

The complaint

Mr A complains that Barclays Bank UK PLC (“Barclays”) hasn’t refunded him after he fell victim to an investment scam.

Mr A is represented by a claims management company (“R”).

What happened

In April 2020, Mr A invested into a company I will refer to as M. R says Mr A saw messages from friends on social media platforms discussing M and saying they were receiving good returns after investing in M. R has also says how the investments were described as ‘halal’ and that the person behind M was a well-respected member of a mosque. The investment was sold on the basis that investors’ money would be used to purchase telecommunications equipment at a discount, to then be sold on at a profit. Mr A didn’t know at the time, but he was sending payments to a Ponzi scheme.

Mr A made the following payments to M.

Date	Amount
9 April 2020	£2,000
10 April 2020	£2,000
10 April 2020	£1,000
8 October 2020	£2,000

Mr A received one return of £50 in February 2021.

Mr A realised he’d fallen victim to a scam when he couldn’t retrieve any funds from his account held with M. He engaged the services of R to represent him, and R contacted Barclays to tell it he’d been scammed.

Ultimately Barclays declined to refund Mr A on the basis that the payments weren’t out of character for the account, and it didn’t consider Mr A had a reasonable basis for belief. Our investigator did not uphold the complaint. He said that Mr A did not have a reasonable basis for belief and Barclays hadn’t done anything wrong when processing the transactions due to the relatively low value of the payments.

R on behalf of Mr A did not agree, it said the findings:

- did not take into account the sheer scale and magnitude of this scam.
- did not take into account the complexity/sophistication of this scam nor the characteristics of Mr A.

It also said there has been a relentless focus on checks which Mr A can't evidence. R pointed out that the Lending Standards Board (LSB) has said firms (and therefore this service) should not do so. R also said that the LSB had said that firms should not be basing their decision on whether a consumer met their requisite level of care. R highlighted that the LSB also emphasised that banks (and therefore this service) need to put themselves in the customer's shoes.

It then went on to list a number of other points about the scam in general and about victims in general which it considers added legitimacy to the scam.

R added that, as an inexperienced investor, Mr A had no reason to be concerned and the bank didn't appear concerned either since it didn't stop or question the payments.

R said Mr A was shown evidence of the returns other had made in person and discussed the opportunity verbally - so is not able to provide evidence. But it said, Mr A's testimony has been consistent throughout and when taken into consideration within the wider context of the group scam, should be sufficient.

R said, as an inexperienced investor, it was not unreasonable for Mr A to think 20% per month was a realistic return.

As the complaint could not be resolved informally, it has been passed to me for a 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.

Firstly, I'm extremely sorry to hear about what happened. I can understand entirely why Mr A feels so strongly that his money should be returned to him, and why he doesn't accept that Barclays isn't responsible to refund him here. He was tricked into sending money to what he thought was a legitimate investment but was in fact a Ponzi scheme. He's been left out of pocket by a significant sum as a result of this scam.

I have carefully noted the representations made by R, but I won't be addressing every single point that's been raised. It doesn't follow that the points haven't been considered, simply that I don't need to particularise every point in reaching an outcome I consider to be fair and reasonable in all the circumstances. I've instead concentrated on the issues I think are central to the outcome of this complaint.

When deciding what is fair and reasonable, I'm also required to take into account: relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

In broad terms, the starting position in law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

When thinking about what is fair and reasonable in this case, I've considered whether Barclays should have reimbursed Mr A in line with the provisions of the Lending Standards Board Contingent Reimbursement Model (the CRM Code) it has signed up to and whether it ought to have done more to protect Mr A from the possibility of financial harm from fraud.

There's no dispute here that Mr A was tricked into making the payments. He thought he was making payments to a genuine investment opportunity. But this isn't enough, in itself, for Mr A to receive a full refund of the money under the CRM Code.

The CRM Code

Barclays has signed up to the CRM Code. The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this, in all but a limited number of circumstances.

One such circumstance in which a bank might decline a refund is, if it can be demonstrated that the customer made the payments without having a reasonable basis for believing that:

- the payee was the person the customer was expecting to pay;
- the payment was for genuine goods or services; and/or
- the person or business with whom they transacted was legitimate

There are further exceptions within the CRM Code, but they do not apply in this case.

The CRM Code also outlines the standards a firm is expected to meet. And it says that when assessing whether the firm has met those standards, consideration must be given to whether compliance with those standards would have had a material effect on preventing the APP scam that took place.

Did Barclays meet its obligations under the CRM Code?

The CRM Code says that where firms identify APP scam risks in a payment journey, they should provide effective warnings to their customers. There's no specific threshold about exactly when a bank should identify an APP scam risk under the CRM Code. But I've considered whether the payments Mr A was making were so significantly unusual that Barclays should have identified he might be at risk of an APP scam.

Having reviewed the transaction history for the period leading up to the scam I'm not persuaded these payments would have looked unusual or suspicious based on the account activity. Banks can't reasonably be involved in every transaction. There is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. So I don't think Barclays needed to do anything more before processing these transactions.

Did Mr A have a reasonable basis for belief?

R has correctly pointed out that the CRM Code doesn't bind consumers and that there is no require level of care. What I need to consider here is not just whether Mr A believed he was sending money for an investment, but whether it was reasonable for him to do so. In doing so I have taken into account all of the circumstances of this case, including the characteristics of Mr A and the complexity of this particular scam.

I understand there were some sophisticated aspects to this scam. Mr A believed that the investment was promoted by a figure in a position of trust within the local community, which I accept might have seem convincing to him.

I recognise Mr A says he first heard about the investment through friends on social media forums who say they were receiving good returns. It seems from what Mr A's representative has told us, that Mr A took a good deal of confidence from other people who had already invested with M. But it remains unclear what evidence he saw of other people receiving returns. Mr A's representative says this was verbal. So, it seems Mr A was ultimately persuaded to invest following the verbal experience of other investors.

But I think there was enough going on to say Mr A ought fairly and reasonably to have significant cause to question what he was being told. Mr A was told he'd receive 20% profit per month on anything invested. I don't think Mr A needed to be an experienced investor to assess that adds up to an incredibly large return over the course of a year.

I'm aware Mr A relied on the experience of others. But I'm not persuaded this was reasonable given the 'too good to be true' rate of returns. Where there is an opportunity presented that comes across as highly improbable, as it did here, and where investing not insignificant sums of money, I find it's fair and reasonable to say Mr A ought to have been concerned about the deal and scrutinised the legitimacy of the offer.

The information and evidence provided by R is generic and does not necessarily relate to Mr A directly. There is a lot that's been described about how the scam operated generally, and some of the broadly known features about how people were drawn in. But that's not enough for me to put together a clear picture of what actions Mr A took or why he was reasonably persuaded to proceed. R hasn't been able to provide persuasive or specific detail about why Mr A was convinced this was legitimate.

Having considered all the evidence and information provided I'm unable to be as sure as I need to be that Mr A had a reasonable basis for believing the payments were for a genuine investment opportunity. And I think Barclays can fairly rely on this exception to reimbursement set out in the CRM Code.

Did Barclays do enough to recover Mr A's funds?

Mr A never raised an official claim with Barclays but by the time his complaint was raised no funds remained to be recovered. This is not unusual as scammers will quickly move funds on leaving nothing to be retrieved and the evidence supports that being the case here. So even if there was a delay by Barclays, there was nothing more it could have done to cover Mr A's funds.

R also complained to the bank to which Mr A sent the payment. It is a signatory to the CRM Code and assessed Mr A's complaint with that in mind. In doing so it refunded a 50% of Mr A's loss, recognising partial liability on its part.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 27 December 2024.

Kathryn Milne
Ombudsman