

## **The complaint**

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

## **What happened**

Mr G says that he was introduced to an investment opportunity with a company I'll refer to as H in this decision. H was a private rental development company which offered loan notes to investors to raise money for its projects. Mr G made a payment to H of £10,000 in January 2020.

Mr G didn't receive the returns he expected, and H went into administration in January 2022. Mr G believes the investment wasn't genuine and that he is the victim of a sophisticated scam. He contacted Barclays in September 2023 and complained through a professional representative. He said it failed in its duty of care to protect him.

Barclays didn't agree to reimburse Mr G. It said Mr G has a civil dispute with H so it can't be held responsible for his loss.

### *Our investigation so far*

The investigator who considered this complaint didn't recommend that it be upheld. She said there was insufficient evidence to conclude that H didn't intend to provide the agreed investment or make the returns it set out. This meant that she couldn't ask Barclays to consider Mr G's complaint under the CRM Code.

Mr G didn't agree with the investigator's findings and asked for a review by an ombudsman, so his complaint has been passed to me to decide. He asked me to review the following points:

- The investigator applied the wrong threshold test for intervention by Barclays when considering the application of the CRM Code. The investigator said the CRM Code only applies where the payer's payment meets the CRM Code definition of an APP scam. But the threshold test for triggering action by the bank is whether there was an identifiable scam risk at the time the payment was made. In this case the payment Mr G made was highly unusual given his usual account activity.
- Barclays should reimburse Mr G based on his vulnerability as he was an inexperienced investor.
- The investigator failed to give adequate weight to the information provided to demonstrate that H was operating a Ponzi scheme. Too much weight was given to indicators H was running a legitimate business and too little weight to the implausibility of the returns offered and the required cashflow to generate those returns. H would not see a return from a site until it was sold or refinanced but had to pay commission, interest, and bonuses in the short term. Mr G said the logical explanation was that H was using new investor funds to make payments to other investors.
- Administrators for H haven't offered any conclusions on the inter group transactions that were being investigated and haven't concluded there was nothing irregular going on.

- H hasn't filed accounts since 2018. The logical inference is that auditors were unable to sign off H's accounts.
- Mr G said the purpose of the genuine business conducted by H was to give the project legitimacy and encourage investment.
- Given the high rates of return offered and the commission paid to introducers, H would have to generate huge returns which make the rates offered implausible. The logical conclusion is that investor funds were used to make payments to other investors.
- Mr G's representative also provided counsel's opinion from a senior barrister, a forensic accountant's report and the opinion of junior counsel on a judgement about a company linked to H.

### **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.

Barclays is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code). Under this code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam, except in limited circumstances. But the CRM Code only applies if the definition of an authorised push payment (APP) scam, as set out in it, is met.

I have considered whether Mr G's claim falls within the scope of the CRM Code, which defines an APP scam as:

*...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) (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

It is for Mr G to demonstrate that he is the victim of an APP scam.

To decide whether Mr G is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payment and whether Mr G thought this purpose was legitimate.
- The purpose the recipient (H) had in mind at the time of the payment, and whether this broadly aligned with what Mr G understood to have been the purpose of the payment.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

Mr G thought he was investing in a property development company. I haven't seen anything to suggest that he didn't consider this to be a legitimate purpose.

In reaching an answer on what purpose H had in mind, I've considered the wider circumstances surrounding H and any linked businesses. The key information to this case is:

- H completed three different development projects. H also worked on other developments which it then sold to developers when it experienced financial

difficulties. The completion of three development projects is strongly indicative of a legitimate business carrying out the activities I would expect of it.

I appreciate that Mr G believes H completed these developments to draw in investors and give the appearance of being legitimate. But no persuasive evidence has been put forward to make me believe this is the more likely scenario.

- Points raised by Mr G are largely based on assumptions and indicate poor business and financial management but don't go far enough to bring his claim within the scope of the CRM Code. Whilst H may have, for example, offered high rates of return, failed to cooperate with administrators, and paid high commissions to introducers, there is currently no evidence to say this was done with the intention of scamming investors. A lot of adverse inferences have been drawn here.
- I've not seen anything from the administrators of the company to suggest the company was operating a scam or that the transactions carried out by the company and connected companies were done with any intention other than putting investors' funds towards development projects. Whilst transactions have been investigated, there is no evidence that funds weren't used for the intended purpose.
- I also haven't been provided with evidence following an investigation by any other external organisation which concludes that H intended to use Mr G's funds for a different purpose.

Having carefully considered all the evidence provided to me, I'm not persuaded there is sufficient evidence to conclude that the purpose H had in mind when it took Mr G's payment was different to his. So, I consider Barclays acted fairly in not considering Mr G's complaint under the CRM Code.

If material new evidence comes to light at a later date Mr G can ask Barclays to reconsider his fraud claim.

I think the payment of £10,000 from Mr G's account was unusual. I can't uphold Mr G'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 G'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 G the kind of questions I'd expect it to in January 2020, 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 and was paying returns to other investors. Detailed documentation was provided and there was nothing in the public domain at the time to suggest Barclays should have been concerned that Mr G might be falling victim to a scam. Many of the concerns Mr G has raised, including high commissions paid to introducers, have come to light after the payments left Mr G's account.

Barclays ought to have asked Mr G questions to understand the nature of the payment and to ensure he had researched the investment opportunity before committing funds. But it wasn't for Barclays to analyse in detail the documentation provided to Mr G and review H's accounts as Mr G's representative has said.

Mr G says the investigator misapplied the CRM Code but I don't agree. The CRM Code is clear that subject to certain exceptions a customer "who has been the victim of an APP scam" should be reimbursed. Likewise, the provisions in respect of reimbursement when a customer is vulnerable apply when, at the time of becoming victim to an APP scam, that customer couldn't have protected themselves from the scam they fell victim to. So, reimbursement under the CRM Code, whether because of vulnerability or because an

exception to reimbursement doesn't apply, is dependent on the definition of an APP scam being met.

The code includes other provisions relating to the detection and prevention of scams. The section on prevention refers to the warning customers should be given if a firm identifies an APP scam risk in a payment journey. These provisions tie in with Barclays's wider obligation to be on the look-out for unusual transactions or other signs that might indicate that its customer was at risk of fraud (among other things). I have explained above why I don't consider any warning would have made a difference in this case.

I have reviewed the further information provided but don't consider it changes anything. Most of the points have already been considered in my decision so there is little to add here. I note that the advisory and accountant firm which prepared a report didn't have access to H's banking or accounting records and provides no evidence to show how funds were used or that they were used fraudulently. The judgement suggests that one company within the H group traded whilst insolvent, but I don't consider this goes far enough to conclude that funds weren't used for their intended purpose.

Mr G's representative has asked for £1,000 compensation for poor service but hasn't set out any failings or their impact. I also can't see that Barclays acted unreasonably, so I not making an award.

I'm really sorry to disappoint Mr G, but I'm not satisfied that I can fairly ask Barclays to refund him based on the evidence that is currently available.

### **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 G to accept or reject my decision before 27 May 2025.

Jay Hadfield  
**Ombudsman**