. So, Barclays can't seek to delay a decision it's already made. And Barclays only raised this point after it had deemed the matter to be a civil dispute. So it had already reached a decision on Mr C's claim, when it said the complaint appeared to be the subject of a civil dispute between Mr C and the IFA in its decision letter dated 16 March 2023.

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

Is it appropriate to determine Mr C's complaint now?

Even if Barclays hadn't initially concluded this was a civil dispute (its subsequent letter to Mr C dated 18 May 2023 it confirmed it wasn't in a position to offer a reimbursement, due to the subsequent legal proceedings, potential recovery of third-party assets, the ongoing FCA investigation and criminal proceedings). It said, the legal and civil proceedings need to be seen through to a conclusion and it would not be appropriate for the bank to reimburse at this point. It also encouraged Mr C to pursue these civil means to recover his remaining loss.

But I ultimately have to decide whether it is fair and reasonable for Barclays not to have upheld Mr C's claim for reimbursement of his losses.

There may be circumstances and cases where it is appropriate to wait for the outcome of external investigations and/or related court cases. 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 C'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 C 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 Mr C's complaint unless there is a reasonable basis to suggest that the outcome of the related court case may have a material impact on my decision over and above the evidence that is already available.

Barclays is concerned that any subsequent court or action by the regulator regarding the IFA's actions may lead to Mr C being compensated twice for the same loss, i.e. by Barclays and by the courts/the FCA.

But I agree that, if Barclays has already paid a refund, it would not be fair or reasonable for those recovered funds to be returned to Mr C as well. And I would also expect Mr C to divulge to Barclays anything he received in connection with the IFA at any point now or in the future. So, in order to avoid the risk of double recovery, Barclays is entitled to take, if it wishes, an assignment of the rights to all future distributions under the relevant statutory process(es) before paying the award. As Barclays can ask Mr C to undertake to transfer to it any rights he may have to recovery elsewhere, I'm not persuaded that this is a reasonable barrier to it reimbursing him in line with the CRM Code's provisions.

So, as I don't think it's fair or necessary to wait until the outcome of the other investigations involved in this case, I don't think it's fair for Barclays to delay making a decision on whether to reimburse Mr C any further.

For the reasons I discuss further below, I don't think it's necessary to wait until the outcome of the court case for me to reach a fair and reasonable decision. And I don't think it would be fair to wait for other investigations to complete before making a decision on whether to reimburse Mr C.

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

Barclays has signed up to the voluntary CRM Code, which provides additional protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances).

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 wouldn't apply to a genuine investment that subsequently failed.

And the CRM Code only applies if the definition of an APP scam, as set out in it (and as I have set out at the start of this decision), is met.

I've considered the first part of the definition, and having done so I'm satisfied that Mr C paid the account he was intending to send the funds to. And I do not think there was any deception involved when it comes to who he thought he was paying. So, I do not think the first part of the definition set out above affects Mr C's transactions.

I've gone on to consider if Mr C's intended purpose for the payment was legitimate, whether the intended purposes he and the IFA he paid were broadly aligned and, if not, whether this was the result of dishonest deception on the part of the IFA.

From what I've seen and what Mr C has told us, I'm satisfied Mr C made the payment with the intention of investing in a specific product provider's fixed rate bond with a term of six months and that he would receive his investment return in January 2023. And I haven't seen anything to suggest that Mr C didn't think this was legitimate.

I've considered whether there is convincing evidence to demonstrate that the IFA's intentions with Mr C's funds was significantly different to this, and so whether this was a scam or genuine investment.

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

Mr C was told his money would be invested into a specific six-month fixed rate bond. But there's no evidence this happened or that the consumer's funds were ever invested at all. On the contrary the product provider of the bond has confirmed that Mr C's investment does not exist and the documentation the IFA provided him with was fake. The IFA also claimed to have accidentally reinvested Mr C's funds which also doesn't appear to be true. And from what has been said and evidenced, it seems the funds were more likely used by the IFA to purchase a property.

So, I think the evidence shows the IFA wasn't acting in line with what it led Mr C to believe how he was investing his money. And so the purpose the IFA intended for the payments Mr C made wasn't aligned with the purpose Mr C intended for the payments.

So I think the discrepancy in the alignment of the payment purposes between Mr C and the IFA was the result of dishonest deception on the part of the IFA.

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

Is Mr C 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 C. 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 investment Mr C was 'sold' was on the basis of a genuine one with a well-known international bank and wealth manager. So nothing about the way it 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 the investment wasn't completely guaranteed. The investment material and communications with IFA I've reviewed appear professional and there was nothing in the public domain at the time about the IFA that Mr C could've reasonably inferred from that a scam was taking place.

The IFA has been operating for several years and was personally known to Mr C. The IFA was regulated by the FCA and Mr C had received investment returns previously. So, I don't think there was anything about the investment that should have caused Mr C concern. And I find Barclays hasn't established that Mr C made the payment without a reasonable basis for belief that the investment or the IFA wasn't legitimate.

Barclays hasn't submitted it provided a warning at the time Mr C made the transaction, I note from its internal investigation notes that "no scams warning presented whilst payments were being made via telephone" It also noted that a scams warning would have prevented the scam. All in all, this means I can't fairly say Mr C 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 C lost in full (subject to my award limits and any returns already received).

Putting things right

Award limits

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £415,000 for originating acts and omissions on or after 1 April 2019 (where the complaint was referred to us between 1 April 2023 and 31 March 2024 - as it was here).¹ plus any interest and/or costs/ interest on costs that I think are appropriate.

If I think that fair compensation is more than the limits mentioned above, I may recommend that the business pays the balance.

Final Decision and award: I uphold the complaint.

In assessing what would be fair compensation, I am satisfied that what I have set out below is fair, reasonable and proportionate given Mr C's circumstances and objectives.

Mr C recovered funds of £350,000 so this should be deducted.

I think fair compensation in this case should be calculated as follows:

A = refund the transactions made to the scam on 12 July 2022 (not including those payments already recovered) so £1,150,000

My final decision is that Barclays Bank UK PLC must pay Mr C the amount produced by that calculation – up to a maximum of £415,000.

¹ There are different maximum award limits based on the date of the act or omission by the business, and the date the complaint is referred to us they can be found here <https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation>

As Mr C has been deprived of the use of this money – I consider it fairest Barclays Bank UK PLC pay interest* on the above refund calculated (£415,000) at 8% simple per year from the date the claim was declined (16 March 2023) to the date of settlement.

For clarity: the maximum award limit is in respect of Mr C's losses.
Interest is payable on top of that sum and does not form part of the £415,000 award.
Interest is only payable on the sum of £415,000 and not on Mr C's whole loss, unless Barclays follows my recommendation below.

Recommendation: I think fair compensation is more than £415,000 so I recommend that Barclays Bank UK PLC pays Mr C the balance with interest on that sum at 8% per annum from the claim was declined (16 March 2023) to the date of refund.

This recommendation does not form part of my final determination or award. Barclays Bank UK PLC doesn't have to do what I recommend. It's unlikely that Mr C can accept my final decision and go to court to ask for the balance. Mr C may want to get independent legal advice before deciding whether to accept my final decision.

Barclays Bank UK PLC must pay the compensation within 28 days of the date on which we tell it Mr C accepts my final decision.

In order to avoid the risk of double recovery, Barclays Bank UK PLC is entitled to take, if it wishes, an assignment of the rights to all future distributions under the relevant statutory process(es) before paying the award. If the bank elects to take an assignment of rights before paying compensation, it must first provide a draft of the assignment to Mr C for his consideration and agreement.

*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 C how much it's taken off. It should also provide a tax deduction certificate if Mr C 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 C as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 30 July 2025.

Kathryn Milne
Ombudsman