

The complaint

Mr B complains about Barclays Bank UK PLC.

He says that he fell victim to a scam and would like Barclays to refund him the money he has lost as a result.

What happened

Mr B invested into a company called KPG, which formed part of another company – HSG.

He made the following payments as part of the investment.

- 19 June 2017 - £3,000
- 28 June 2018 - £6,850
- 22 May 2019 - £5,500
- 27 November 2019 - £10,000
- 16 December 2019 - £3,170
- 15 July 2020 - £7,393.10

Mr B complained about not receiving credits from HSG as planned, but the issue remained unresolved, so through a third party, Mr B made a complaint to Barclays that he had fallen victim to a scam.

Barclays didn't uphold his complaint – it said that the first two payments were made more than six years ago, and so were out of time to make a complaint about, and that it considered the complaint to be about a failed investment, not a scam as Mr B and his representatives alleged.

Our investigator looked into things and said that they didn't consider that the first two payments fell outside of jurisdiction, and Barclays had been incorrect to suggest that they did, but also that they agreed that HSG was a failed investment, and not a scam, and so Barclays didn't need to refund Mr B any of the payments he made.

Barclays hasn't made any further comments, but Mr B and his representatives disagreed with what our Investigator said – so the complaint has been passed to me to make 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.

Having done so, I have decided to not uphold this complaint. I know this will be disappointing for Mr B, so I'll explain why.

I should start by saying that like our Investigator, I don't believe that any of the payments Mr B made were outside of this Service's jurisdiction to consider – but as Barclays have not

responded to our Investigator explaining this, I have assumed that it has accepted this position, and so I won't comment on this further.

It isn't in dispute that Mr B authorised the payments he made to HSG. Because of this the starting position – in line with the Payment Services Regulations (PSR's) 2017 – is that he is liable for the transaction. But he also says that he has been the victim of an authorised push payment (APP) scam.

The first three transactions Mr B made were prior 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 these payments.

However, this doesn't alter the fact that at the time, Barclays should also 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) though. 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.

But I can't uphold Mr B's complaint about these payments solely on the basis that Barclays ought reasonably to have intervened. I need to go on to consider causation – whether suitable intervention would have made a difference to Mr B's decision making or Barclays could have reasonably prevented the loss.

I'm not persuaded that if Barclays asked Mr B 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. HSG was a legitimate company (which I will explain in more detail further in my decision) that at the time the payment was made was paying returns to other investors and there was nothing in the public domain at the time to suggest Barclays should have been concerned that Mr B might be falling victim to a scam. Many of the concerns Mr B has raised have come to light after the payment left his account. And it wasn't for Barclays to analyse in detail the documentation provided to Mr B or to provide investment advice.

Payments four, five and six were made after the CRM code came into place.

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 the Mr B made to HSG 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 Mr B has been the victim of a scam, I have to consider if his intended purpose for the payments was legitimate, whether the intended purposes Mr B and HSG were broadly aligned and, if not, whether this was the result of dishonest deception on the part of the HSG.

Based on the evidence available to me, it appears Mr B was intending for the funds to be invested in specific building projects around the country. He then expected to receive regular returns on his investment of around 15-18% over the course of the investment. The paperwork he received prior to investing appeared to be professional and detailed, and HSG was listed on Companies House as being incorporated since 2011. So, I see no reason why Mr B would not have thought this was a legitimate investment.

I've gone on to consider whether HSG's intended purpose for the payments aligned with what Mr B intended. I've seen evidence that three building projects were completed by HSG. They also 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 HSG 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.

Mr B's representatives have said HSG paid unregulated introducers a high level of commission which in turn made the level of interest offered to investors unlikely. 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 HSG 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 there is a correlation between the level of commission and Mr B being the victim of a scam in the circumstances.

It should be noted that the liquidator for HSG has 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 HSG to various subsidiary companies, due to the way in which the HSG 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.

Mr B's representatives have also highlighted that HSG had not filed accounts since 2018, before Mr B made his investment. And they felt Barclays should reasonably have picked up on this fact before processing the payments in question and revealed what they feel is a scam. While it appears HSG has not managed its finances correctly, I don't think this therefore means they were conducting a scam or that they intended to scam investors at that time. During this period in question, HSG were completing development projects around the country, and I think this highlights that they intended to use customer's investments in these development projects.

On balance, I think HSG's intended purpose for the funds aligned with Mr B's and nothing I have seen indicates to me that HSG intended to defraud him. Instead, I think it's more likely this was a failed investment, So I don't think it meets the definition of an APP scam. And I think Barclays acted reasonably when it treated the case as a civil dispute.

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

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or

reject my decision before 14 May 2025.

Claire Pugh
Ombudsman