

The complaint

Mr S, who is a director of F, complains that Barclays Bank UK PLC ('Barclays') won't refund money he says was lost as the result of a scam.

What happened

In 2022, Mr S on behalf of F, made five payments totalling £216,400 to a company I'll refer to as P.

Mr S says he'd seen P's director (who I'll refer to as K) speaking at property events and had been following K on social media platforms. K and P were operating in a similar field to F, and both K and P appeared to be highly successful.

F entered into two contracts with P, whereby P would rent property from landlords, then rent them to individuals for short term lets at a higher rate. Mr S says he completed due diligence prior to entering into the agreements with P, including visiting one of the properties. One contract involved 40 properties that would be rented out, the other contract involved two properties.

These are the payments that F made to P from their Barclays account. The payments in *italics* are returns that F received from P.

Date	Details of transaction	Amount
20.9.2022	Payment to P	£6,400.00
20.9.2022	Payment to P	£10,000.00
21.10.2022	Payment to P	£115,000.00
31.10.2022	Payment to P	£35,000.00
31.10.2022	Payment to P	£50,000.00
1.11.2022	<i>Returns received from P</i>	<i>£2,170.00 cr</i>
1.12.2022	<i>Returns received from P</i>	<i>£1,420.00 cr</i>
1.12.2022	<i>Returns received from P</i>	<i>£23,000.00 cr</i>
2.12.2022	<i>Returns received from P</i>	<i>£1,000.00 cr</i>
6.1.2023	<i>Returns received from P</i>	<i>£9,354.00 cr</i>
6.2.2023	<i>Returns received from P</i>	<i>£13,905.00 cr</i>

Mr S became concerned with the rounded value of the returns and because the monthly breakdowns he was receiving didn't make sense. Mr S contacted a third-party company involved with the 40 properties set out in one of the contracts and says they told him that their contract with K had ended. Mr S says the properties were only rented out for a short period of time and that it wasn't 40 properties they had contracted for P to rent. Mr S believes that P was running a ponzi scheme, whereby they paid investors returns to entice further payments and investment.

Mr S raised a fraud claim on F's behalf with Barclays in September 2023. When Barclays didn't refund F, Mr S brought a complaint to our service.

An investigator looked into F's complaint but didn't recommend that Barclays refund them. The investigator said there wasn't clear evidence that F had been the victim of an APP scam, as set out in the Contingent Reimbursement Model Code (CRM Code). Also, while Barclays had intervened on one of the payments Mr S made, there wasn't anything to suggest to Barclays that F was at risk of falling victim to a scam at the time of making the payments.

Mr S on behalf of F, disagreed with the investigator's opinion, raising the following points:

- The payments F made weren't used by P for their intended purpose and we should review the statements from the receiving bank to ascertain how F's money was used.
- K and P intended to defraud F from the outset.
- There are other investors who have also lost money, who have evidence that their funds weren't used for the intended purpose.
- Deliberately misleading information was given by K, including addresses relating to different properties and saying that 40 properties had been rented – when evidence suggests this wasn't the case.
- P has breached section 2 of the Fraud Act 2006, by making a false representation.
- Mr S also referenced other complaints that have been brought to our service in relation to investments made with P.

As the case couldn't be resolved informally, it was passed to me to review.

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.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

Are F entitled to a refund under the CRM Code?

Barclays are a signatory of the 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. But 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 Mr S made the payments on behalf of F, meets the definition of an APP scam, I need to consider:

- The purpose of the payments and whether Mr S thought this purpose was legitimate.
- The purpose P had in mind at the time of the payments and whether this was broadly in line with what Mr S 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.

Here, Mr S was making payments to P for a property investment, and I can't see anything that would suggest that Mr S didn't think this was legitimate.

So, I've gone on to consider what purpose P had in mind and whether it was in line with what Mr S thought.

In reaching an answer on what purpose P had in mind, I've considered the wider circumstances surrounding P and its director K. The key information to this case is:

- P was an incorporated UK company which had been operating since January 2020 when F made their first payment in September 2022. There was a notice to strike off in December 2021, however this was discontinued in January 2022. A further notice to strike off was registered in July 2024, but this was suspended in August 2024. I appreciate that the first notice to strike off was in place when F made their payments, but that by itself isn't enough to say that dishonest deception was used in order to obtain their payment. Especially as the first notice to strike off was discontinued and the second one was registered after F had made their payments.
- F received returns from P of over £50,000, all of which were paid after F had finished making payments to P. It's unusual to see such high returns made if no further investment was expected, although I appreciate that it could be due to P hoping for further investment at a later stage. I appreciate that P didn't pay the returns that F expected and that the returns stopped after three months. But the failure of P to continue paying returns, doesn't show intent at the point F made their payments and could be indicative of a business that failed, after the payments were made.
- We've received third party information from the receiving bank, which I can't disclose due to data protection laws. However, that information doesn't allow me to safely conclude that P took the funds through dishonest deception or didn't have the intention to use the funds in line with F's expectations.
- A failed firm or investment, in and of itself, isn't sufficient to establish that the business or those operating it had a different purpose for the funds when they were obtained from the consumer.
- F has provided evidence which suggests that P didn't rent as many properties as agreed to in the contract and, for the properties P did rent, the contracts were cancelled shortly after being initiated. However, this evidence hasn't been independently verified and it's also unclear if the ending of the contract was due to issues with the parties P rented the properties to rather than P ending the contract.

Taking all of these points into consideration as a whole, I'm not satisfied there is sufficient evidence to say F's funds weren't used in the manner agreed by P or that the purpose P had in mind was different to F's. Therefore, I'm not satisfied that I can safely conclude that F's payments meet the definition of an APP scam under the CRM Code. On that basis, I can't fairly ask Barclays to refund F under the CRM Code.

Is there any other reason I can hold Barclays liable for F's losses?

In broad terms, the starting position in law is that Barclays are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations 2017 (PSR's).

But, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Barclays should fairly and reasonably have been monitoring accounts and any payments made or received to counter various, including preventing fraud and scams.

Also, I'd expect Barclays to have 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).

And where a potential risk of financial harm is identified, to have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

However, I'm not convinced that if Barclays had identified a scam risk and intervened on any of the payments F made, that they would've been concerned that F were making the payments as part of a scam or prevented F's loss.

I say this because all of the information that Mr S and F had available at the time they made the payments, suggested that P and K were operating legitimately. Questions asked by Barclays are likely to have highlighted that Mr S had known of P and K for a significant period of time and that K had been a keynote speaker at meetings related to the industry P operated in. The business model P was using for the investment, was a business model that Mr S knew of in the industry F operated in. K had social media presence on numerous platforms and all the information available online suggested that K and P were legitimate. Mr S also says that he went to see properties that were supposed to be part of the investment.

So, I don't think any information would've come to light that would've concerned Barclays or prevented F from making the payments. On that basis, I can't fairly say that Barclays acted unreasonably in following F's payment instructions or that they could've prevented F's losses.

We don't have any evidence from the police, or an independent third party that proves P took F's money through dishonest deception. If there is material new evidence which comes to light at a later date, F can ask Barclays to reconsider their fraud claim.

Mr S is concerned that we haven't ascertained what P did with the money that was paid to them, however I can only assess the complaint against Barclays. Ultimately, I'm not investigating P and there will be certain information about P that I don't have access to. My role in reaching a decision on F's case is to consider whether I can fairly and reasonably hold Barclays liable for their loss or ask them to refund F based on the available evidence.

I'm sorry to disappoint F, as I know that they have lost a significant amount of money. But, having carefully considered all of the information and evidence, I'm not satisfied that I can fairly hold Barclays liable for their loss or ask them to refund F.

My final decision

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

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

Lisa Lowe
Ombudsman