

The complaint

Miss C complains that Barclays Bank UK PLC won't refund the money she lost when she was victim of a scam.

What happened

In August 2018, Miss C was told about an investment company offering a three-year bond. She was told the investment company had developed an algorithm that could accurately predict the outcome of sporting events, and that her funds would be used to place bets on these events and she would receive regular interest payments in return.

Miss C then made a number of payments from her Barclays account to the investment company, as set out below:

Date	Amount
5 September 2018	£18,000
25 January 2019	£2,000
26 November 2019	£15,000
27 November 2019	£15,000
28 January 2020	£4,000

Unfortunately, Miss C didn't receive all the interest payments she was told she would, and the investment company went into administration. Miss C then reported the payments she had made to Barclays as a scam and asked it to refund the money she had lost.

Barclays didn't agree to refund the money Miss C had lost, so she referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think proportionate questioning by Barclays would have uncovered any concern at the time the payments were made. But they thought the evidence available suggested the investment was a scam, and so Barclays should refund the money Miss C had lost that was covered by the CRM code. Barclays disagreed with our investigator, so the complaint has been passed to me.

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.

In broad terms, the starting position at 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 Boards 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 the code only came into effect in May 2019, and it doesn't apply retrospectively, so the first two payments Miss C made here were made before the CRM code came into effect.

The payments made before the CRM code came into effect

As the first two payments Miss C made here were made before the CRM code came into effect, the code can't apply to these payments.

Although the CRM code can't apply to these payments, the regulatory landscape, along with good industry practice, sets out other requirements for banks to protect their customers from fraud and financial harm. So, in line with this, I think 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 made 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.

But, even if Barclays had carried out the checks I would've expected it to have done, I don't think it would've uncovered significant concerns and I don't think these payments Miss C was trying to make to the investment company would have been stopped.

In these circumstances and given the size of the payments Miss C was making, I think it would be reasonable to expect Barclays' checks to include questions about the purpose of the payments and then relevant follow-up questions about the investment Miss C thought she was making and what checks she had done to satisfy herself it was genuine.

But Miss C thought she was investing in a bond offered by the investment company where she would provide capital and the company would pay her monthly interest. And as this is a fairly standard format of investment, I don't think this will have seemed particularly suspicious to Barclays.

At the time, the investment company had been listed on the governments register of limited companies and filed accounts for several years. And I wouldn't necessarily expect this of a company intending to operate a scam, so I think this would have reassured both Miss C and Barclays that the company was genuine.

Miss C also appears to have received paperwork from the investment company relating to her investment, including a bond certificate. So, if Barclays had asked to see any of this paperwork, I don't think this would have raised any concerns either.

And so if Barclays had carried out the checks I would've expected when Miss C tried to make these payments, I think it would have been satisfied with the information it was given and I don't think anything it was told or shown would've caused it significant concern. Based

on the information I would have expected it to uncover at the time, I think this would have looked like a genuine investment to Barclays. And so I wouldn't have expected it to stop Miss C making the payments.

During this complaint, Miss C has sent us a significant amount of detailed information about the investment company, which she says shows there were irregularities with how the company was conducting its business. But this information has only come to light since the payments she made, and wouldn't have been available to either her or Barclays at the time. I also wouldn't have expected Barclays' checks to go into the level of detail necessary to uncover this kind of information, as the information it would've been given from the checks I would've expected it to do earlier wouldn't have uncovered any significant concerns. So I don't think this information Miss C has sent us means Barclays acted unreasonably in allowing the payments to go through.

And so I don't think anything I would reasonably have expected Barclays to have done in relation to these first two payments would have prevented the loss Miss C suffered. I therefore don't think it would be fair to require it to refund these payments she made.

The payments made after the CRM code came into effect

The last three payments Miss C made here were made after the CRM code into effect, and after Barclays signed up to it. But customers are also only covered by the code where they have been the victim of a scam – as defined in the 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 Miss C has been the victim of a scam as defined in the CRM code I need to consider whether the purpose she intended for the payments was legitimate, whether the purposes she and the investment company intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of the company.

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

From what I've seen and what she's told us, I'm satisfied Miss C made the payments here with the intention of investing with the investment company. She thought her funds would be used to fund bets placed on sporting events, and that she would receive returns on her investment. And I haven't seen anything to suggest that Miss C didn't think this was legitimate.

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

In its promotional literature, the investment company said that the algorithm it had developed, and which would be used to place bets and so earn profit for the investment, was based on artificial intelligence which refined itself with each result and so continuously learns and develops. However, to date, the administrators of the company have been unable to locate any such artificial intelligence and said in their report of December 2022 that *"while it was initially assumed that [the algorithm] was a piece of software, we have since received*

confirmation that it is actually a very short set of written trading rules". The administrators also said they had received no evidence that the algorithm performs as described in the investment company's literature. So it appears that one of the main underlying features of the investment was not as described to investors.

The administrator's report also said that the total amount paid by the company to introducers by the end of August 2019 was more than 40% of the amount invested by bond holders at that time. This large amount and high proportion of payments being made to introducers is a typical hallmark of a Ponzi scheme. And, in any event, I haven't seen any evidence that the investment company told investors that this proportion of their investment would be paid to introducers – and so it appears funds were not being used in the way investors were told.

I've also not been provided with any evidence to show that the investment company was operating in line with the way it described and agreed with investors prior to their investment.

So I think the evidence I've seen suggests the investment company wasn't acting in line with the business model and features of the investment it had led Miss C to believe she was making. And so the purpose the company intended for the payments Miss C made wasn't aligned with the purpose Miss C intended for the payments.

As the difference between the way the investment was marketed and the way it was being run was so significant, and in the absence of any evidence to the contrary, I'm also satisfied the discrepancy in the alignment of the payment purposes between Miss C and the investment 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 from the CRM code.

Is Miss C entitled to a refund under the CRM code?

As I explained above, Barclays is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one I've explained I'm satisfied Miss C fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made
- The customer made the payment without a reasonable basis for believing that:
 - o the payee was the person the customer was expecting to pay;
 - o the payment was for genuine goods or services; and/or
 - o the person or business with whom they transacted was legitimate

There are further exceptions within the CRM code, but these don't apply here.

From what I've seen, the communication Miss C had with the investment company and the documents she received about the investment all appear to have been relatively professional and looked legitimate. The way Miss C was told the investment would work doesn't appear to be suspicious and the returns she was told she would receive don't appear to be too good to be true. And it appears the company had been operating for several years 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 Miss C significant concern, or that Barclays has established that she made the payments without a reasonable basis for belief that the investment was legitimate.

Barclays also hasn't sent us anything to suggest Miss C was shown an effective warning in relation to the payments she made at the time she was making them. And so I don't think Barclays has established that she ignored an effective warning in relation to the payments.

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 Miss C lost which is covered by the code in full.

Redress

Miss C received a number of monthly interest payments back from the investment company after the payments she made which are covered by the CRM code, totalling £2,621.70. So I think it would be fair for these payments to be deducted from the amount Barclays has to refund her.

My final decision

For the reasons set out above, I uphold this complaint and require Barclays Bank UK PLC to:

- Refund Miss C the payments she made as a result of this scam which are covered by the CRM code, less the payments she received back from the investment company after these payments
- Pay Miss C 8% interest on that refund, from the date it initially responded to her claim until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 4 December 2024.

Alan Millward
Ombudsman