

The complaint

Ms F complains that Barclays Bank UK PLC won't refund the money she lost when she was the victim of what she feels was a scam.

What happened

In 2019, Ms F was told about an opportunity to invest in a property development company by an investment broker. She was told she would be providing a loan to the company, and that her investment would be used to fund the company's projects and she would receive regular interest payments in return. And after seeing brochures for the investment, Ms F decided to invest and made a number of payments from her Barclays account to the property development company.

I've set out the payments Ms F made below:

Date	Amount
30 May 2019	£50,000
3 June 2019	£25,000

Unfortunately, Ms F didn't receive all the interest payments she was told she would, and the property development company has now gone into administration. Ms F 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 Ms F had lost, so Ms F referred a complaint to our service.

One of our investigators looked at the complaint. They said they didn't think the circumstances here met the definition of a scam, so they didn't think Barclays should have to refund the money Ms F had lost. Ms F 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 customers are 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 Ms F 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 property development 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.

From what I've seen and what she's told us, I'm satisfied Ms F made the payments here with the intention of investing with the property development company. She thought her funds would be used to fund projects the company was carrying out, and that she would receive returns on her investment. And I haven't seen anything to suggest that Ms F didn't think this was legitimate.

But I'm not satisfied the evidence I've seen shows that the property development company intended a different purpose for the payments, or that Ms F's and the property development company's purposes for the payments weren't broadly aligned.

From what I've seen, the property development company completed three different development projects – in three different cities across the UK. It also worked on a number of other developments, which it sold to developers when it experienced financial difficulties. And I wouldn't expect a company that intended to scam investors, to complete these projects that would have involved a large amount of investment and management. So I think the completion of these projects strongly suggests the property development company was attempting to operate as a legitimate business.

Ms F has also argued that the property development company was offering very high rates of return and paying very high commission to introducers, which made the rate of return offered on the investment very unlikely. But while this, and other irregularities or poor business practice Ms F has highlighted may suggest the property development company wasn't acting as I would expect a professional business to do, I don't think it goes far enough to show that it intended to operate a scam.

Ms F has also highlighted a number of inaccuracies or irregularities with the accounts the company has filed, and that it has only filed accounts made up to 2018. But while this may suggest financial mismanagement on the part of the company, this is not the same as the intention to operate a scam and I don't think it shows that the company never intended to use investor's funds for development projects.

I've also not seen anything from the administrators of the company which suggests the company was operating a scam or that the transactions carried out by the company and other connected companies were done with any intention other than putting investor's funds towards development projects. And I haven't been provided with evidence of any investigation by an external organisation which concludes that the company was operating a scam.

So I'm not persuaded that the available evidence is sufficient to safely conclude that the purpose the property development company intended for these payments was different than the purpose Ms F intended. And so I don't think the circumstances here meet the definition of a scam, or that Barclays has acted unreasonably in not agreeing to refund the money Ms F lost from these payments as a result.

It's possible that material new evidence may become available at a future date, which suggests that the property development company did take the payments using dishonest deception. If that happens, Ms F can ask Barclays to reconsider her claim for these payments and, if not satisfied with its response, bring a new complaint to our service.

I'm sorry to disappoint Ms F, as I know she has lost a significant amount of money. But I'm not satisfied that I can fairly ask Barclays to refund her based on the evidence that is currently available.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 29 November 2024.

Alan Millward
Ombudsman