

The complaint

Ms C complains that Barclays Bank UK PLC did not refund the £10,000 she says she lost to a scam.

Ms C is represented in this complaint by a solicitor.

What happened

Ms C was looking to invest and was introduced to a company I'll call 'HS'. HS had several different building projects they were providing investments for in the form of loan notes. Ms C was told she could receive returns of around 12%. She decided to invest £10,000 and transferred those funds to HS from her Barclays account in December 2019.

Ms C says she did not receive any returns on her investment and HS then went into administration in December 2021.

Ms C felt she had been the victim of an investment scam and that HS set out to defraud her. She raised a scam claim with Barclays, and when she did not receive a response she referred the complaint to our service.

Our Investigator looked into the complaint and reviewed it under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. Having done so, they felt it was more likely a civil dispute between Ms C and HS. On balance, they did not think the evidence showed HS never intended to act in line with its agreement with Ms C. And instead, they felt it was more likely this was an investment that failed, so they didn't think Barclays needed to refund Ms C.

Ms C's representative disagreed with the findings, although they provided no detailed arguments or evidence to refute the Investigator's findings. As an informal agreement could not be reached the complaint has been passed to me for 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.

It isn't in dispute that Ms C authorised the payments in question. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that she is liable for the transactions. But she says that he has been the victim of an authorised push payment (APP) scam.

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). But the CRM Code only applies if the definition of an APP scam, as set out in it, is met.

I have set out the definition of an APP scam as set out in the CRM Code below:

...a transfer of funds executed across Faster Payments...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.*

I've therefore considered whether any payments Ms C made to HS fall under the scope of an APP scam as set out above. Having done so, I don't think that they do. I'll explain why in more detail.

In order to determine if Mrs C has been the victim of a scam, I have to consider if her intended purpose for the payment was legitimate, whether the intended purposes she and the company she paid were broadly aligned and, if not, whether this was the result of dishonest deception on the part of the company.

Based on the limited evidence available to me, it appears Ms C was intending for her funds to be invested in loan notes. She then expected to receive returns on her investment of 12%. I've not seen any paperwork Ms C received about her investment, but I'm aware that other investors in HS received professional and detailed paperwork about their investments, and I can see HS was on Companies House and had been incorporated since 2011. So, I see no reason why Ms C would not have thought this was a legitimate investment.

I've gone on to consider whether HS's intended purpose for the payments aligned with what Ms C intended as set out above. I've seen evidence that three building projects were completed by HS. They had other projects ongoing, however these had to be sold to other developers after they entered into financial difficulty. On balance, I think this shows HS was a legitimate company involved in legitimate building projects and I think it's unlikely a scam company would have completed three large scale building projects at significant cost in order to entice more funds from investors.

Ms C's representatives have said HS paid unregulated introducers a high level of commission which in turn made the level of interest offered to investors unlikely to be possible. They felt that a credit event was inevitable in the circumstances. However, whether or not unregulated investors were used to introduce the investment does not indicate that HS set out to defraud investors of their funds, with no intention to invest the funds into building projects. And while I have not seen evidence of the levels of commission paid to introducers, I don't think a high level of commission being paid would mean that Ms C was a victim of a scam in the circumstances.

It should be noted that the liquidator for HS has also not provided any evidence to suggest they were acting fraudulently or operating a Ponzi scheme. They are still in the process of investigating a significant number of transactions made from HS to various subsidiary companies, due to the way in which the HS network was set up. However, at the moment there is no indication that these transactions were made with the intention of hiding these funds and not using them towards development projects.

On balance, I think it is more likely HS's intended purpose for the funds aligned with Ms C's and nothing I have seen indicates to me that HS intended to defraud her. Instead, I think it's more likely this was a failed investment, So I don't think Ms C's circumstances meet the definition of an APP scam. It follows that I do not consider Barclays can reasonably be held liable for Ms C's loss under the CRM Code.

Ms C's representatives have also suggested that Barclays should have intervened in the payments Ms C was making, and that it would have been able to prevent her loss if it had done so. But given that I am satisfied HS was not operating as a scam, I cannot fairly say Barclays would have been able to identify any issues with HS or prevent Ms C from making payments to it.

It is possible that further evidence may come to light at a later date, which may indicate HS was operating a scam. Should such evidence come to light, then Ms C can complain to Barclays again, and refer the matter to this office, should she not be happy with the outcome.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 12 December 2024.

Sophie Mitchell
Ombudsman