

## **The complaint**

Mr T complains that Barclays Bank UK PLC ('Barclays') won't refund the money he lost when he says he fell victim to a scam.

## **What happened**

Mr T says that he was introduced to an investment opportunity which involved investing in property/real estate with a company I'll refer to as H in my decision. H offered a rate of return of 10% initially, which increased by 2% each year for the duration of the loan note. He had already invested £10,000 (which he had paid from an account with another bank) and invested a further £20,000 on 11 February 2019.

Mr T didn't receive any returns or his capital, and H went into administration in early 2022. Mr T says H was operating a scam and never intended to return his funds.

In October 2023 Mr T's representative sent a letter to Barclays asking it to reimburse him. He said he was the victim of a scam and that Barclays failed to identify he was at risk of fraud and to take appropriate steps to protect him when a high value payment was made. Mr T explained why he thought he was the victim of a scam. He said that H offered guaranteed returns; sold an unregulated product to a non-sophisticated investor in breach of FCA and other rules, something Barclays should have been aware of given the FCA had warned about the promotion of such schemes since 2013; introducers were being offered commissions of 20% to 25%, making the returns offered by H ludicrous; and the wealth of information available about Ponzi schemes at the time.

Barclays didn't agree to reimburse Mr T and said he has a civil dispute with H.

Mr T was unhappy with Barclays' response and brought a complaint to this service. In communications with this service, Mr T raised additional points. He said H's business model reflects that of a Ponzi scheme; that administrators said in their initial report that 12,300 individual transactions warrant further investigation – showing investor funds weren't necessarily invested; and that in April 2022 a director of H asked investors not to contribute to any investigation about H.

The investigator who considered Mr T's complaint didn't recommend that it be upheld. She said that although Barclays should have intervened and discussed the out of character transaction it wouldn't have made a difference as it wouldn't have had any concerns, particularly as Mr T had already invested in H in 2018.

Mr T didn't agree with the investigator's findings, so his complaint has been passed to me to decide. He says he is the victim of a sophisticated scam, and his loss could have been prevented if Barclays appropriately intervened. His response was lengthy so although I have considered it in detail, I have summarised what I consider to be the main points below.

- The investigator failed to take into account that Barclays should have done more to protect him based on FCA Principles of Business, Conduct of Business Sourcebook, and PAS 17271: 2017 and the CRM Code. If this service properly applied the PAS code Mr T's complaint would be upheld.
- Barclays should have completed additional checks and asked Mr T questions about the payments. Had it done so, it would have been alerted to the fact the intended investment wasn't FCA regulated; the investment was promoted by an unregulated

agent; Mr T wasn't a high net worth or sophisticated investor, so the investment was inappropriately marketed; and the returns were high, and well above the Bank of England interest rate. He pointed out that the FCA has said high returns are a red flag. If Barclays had pointed out these concerns and provided appropriate warnings, Mr T wouldn't have proceeded with the payment.

- The PAS code doesn't require that a customer conclusively prove that H was operating a scam. Unusual activity is enough to invoke intervention from a bank.
- The investigator failed to take into account the full range of questions Barclays should have asked Mr T when she said Barclays should have asked him how he found out about the investment and what information he had received about the company. Even if Mr T had confirmed he wasn't contacted out of the blue, numerous fraudulent schemes involve a victim contacting a company directly.
- This service has misdirected itself as to the features of a Ponzi scheme (the FCA definition of which was provided) and incorrectly concluded there is insufficient evidence of a scam. We are incorrect in concluding that the high commissions paid to introducers meant the levels of return offered to investors were unlikely, rather than being indicative of a Ponzi scheme. Given the level of commission paid to introducers, the funds received from later investors were insufficient to pay introducers, prior investors and complete building developments.

### **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 deciding what's fair and reasonable, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

Whilst I have considered all points raised by Mr T, I will not comment specifically on each one. I also cannot comment on other decisions issued by the Financial Ombudsman Service.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – in other words on what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment.

This payment was made prior to the introduction of the Contingent Reimbursement Model Code ('CRM Code') on 28 May 2019. The CRM Code can't be applied retrospectively, so it doesn't apply to this transaction.

At the time the transaction was made, Barclays should have been on the look-out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And, in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

Having considered Mr T's bank statements for the twelve months before the payment to H, I'm satisfied it was an unusual and out of character payment, so Barclays should have intervened and asked Mr T some questions about it. It was to a new payee and the value significantly exceeded any previous payment.

I can't uphold Mr T's complaint solely on the basis that Barclays ought reasonably to have intervened and there is no evidence that it did. I need to go on to consider causation – whether suitable intervention would have made a difference to Mr T's decision making or Barclays could have reasonably prevented the loss. In deciding this, I need to consider the information that was available at the time the payment was made.

I'm not persuaded that if Barclays asked Mr T the kind of questions I'd have expected it to, it would have had any concerns, or that the payment would not have been made. H was a legitimate company that at the time the payment was made was paying returns to other investors. Detailed documentation was provided via the introducer and there was nothing in the public domain at the time to suggest Barclays should have been concerned that Mr T might be falling victim to a scam. Many of the concerns Mr T has raised have come to light after the payment left his account. For example, the amount paid to introducers would not have been known to Mr T when he made the payment. And it wasn't for Barclays to analyse in detail the documentation provided to Mr T or to provide investment advice. I'm also mindful that Mr T had already invested in H.

I'm really sorry to disappoint Mr T, as I know he has lost a significant amount of money. But I'm not satisfied that I can fairly ask Barclays to refund him.

### **My final decision**

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 9 December 2024.

Jay Hadfield  
**Ombudsman**